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 audits of third-party payor and third-

6   party administrator records of pharmacy permittees;

7   providing that claims containing certain clerical or

8   recordkeeping errors are not subject to financial

9   recoupment under certain circumstances; specifying

10   that certain audit criteria apply to third-party

11   claims submitted after a specified date; prohibiting

12   certain accounting practices used for calculating the

13   recoupment of claims; prohibiting the audit criteria

14   from requiring the recoupment of claims except under

15   certain circumstances; providing procedures for review

16   and appeal of third-party payor and third-party

17   administrator audits; providing an effective date.

18

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

22   to read:

23   465.188 Financial Medicaid 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

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 typographical, scrivener's,

42   computer, or other clerical or recordkeeping error, the claim is

43   an otherwise valid claim.

44   (d) A pharmacist may use the physician's record or other

45   order for drugs or medicinal supplies written or transmitted by

46   any means of communication for purposes of validating the

47   pharmacy record with respect to orders or refills of a legend or

48   narcotic drug.

49   (e) A finding of an overpayment or underpayment must be

50   based on the actual overpayment or underpayment and may not be a

51   projection based on the number of patients served having a

52   similar diagnosis or on the number of similar orders or refills

53   for similar drugs.

54   (f) Each pharmacy shall be audited under the same

55   standards and parameters.

56   (g) A pharmacist must be allowed at least 10 days in which

57 to produce documentation to address any discrepancy found during
58 an audit.

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

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

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

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

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

81   (2) The Agency for Health Care Administration, in the case
82 of a Medicaid-related audit, or the third-party payor or third-
83 party administrator contracting with the pharmacy, in the case
84 of a third-party payor or third-party administrator audit, shall

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85 establish a process under which a pharmacist may obtain a
86 preliminary review of an audit report and may appeal an
87 unfavorable audit report without the necessity of obtaining
88 legal counsel. The preliminary review and appeal may be
89 conducted by an ad hoc peer review panel, appointed by the
90 agency, in the case of a Medicaid-related audit, or appointed by
91 the third-party payor or third-party administrator contracting
92 with the pharmacy, in the case of a third-party payor or third-
93 party administrator audit, which consists of pharmacists who
94 maintain an active practice. If, following the preliminary
95 review, the agency or review panel finds that an unfavorable
96 audit report is unsubstantiated, the agency, in the case of a
97 Medicaid-related audit, or the third-party payor or third-party
98 administrator contracting with the pharmacy, in the case of a
99 third-party payor or third-party administrator audit, shall
100 dismiss the audit report without the necessity of any further
101 proceedings.
102   (3) This section does not apply to investigative audits
103 conducted by the Medicaid Fraud Control Unit of the Department
104 of Legal Affairs.
105   (4) This section does not apply to any investigative audit
106 conducted by the Agency for Health Care Administration when the
107 agency has reliable evidence that the claim that is the subject
108 of the audit involves fraud, willful misrepresentation, or abuse
109 under the Medicaid program.
110   Section 2. This act shall take effect upon becoming a law.

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