

By Senator Peaden

2-1060-03

1                                   A bill to be entitled  
 2           An act relating to Medicaid audits of  
 3           pharmacies; providing requirements for an audit  
 4           conducted of the Medicaid-related records of a  
 5           pharmacy licensed under ch. 465, F.S.;  
 6           requiring that a pharmacist be provided prior  
 7           notice of the audit; providing that a  
 8           pharmacist is not subject to criminal penalties  
 9           without proof of intent to commit fraud;  
 10          providing that an underpayment or overpayment  
 11          may not be based on certain projections;  
 12          requiring that all pharmacies be audited under  
 13          the same standards; limiting the period that  
 14          may be covered by an audit; requiring that the  
 15          Agency for Health Care Administration establish  
 16          a procedure for conducting a preliminary  
 17          review; authorizing the agency to establish  
 18          peer-review panels; requiring that the agency  
 19          dismiss an unfavorable audit report if it or a  
 20          review panel finds that the pharmacist did not  
 21          commit intentional fraud; exempting certain  
 22          audits conducted by the Medicaid Fraud Control  
 23          Unit of the Department of Legal Affairs;  
 24          providing an effective date.

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 26 Be It Enacted by the Legislature of the State of Florida:

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 28           Section 1. Medicaid audits of pharmacies.--  
 29           (1) Notwithstanding any other law, an audit of the  
 30 Medicaid-related records of a pharmacy licensed under chapter  
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1 465, Florida Statutes, must be conducted as provided in this  
2 section.

3 (a) The agency conducting the audit must give the  
4 pharmacist at least 2 weeks' prior notice of the audit.

5 (b) An audit must be conducted by a pharmacist  
6 licensed in this state.

7 (c) Any clerical or recordkeeping error, such as a  
8 typographical error, scrivener's error, or computer error  
9 regarding a document or record required under the Medicaid  
10 program does not constitute a willful violation and is not  
11 subject to criminal penalties without proof of intent to  
12 commit fraud.

13 (d) A pharmacist may use the physician's record or  
14 other order for drugs or medicinal supplies written or  
15 transmitted by any means of communication for purposes of  
16 validating the pharmacy record with respect to orders or  
17 refills of a legend or narcotic drug.

18 (e) A finding of an overpayment or underpayment must  
19 be based on the actual overpayment or underpayment and may not  
20 be a projection based on the number of patients served having  
21 a similar diagnosis or on the number of similar orders or  
22 refills for similar drugs.

23 (f) Each pharmacy, regardless of whether the pharmacy  
24 is a community pharmacy, an institutional pharmacy, or a  
25 special pharmacy, shall be audited under the same standards  
26 and parameters.

27 (g) A pharmacist must be allowed at least 10 days in  
28 which to produce documentation to address any discrepancy  
29 found during an audit.

30 (h) The period covered by an audit may not exceed 1  
31 calendar year.

1           (i) An audit may not be scheduled during the first 5  
2 days of any month due to the high volume of prescriptions  
3 filled during that time.

4           (j) The audit report must be delivered to the  
5 pharmacist within 90 days after conclusion of the audit.

6           (2) The Agency for Health Care Administration shall  
7 establish a process under which a pharmacist may obtain a  
8 preliminary review of an audit report and may appeal an  
9 unfavorable audit report without the necessity of obtaining  
10 legal counsel. The preliminary review and appeal may be  
11 conducted by an ad hoc peer-review panel, appointed by the  
12 agency, which consists of pharmacists who maintain an active  
13 practice. If, following the preliminary review, the agency or  
14 review panel finds that an unfavorable audit report lacks  
15 merit and finds that the pharmacist did not commit intentional  
16 fraud, the agency shall dismiss the audit report without the  
17 necessity of any further proceedings.

18           (3) This section does not apply to investigative  
19 audits conducted by the Medicaid Fraud Control Unit of the  
20 Department of Legal Affairs.

21           Section 2. This act shall take effect upon becoming a  
22 law.

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SENATE SUMMARY

Provides requirements for audits of the Medicaid records of pharmacies. Requires that a pharmacist be given 2 weeks' prior notice of an audit. Requires that there be proof of intent to commit fraud before a pharmacist is subject to criminal penalties. Provides that the period subject to audit may not exceed 1 year. Requires the Agency for Health Care Administration to provide for preliminary reviews of an unfavorable audit report. Requires dismissal of an audit report if the pharmacist did not commit intentional fraud. Provides that the act does not apply to investigative audits conducted by the Medicaid Fraud Control Unit of the Department of Legal Affairs. (See bill for details.)