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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           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; creating s. 465.1902, F.S.;  
18          prohibiting a third-party payor or state agency from  
19          mandating the delivery of pharmacy provider services  
20          and prescription drugs by mail; authorizing a third-  
21          party payor or state agency to offer an incentivized  
22          program for prescription drugs by mail; providing an  
23          effective date.

24  
25   Be It Enacted by the Legislature of the State of Florida:

26  
27           Section 1.   Section 465.188, Florida Statutes, is amended  
28   to read:

29 465.188 Financial ~~Medicaid~~ audits of pharmacies.—

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

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

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

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

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

55 (e) A finding of an overpayment or underpayment must be  
 56 based on the actual overpayment or underpayment and may not be a

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57 | projection based on the number of patients served having a  
58 | similar diagnosis or on the number of similar orders or refills  
59 | for similar drugs.

60 | (f) Each pharmacy shall be audited under the same  
61 | standards and parameters.

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

65 | (h) The period covered by an audit may not exceed 1  
66 | calendar year.

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

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

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

84 | (l) The audit criteria may not subject a claim to

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85 financial recoupment except in those circumstances when  
86 recoupment is required by law.

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

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

111 (4) This section does not apply to any investigative audit  
112 conducted by the Agency for Health Care Administration when the

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113 agency has reliable evidence that the claim that is the subject  
114 of the audit involves fraud, willful misrepresentation, or abuse  
115 under the Medicaid program.

116 Section 2. Section 465.1902, Florida Statutes is created  
117 to read:

118 465.1902 Pharmacy services and prescription drugs by  
119 mail.—Notwithstanding any other provision of law, a third-party  
120 payor or state agency may not mandate, by contract, rule, or  
121 condition of participation in a pharmacy provider network, the  
122 delivery of pharmacy provider services and prescription drugs by  
123 mail. However, a third-party payor or state agency may offer an  
124 incentivized program for prescription drugs by mail.

125 Section 3. This act shall take effect upon becoming a law.