

By Senator Peaden

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

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

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

23 465.188 Medicaid financial audits of pharmacies.—

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

29 (a) The agency or other entity conducting the audit must

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30 give the pharmacist at least 1 week's prior notice of the
31 initial audit for each audit cycle.

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

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

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

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

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

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

58 (h) The period covered by an audit may not exceed 1

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59 calendar year.

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

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

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

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

80 (2) The Agency for Health Care Administration, in the case
81 of a Medicaid-related audit, or the third-party payor or third-
82 party administrator contracting with the pharmacy, in the case
83 of a third-party payor or third-party administrator audit, shall
84 establish a process under which a pharmacist may obtain a
85 preliminary review of an audit report and may appeal an
86 unfavorable audit report without the necessity of obtaining
87 legal counsel. The preliminary review and appeal may be

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88 conducted by an ad hoc peer review panel, appointed by the
89 agency, in the case of a Medicaid-related audit, or appointed by
90 the third-party payor or third-party administrator contracting
91 with the pharmacy, in the case of a third-party payor or third-
92 party administrator audit, which consists of pharmacists who
93 maintain an active practice. If, following the preliminary
94 review, the ~~agency or~~ review panel finds that an unfavorable
95 audit report is unsubstantiated, the agency, in the case of a
96 Medicaid-related audit, or the third-party payor or third-party
97 administrator contracting with the pharmacy, in the case of a
98 third-party payor or third-party administrator audit, shall
99 dismiss the audit report without the necessity of any further
100 proceedings.

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

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

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