

By Senator Flores

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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 requiring that audits of third-party payor and third-
6 party administrator records of pharmacy permittees be
7 conducted in specified manners; providing that claims
8 containing certain clerical or recordkeeping errors
9 are not subject to financial recoupment under certain
10 circumstances; specifying that certain audit criteria
11 apply to third-party claims submitted after a
12 specified date; prohibiting certain accounting
13 practices used for calculating the recoupment of
14 claims; prohibiting the audit criteria from requiring
15 the recoupment of claims except under certain
16 circumstances; providing procedures for review and
17 appeal of third-party payor and third-party
18 administrator audits; providing an effective date.

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

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

24 465.188 Financial ~~Medicaid~~ audits of pharmacies.—

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

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

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

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

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

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

55 (f) Each pharmacy shall be audited under the same standards
56 and parameters.

57 (g) A pharmacist must be allowed at least 10 days in which
58 to produce documentation to address any discrepancy found during

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59 an audit.

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

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

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

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

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

82 (2) The Agency for Health Care Administration, in the case
83 of a Medicaid-related audit, or the third-party payor or third-
84 party administrator contracting with the pharmacy, in the case
85 of a third-party payor or third-party administrator audit, shall
86 establish a process under which a pharmacist may obtain a
87 preliminary review of an audit report and may appeal an

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

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

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

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