

1 A bill to be entitled
 2 An act relating to audits of pharmacy records; amending s.
 3 465.188, F.S.; revising requirements for the audit of
 4 Medicaid-related pharmacy records; authorizing third-party
 5 payor and third-party administrator audits of pharmacies;
 6 providing that claims containing certain clerical or
 7 recordkeeping errors are not subject to financial
 8 recoupment under certain circumstances; specifying that
 9 certain audit criteria apply to third-party claims
 10 submitted after a specified date; prohibiting certain
 11 accounting practices used for calculating the recoupment
 12 of claims; prohibiting the audit criteria from requiring
 13 the recoupment of claims except under certain
 14 circumstances; providing procedures for the audit of
 15 third-party payor and third-party administrator audits;
 16 providing an effective date.

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

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 20 Section 1. Section 465.188, Florida Statutes, is amended
 21 to read:

22 465.188 Medicaid financial audits of pharmacies.—
 23 (1) Notwithstanding any provision of ~~other~~ law, when an
 24 audit of ~~the~~ Medicaid-related, third-party payor, or third-party
 25 administrator records of a pharmacy permittee ~~licensed~~ under
 26 this chapter ~~465~~ is conducted, such audit must be conducted as
 27 provided in this section.

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28 (a) The agency or other entity conducting the audit must
29 give the pharmacist at least 1 week's prior notice of the
30 initial audit for each audit cycle.

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

33 (c) Any clerical or recordkeeping error, such as a
34 typographical error, scrivener's error, or computer error
35 regarding a document or record required under the third-party
36 payor, third-party administrator, or Medicaid program does not
37 constitute a willful violation and, without proof of intent to
38 commit fraud, is not subject to criminal penalties ~~without proof~~
39 ~~of intent to commit fraud~~. A claim is not subject to financial
40 recoupment if, except for such a clerical or recordkeeping
41 error, the claim is an otherwise valid claim.

42 (d) A pharmacist may use the physician's record or other
43 order for drugs or medicinal supplies written or transmitted by
44 any means of communication for purposes of validating the
45 pharmacy record with respect to orders or refills of a legend or
46 narcotic drug.

47 (e) A finding of an overpayment or underpayment must be
48 based on the actual overpayment or underpayment and may not be a
49 projection based on the number of patients served having a
50 similar diagnosis or on the number of similar orders or refills
51 for similar drugs.

52 (f) Each pharmacy shall be audited under the same
53 standards and parameters.

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

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

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

62 (j) The audit report must be delivered to the pharmacist
 63 within 90 days after conclusion of the audit. A final audit
 64 report shall be delivered to the pharmacist within 6 months
 65 after receipt of the preliminary audit report or final appeal,
 66 as provided for in subsection (2), whichever is later.

67 (k) The audit criteria set forth in this section apply
 68 ~~applies~~ only to audits of Medicaid claims submitted for payment
 69 after subsequent to July 11, 2003, and to third-party claims
 70 submitted for payment after July 1, 2009. Notwithstanding any
 71 ~~other~~ provision of in this section, the agency or other entity
 72 conducting the audit shall not use the accounting practice of
 73 extrapolation in calculating penalties or recoupment for
 74 Medicaid, third-party payor, or third-party administrator
 75 audits.

76 (1) The audit criteria may not subject a claim to
 77 financial recoupment except in those circumstances when
 78 recoupment is required by law.

79 (2) The Agency for Health Care Administration, in the case
 80 of a Medicaid-related audit, or the third-party payor or third-
 81 party administrator contracting with the pharmacy, in the case

82 of a third-party payor or third-party administrator audit, shall
 83 establish a process under which a pharmacist may obtain a
 84 preliminary review of an audit report and may appeal an
 85 unfavorable audit report without the necessity of obtaining
 86 legal counsel. The preliminary review and appeal may be
 87 conducted by an ad hoc peer review panel, appointed by the
 88 agency, in the case of a Medicaid-related audit, or appointed by
 89 the third-party payor or third-party administrator contracting
 90 with the pharmacy, in the case of a third-party payor or third-
 91 party administrator audit, which consists of pharmacists who
 92 maintain an active practice. If, following the preliminary
 93 review, the ~~agency or~~ review panel finds that an unfavorable
 94 audit report is unsubstantiated, the agency, in the case of a
 95 Medicaid-related audit, or the third-party payor or third-party
 96 administrator contracting with the pharmacy, in the case of a
 97 third-party payor or third-party administrator audit, shall
 98 dismiss the audit report without the necessity of any further
 99 proceedings.

100 (3) This section does not apply to investigative audits
 101 conducted by the Medicaid Fraud Control Unit of the Department
 102 of Legal Affairs.

103 (4) This section does not apply to any investigative audit
 104 conducted by the Agency for Health Care Administration when the
 105 agency has reliable evidence that the claim that is the subject
 106 of the audit involves fraud, willful misrepresentation, or abuse
 107 under the Medicaid program.

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