

ENROLLED

HB 357

2022 Legislature

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An act relating to pharmacies and pharmacy benefit managers; transferring, renumbering, and amending s. 465.1885, F.S.; revising the entities conducting pharmacy audits to which certain requirements and restrictions apply; authorizing audited pharmacies to appeal certain findings; providing that health insurers and health maintenance organizations that transfer certain payment obligation to pharmacy benefit managers remain responsible for specified violations; amending s. 624.490, F.S.; providing a penalty for failure to register as pharmacy benefit managers under certain circumstances; providing an effective date.

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

Section 1. Section 465.1885, Florida Statutes, is transferred, renumbered as section 624.491, Florida Statutes, and amended to read:

624.491 ~~465.1885~~ Pharmacy audits; ~~rights~~.

(1) A health insurer or health maintenance organization providing pharmacy benefits through a major medical individual or group health insurance policy or a health maintenance contract, respectively, must comply with the requirements of

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26 | this section when the health insurer or health maintenance  
 27 | organization or any person or entity acting on behalf of the  
 28 | health insurer or health maintenance organization, including,  
 29 | but not limited to, a pharmacy benefit manager as defined in s.  
 30 | 624.490(1), audits the records of a pharmacy licensed under  
 31 | chapter 465. The person or entity conducting such audit must ~~if~~  
 32 | ~~an audit of the records of a pharmacy licensed under this~~  
 33 | ~~chapter is conducted directly or indirectly by a managed care~~  
 34 | ~~company, an insurance company, a third-party payor, a pharmacy~~  
 35 | ~~benefit manager, or an entity that represents responsible~~  
 36 | ~~parties such as companies or groups, referred to as an "entity"~~  
 37 | ~~in this section, the pharmacy has the following rights:~~

38 |       (a) Except as provided in subsection (3), notify the  
 39 | pharmacy ~~To be notified~~ at least 7 calendar days before the  
 40 | initial onsite audit for each audit cycle.

41 |       (b) Not schedule an ~~To have the~~ onsite audit during  
 42 | ~~scheduled after~~ the first 3 calendar days of a month unless the  
 43 | pharmacist consents otherwise.

44 |       (c) Limit the duration of ~~To have the~~ audit period ~~limited~~  
 45 | to 24 months after the date a claim is submitted to or  
 46 | adjudicated by the entity.

47 |       (d) In the case of ~~To have~~ an audit that requires clinical  
 48 | or professional judgment, conduct the audit in consultation  
 49 | with, or allow the audit to be conducted by, ~~or in consultation~~  
 50 | ~~with~~ a pharmacist.

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51           (e) Allow the pharmacy to use the written and verifiable  
 52 records of a hospital, physician, or other authorized  
 53 practitioner, which are transmitted by any means of  
 54 communication, to validate the pharmacy records in accordance  
 55 with state and federal law.

56           (f) Reimburse the pharmacy ~~To be reimbursed~~ for a claim  
 57 that was retroactively denied for a clerical error,  
 58 typographical error, scrivener's error, or computer error if the  
 59 prescription was properly and correctly dispensed, unless a  
 60 pattern of such errors exists, fraudulent billing is alleged, or  
 61 the error results in actual financial loss to the entity.

62           (g) Provide the pharmacy with a copy of ~~To receive~~ the  
 63 preliminary audit report within 120 days after the conclusion of  
 64 the audit.

65           (h) Allow the pharmacy to produce documentation to address  
 66 a discrepancy or audit finding within 10 business days after the  
 67 preliminary audit report is delivered to the pharmacy.

68           (i) Provide the pharmacy with a copy of ~~To receive~~ the  
 69 final audit report within 6 months after the pharmacy's receipt  
 70 of receiving the preliminary audit report.

71           (j) Calculate any ~~To have~~ recoupment or penalties based on  
 72 actual overpayments and not according to the accounting practice  
 73 of extrapolation.

74           (2) ~~The rights contained in~~ This section does ~~de~~ not apply  
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76 (a) Audits in which suspected fraudulent activity or other  
 77 intentional or willful misrepresentation is evidenced by a  
 78 physical review, review of claims data or statements, or other  
 79 investigative methods;

80 (b) Audits of claims paid for by federally funded  
 81 programs; or

82 (c) Concurrent reviews or desk audits that occur within 3  
 83 business days after ~~of~~ transmission of a claim and where no  
 84 chargeback or recoupment is demanded.

85 (3) An entity that audits a pharmacy located within a  
 86 Health Care Fraud Prevention and Enforcement Action Team (HEAT)  
 87 Task Force area designated by the United States Department of  
 88 Health and Human Services and the United States Department of  
 89 Justice may dispense with the notice requirements of paragraph  
 90 (1)(a) if such pharmacy has been a member of a credentialed  
 91 provider network for less than 12 months.

92 (4) Pursuant to s. 408.7057, and after receipt of the  
 93 final audit report issued under paragraph (1)(i), a pharmacy may  
 94 appeal the findings of the final audit report as to whether a  
 95 claim payment is due and as to the amount of a claim payment.

96 (5) A health insurer or health maintenance organization  
 97 that, under terms of a contract, transfers to a pharmacy benefit  
 98 manager the obligation to pay a pharmacy licensed under chapter  
 99 465 for any pharmacy benefit claims arising from services  
 100 provided to or for the benefit of an insured or subscriber

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101 remains responsible for a violation of this section.

102 Section 2. Subsection (6) of section 624.490, Florida  
 103 Statutes, is renumbered as subsection (7), and a new subsection  
 104 (6) is added to that section, to read:

105 624.490 Registration of pharmacy benefit managers.—

106 (6) A person who fails to register with the office while  
 107 operating as a pharmacy benefit manager is subject to a fine of  
 108 \$10,000 for each violation.

109 Section 3. This act shall take effect July 1, 2022.