

Supersedes: All previous procedures on this subject

Procedure Number: PHDC 1-10

Subject: Pharmacy Appeals - Tennessee ("TN")

Current Effective Date: [PENDING]

Department: Pharmacy Pricing

Last Review Date: [PENDING]

Unit(s): Pricing Administration

Original Effective Date: [PENDING]

Line(s) of Business: All

Next Review Date: [PENDING]

POLICY

PerformRx shall permit Tennessee-based pharmacies to appeal a reimbursement the pharmacy alleges is less than the actual cost to that pharmacy for the prescription drug or device.

PURPOSE

Establish the process, approved by the Tennessee Commissioner of Commerce and Insurance (the "Commissioner"), for a Tennessee-based pharmacy to appeal a reimbursement from PerformRx the pharmacy alleges is not at least the actual cost to the pharmacy for the prescription drug or device.

PROCEDURE

- A. PerformRx shall comply with the timing and notice requirements of Tennessee Code Ann. §56-7-3108 and such other requirements as the Commissioner may establish by rule.
1. The pharmacy must file its appeal within seven (7) business days of its submission of the initial claim for reimbursement for the drug or medical product or device.
 2. PerformRx will make a final determination resolving the pharmacy's appeal within seven (7) business days of receipt of the appeal.
 3. The timeline for making a final determination resolving an initial appeal shall not begin until PerformRx has received all required information sufficient to allow PerformRx to conduct a complete analysis of the initial appeal. PerformRx shall be deemed to have received all required information sufficient to allow it to conduct a complete analysis of the initial appeal upon receipt of:
 - a. A complete version of the initial appeal form provided by the Commissioner to be used by a pharmacy to file an initial appeal; and
 - b. Certification from the pharmacy it has provided PerformRx with all invoices or other records demonstrating the pharmacy's actual cost for the drug or medical product or device at issue, which

must take into account all discounts, price concessions, rebates, or other reductions received as of the date the pharmacy filed its initial appeal.

4. If PerformRx receives an initial appeal from a pharmacy that does not contain all information required, PerformRx shall accept the incomplete initial appeal and hold it open pending receipt of additional information from the pharmacy.
 - a. Within five (5) business days of receipt of an incomplete initial appeal, PerformRx shall notify the pharmacy of the information needed to complete the initial appeal and initiate PerformRx's review. The pharmacy may respond within five (5) business days of receipt of PerformRx's notice outlining the requested information.
 - b. If the pharmacy provides the requested information, the timeline for making a final determination outlined above in Section A.2 shall start.
 - c. If the pharmacy fails to provide the requested information within five (5) business days of receipt of PerformRx's notice, PerformRx may deny the initial appeal.
 5. PerformRx may not delay the start of its review of an initial appeal by:
 - a. Requiring additional or different information from a pharmacy beyond what is required to be submitted under PerformRx's initial appeal process as approved by the Commissioner (pursuant to [TN] Rules of the Dept. of Commerce and Insurance, Division of Insurance, Ch. 0780-01-95-.03(3)(a)(1).; or
 - b. basing the delay on administrative or non-substantive errors or omissions in any of the filings that do not affect the overall validity of the initial appeal.
 6. If PerformRx fails to comply with the state's timing and notice requirements, the pharmacy's initial appeal shall be resolved by PerformRx in favor of the pharmacy. If a pharmacy fails to comply with the state's timing requirements, PerformRx may deny the initial appeal.
- B. Pharmacies shall have the right to designate a pharmacy services administrative organization ("PSAO") or other agent to file and handle its appeal.
- C. PerformRx shall permit a pharmacy or its designated agent to file an appeal using the standard appeal form (See Attachment A) created by the Commissioner to be used by a pharmacy or its designated agent to file an appeal with a PBM or covered entity.
- D. Upon filing an initial appeal, the pharmacy shall provide a copy of the invoice(s) demonstrating the pharmacy's actual cost as of the date of the filing of the initial appeal by the pharmacy. If the pharmacy receives any additional discounts, price concessions, rebates, or other reductions, excluding cash discounts, during the pendency of an initial appeal, the pharmacy must inform PerformRx of the additional discount, price concession, rebate, or other reduction, excluding a cash discount.

1. PerformRx may consider the additional discount, price concession, rebate, or other reduction, excluding a cash discount, when calculating the pharmacy's actual cost. Additional discounts, price concessions, rebates, or other reductions received after the resolution of an initial appeal shall not be grounds for reconsideration of any initial appeal previously considered and resolved.
- E. PerformRx shall request from each pharmacy filing an initial appeal the name and contact information of the wholesaler or manufacturer from which it purchased the prescription drug or device at issue.
1. Failure of a pharmacy to provide this information shall not constitute grounds to deny an initial appeal; provided, however, if PerformRx denies an initial appeal as otherwise allowed by law and the pharmacy fails to provide this information or PerformRx does not already have this information on file, PerformRx may presume the prescription drug or device at issue is available at a lower cost from the wholesaler or manufacturer from which the pharmacy purchased the prescription drug or device at issue.
- F. If a pharmacy or agent acting on behalf of a pharmacy prevails in an appeal, then within the seven (7) business days period following receipt of the appeal:
1. PerformRx shall:
 - a. Provide the pharmacy the following in writing:
 - i. A statement the initial appeal is granted, along with a summary outlining the basis for its decision;
 - ii. Notification that PerformRx has adjusted the challenged rate of reimbursement; and
 - iii. Detailed instructions for how to reverse and rebill the claim upon which the initial appeal is based.
 - b. Make the necessary change to the challenged rate of reimbursement or actual cost;
 - c. Provide to the pharmacy or agent the national drug code number ("NDC") for the drug on which the change is based, as applicable;
 - d. Permit the challenging pharmacy to reverse and rebill the claim upon which the appeal is based;
 - e. Pay or waive the cost of any transaction fee required to reverse and rebill the claim;
 - f. Reimburse the pharmacy at least the pharmacy's actual cost for the prescription drug or device; and
 - g. Apply the findings from the appeal as to the rate of reimbursement and actual cost for the particular drug or medical product or device to other similarly situated pharmacies in same network.
- G. If a pharmacy or agent acting on behalf of a pharmacy loses or is denied an appeal, then:
1. PerformRx shall determine whether the product associated with the NDC number or unique device identifier is available at a cost that is less than the challenged rate of reimbursement from a pharmaceutical wholesaler in the state as of the date the initial appeal was received from the appealing pharmacy.

- a. PerformRx shall make a reasonable effort to identify such information and must provide to the pharmacy any information complying with, and as set out in, Tennessee Code Ann. § 56-7-3206(c)(4)(A):
 - i. If a pharmacy or agent acting on behalf of a pharmacy loses or is denied an appeal provided for in this section, then:
 - 1) If the product associated with the NDC number or unique device identifier is available at a cost that is less than the challenged rate of reimbursement from a pharmaceutical wholesaler in the State of Tennessee, then within seven (7) business days after notice of the appeal is received, PerformRx shall provide the appealing pharmacy or agent with:
 - a) The name of the national or regional pharmaceutical wholesalers operating in the State that have the particular drug or medical product or device currently in stock at a price that is less than the amount of the challenged rate of reimbursement; and
 - b) If the product involved in the appeal is a drug, then the NDC number for the drug; or if the product involved is a medical device, then the unique device identifier for the device; and
 2. If the product associated with the NDC number or unique device identifier is not available at a cost that is less than the challenged rate of reimbursement from the pharmaceutical wholesaler from whom the pharmacy purchases the majority of prescription pharmaceutical products for resale, then PerformRx shall adjust the challenged rate of reimbursement to an amount equal to or greater than the appealing pharmacy's actual cost and permit the pharmacy to reverse and rebill each claim affected by the inability to procure the pharmaceutical product at a cost that is equal to or less than the previously challenged rate of reimbursement. PerformRx shall pay or waive the cost of any transaction fee required to reverse and rebill the claim.
 3. The product associated with the NDC number or unique device identifier at issue shall be deemed available if, at the time the initial appeal was received by PerformRx, the product was in stock with a wholesaler operating in the State of Tennessee.
 4. If, after a reasonable effort to identify the information needed to make the determination, PerformRx is unable to make the determination solely because the wholesalers contacted by PerformRx failed to provide the information needed by PerformRx within the required resolution timeframe, PerformRx shall presume that the product associated with the NDC number or unique device identifier at issue was not available at a cost that is less than the challenged rate of reimbursement from a pharmaceutical wholesaler in the state as of the date the initial appeal was received from the appealing pharmacy.
 5. If PerformRx fails to provide the information required above within the required timeframe, it shall be deemed to have determined there is no pharmaceutical wholesaler operating in the State of Tennessee that offered the product associated with the NDC number or unique device identifier at issue at a cost that is less than the challenged rate of reimbursement as of the date the initial appeal was received from the appealing pharmacy.

6. The pharmacy shall provide PerformRx with the name of its majority wholesaler for the purpose of allowing the PerformRx to accurately fulfill its obligations above. PerformRx shall then determine whether the prescription drug or device at issue is available from the pharmaceutical wholesaler at a cost that is less than the challenged rate of reimbursement as of the date the initial appeal was received from the appealing pharmacy.
 - a. If the pharmacy fails to provide the name of its majority wholesaler within two (2) business days of a request by PerformRx to provide that name, PerformRx may presume the prescription drug or device at issue is available at a cost that is less than the challenged rate of reimbursement from the pharmacy's majority wholesaler and take no further action.
7. The product associated with the NDC number or unique device identifier at issue shall be deemed available if, at the time the initial appeal was received by PerformRx, the product was in stock from the pharmacy's majority wholesaler.
8. If, after contacting the pharmacy's majority wholesaler to identify the information needed to make the determination required above, PerformRx is unable to make the determination solely because the wholesaler failed to provide the information needed by PerformRx within the timeframe within which PerformRx must resolve initial appeals, PerformRx shall presume that the product associated with the NDC number or unique device identifier at issue was not available at a cost that is less than the challenged rate of reimbursement from the wholesaler as of the date the initial appeal was received from the appealing pharmacy.
9. The pharmacy shall cooperate with PerformRx to assist in its search; provided, however, that, except as provided elsewhere in this policy, neither the pharmacy's nor a wholesaler's failure to cooperate or provide the information shall be grounds for PerformRx to otherwise fail to meet its obligations under Sections G.1 and G.2 above.
10. Even if PerformRx determines it has a basis to deny an initial appeal for a reason other than that the pharmacy was reimbursed actual cost, PerformRx shall follow the requirements set out in Sections G.1 and G.2 above.
11. If a pharmacy's initial appeal is resolved against the appealing pharmacy and PerformRx is required to adjust the challenged rate of reimbursement, PerformRx shall, to effectuate adjustment of the challenged rate, apply the findings from the appeal as to the rate of reimbursement for the drug or medical product or device at issue to other similarly situated pharmacies in the same manner.
12. If a pharmacy's initial appeal is resolved against the appealing pharmacy, PerformRx shall provide the pharmacy the following in writing:
 - a. A statement the initial appeal is denied, along with a summary outlining the basis for its decision;
 - b. If applicable, evidence PerformRx has adjusted the challenged rate of reimbursement;
 - c. If applicable, detailed instructions for how to reverse and rebill the claim upon which the initial appeal is based; and

- d. Instructions on how to make an external appeal of PerformRx's decision to the Commissioner by:
 - i. Explaining how to submit an appeal, including the appropriate phone number or website address for the Department where appeals are accepted (PerformRx shall be responsible for ensuring the information provided to pharmacies is accurate); and
 - ii. Including the following statement: "Pursuant to T.C.A. §56-7-3206(g)(2), you have the right to appeal this decision to the Commissioner of the Tennessee Department of Commerce and Insurance."
13. If PerformRx is required to pay a pharmacy any additional money upon resolution of an initial appeal, including a payment to a similarly situated pharmacy, PerformRx shall make such payment within seven (7) business days after notice of the initial appeal is received by PerformRx.
- H. PerformRx shall not assess any costs to a pharmacy for any services provided by PerformRx in connection with an initial appeal.
 - I. An initial appeal shall not result in a pharmacy, whether the appealing pharmacy or a similarly situated pharmacy, being required to reimburse or refund PerformRx any portion of a payment previously received by the pharmacy.
 - J. PerformRx shall make available on its secure website information about the initial appeal process, including:
 1. A telephone number, email address, web portal, or any other process that a pharmacy may use to submit initial appeals.
 2. The website shall clearly state that PerformRx's initial appeal process is available for all prescription drugs or devices in Tennessee for which a pharmacy alleges it did not receive its actual cost.
 3. All deadlines applicable to PerformRx's initial appeal process, and description of the steps contained within its initial appeal process.
 - K. PerformRx shall retain all records related to an initial appeal for the greater of five (5) years or until PerformRx is audited by the Department. PerformRx shall provide the Department access to all records upon request and comply with requests for information regardless of whether the request is part of a departmental audit.
 - L. On or before July 1st of each year, PerformRx shall provide the Commissioner with:
 1. A written report that contains the following aggregated information for the preceding calendar year:
 - a. The number of initial appeals filed with PerformRx;
 - b. The number of initial appeals resolved in favor of pharmacies;
 - c. The number of initial appeals resolved against pharmacies;
 - d. The total amount of money paid to appealing pharmacies as a result of initial appeals resolved in favor of pharmacies;
 - e. The total amount of money paid to similarly situated pharmacies as a result of initial appeals resolved in favor of pharmacies;

- f. The number of initial appeals that were appealed to the Commissioner of which PerformRx received notice; and
 - g. Any other information requested by the Commissioner.
2. A written statement certifying it meets the requirements Sec. J above along with timestamped screenshots of PerformRx's website showing the required information is on PerformRx's website and is readily accessible by pharmacies.

RELATED POLICIES AND PROCEDURES

PR.244.02PP Pharmacy Pricing Review
PHDC 1-02 Pharmacy Relations Program

SOURCE DOCUMENTS

Tennessee Code Ann. § 56-7-3206
Tennessee Code Ann. § 56-7-3108
[TN] Rules of the Dept. of Commerce and Insurance, Division of Insurance, Ch. 0780-01-95 - Pharmacy Benefit Managers

ATTACHMENTS



StandardAppealForm
012023.pdf

A.

ATTACHMENT A**Revision History Table**

Date	Status	Revision Description	Author(s) of Revision
[PENDING]	Initial Policy Development	Developed policy to articulate fulfillment of TN Code Ann. § 56-7-3206, -3108; and [TN] Rules of the Dept. of Commerce and Insurance, Division of Insurance, Ch. 0780-01-95 - Pharmacy Benefit Managers.	C. Maahs M. McGrath

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