

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Brodeur offered the following:

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3 **Amendment (with title amendment)**

4 Between lines 3847 and 3848, insert:

5 Section 82. Section 465.188, Florida Statutes, is amended  
6 to read:

7 465.188 Medicaid audits of pharmacies.—

8 (1) Notwithstanding any other law, when an audit of the  
9 ~~Medicaid-related~~ records of a pharmacy licensed under chapter  
10 465 is conducted, such audit must be conducted as provided in  
11 this section.

12 (a) The agency or a third party conducting the audit must  
13 give the pharmacist at least 1 week's prior notice of the  
14 initial audit for each audit cycle.

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

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17 (c) Any clerical or recordkeeping error, such as a  
18 typographical error, scrivener's error, or computer error  
19 regarding a document or record required by the third party or  
20 under the Medicaid program does not constitute a willful  
21 violation and is not subject to criminal penalties without proof  
22 of intent to commit fraud.

23 (d) A pharmacist may use the physician's record or other  
24 order for drugs or medicinal supplies written or transmitted by  
25 any means of communication for purposes of validating the  
26 pharmacy record with respect to orders or refills of a legend or  
27 narcotic drug.

28 (e) A finding of an overpayment or underpayment must be  
29 based on the actual overpayment or underpayment and may not be a  
30 projection based on the number of patients served having a  
31 similar diagnosis or on the number of similar orders or refills  
32 for similar drugs.

33 (f) Each pharmacy shall be audited under the same  
34 standards and parameters.

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

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

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

43 (j) The audit report must be delivered to the pharmacist  
44 within 90 days after conclusion of the audit. A final audit  
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45 report shall be delivered to the pharmacist within 6 months  
46 after receipt of the preliminary audit report or final appeal,  
47 as provided for in subsection (2), whichever is later.

48 (k) The audit criteria set forth in this section applies  
49 only to audits of claims submitted for payment subsequent to  
50 July 11, 2003. Notwithstanding any other provision in this  
51 section, the agency or the third party conducting the audit  
52 shall not use the accounting practice of extrapolation in  
53 calculating penalties for Medicaid audits.

54 (2) The Agency for Health Care Administration, in the case  
55 of Medicaid-related audits, or the third party contracting with  
56 the pharmacy in the case of a third-party payor or administrator  
57 audit, shall establish a process under which a pharmacist may  
58 obtain a preliminary review of an audit report and may appeal an  
59 unfavorable audit report without the necessity of obtaining  
60 legal counsel. The preliminary review and appeal may be  
61 conducted by an ad hoc peer review panel, appointed by the  
62 agency, in the case of Medicaid-related audits, or the third  
63 party contracting with the pharmacy in the case of a third-party  
64 payor or administrator audit, which consists of pharmacists who  
65 maintain an active practice. If, following the preliminary  
66 review, the agency or review panel finds that an unfavorable  
67 audit report is unsubstantiated, the agency shall dismiss the  
68 audit report without the necessity of any further proceedings.

69 (3) This section does not apply to investigative audits  
70 conducted by the Medicaid Fraud Control Unit of the Department  
71 of Legal Affairs.

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

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81 **T I T L E A M E N D M E N T**

82 Remove line 270 and insert:

83 Administration; amending s. 465.188, F.S.; providing  
84 for financial audits of pharmacies by the Agency for  
85 Health Care Administration or a third party; amending  
86 s. 468.1695, F.S.; providing  
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