

By Senator Latvala

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1 A bill to be entitled
 2 An act relating to pharmacies; amending s. 465.188,
 3 F.S.; revising requirements for the audit of Medicaid-
 4 related pharmacy records; authorizing third-party
 5 payor and third-party administrator audits of
 6 pharmacies; providing that claims containing certain
 7 errors are not subject to financial recoupment under
 8 certain circumstances; specifying that certain audit
 9 criteria apply to third-party claims submitted after a
 10 specified date; prohibiting certain accounting
 11 practices used for calculating the recoupment of
 12 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
 16 audits; prohibiting a third-party payor or state
 17 agency from requiring the delivery by mail of pharmacy
 18 provider services and prescription drugs; authorizing
 19 a third-party payor or state agency to offer an
 20 incentive program for the delivery of prescription
 21 drugs by mail; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 465.188, Florida Statutes, is amended to
 26 read:

27 465.188 Financial Medicaid audits of pharmacies.—

28 (1) Notwithstanding any other provision of law, when an
 29 audit of ~~the~~ Medicaid-related, third-party payor, or third-party

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30 administrator records of a pharmacy permittee ~~licensed~~ under
31 this chapter ~~465~~ is conducted, such audit must be conducted as
32 provided in this section.

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

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

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

48 (d) A pharmacist may use the physician's record or other
49 order for drugs or medicinal supplies written or transmitted by
50 any means of communication for purposes of validating the
51 pharmacy record with respect to orders or refills of a legend or
52 narcotic drug.

53 (e) A finding of an overpayment or underpayment must be
54 based on the actual overpayment or underpayment and may not be a
55 projection based on the number of patients served having a
56 similar diagnosis or on the number of similar orders or refills
57 for similar drugs.

58 (f) Each pharmacy shall be audited under the same standards

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59 and parameters.

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

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

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

68 (j) The audit report must be delivered to the pharmacist
69 within 90 days after conclusion of the audit. A final audit
70 report shall be delivered to the pharmacist within 6 months
71 after receipt of the preliminary audit report or final appeal,
72 as provided for in subsection (2), whichever is later.

73 (k) The audit criteria set forth in this section apply
74 ~~applies~~ only to audits of Medicaid claims submitted for payment
75 after subsequent to July 11, 2003, and to third-party claims
76 submitted for payment after July 1, 2011. Notwithstanding any
77 other provision of in this section, the agency or other entity
78 conducting the audit may shall not use the accounting practice
79 of extrapolation in calculating penalties or recoupment for
80 Medicaid, third-party payor, or third-party administrator
81 audits.

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

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

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

106 (3) This section does not apply to investigative audits
107 conducted by the Medicaid Fraud Control Unit of the Department
108 of Legal Affairs.

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

114 Section 2. Notwithstanding any other provision of law, a
115 third-party payor or state agency may not require, by contract,
116 administrative rule, or condition of participation in a pharmacy

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117 provider network, the delivery of pharmacy provider services and
118 prescription drugs by mail. However, a third-party payor or
119 state agency may offer an incentive program for the delivery of
120 prescription drugs by mail.

121 Section 3. This act shall take effect July 1, 2012.