

By Senator Wright

14-00145A-22

20221476\_\_

1                   A bill to be entitled  
2       An act relating to prescription drug coverage;  
3       amending s. 624.3161, F.S.; authorizing the Office of  
4       Insurance Regulation to examine pharmacy benefit  
5       managers; specifying that certain examination costs  
6       are payable by persons examined; amending s. 624.490,  
7       F.S.; providing a penalty for failure to register as a  
8       pharmacy benefit manager under certain circumstances;  
9       transferring, renumbering, and amending s. 465.1885,  
10      F.S.; revising the entities conducting pharmacy audits  
11      to which certain requirements and restrictions apply;  
12      authorizing audited pharmacies to appeal certain  
13      findings; providing that health insurers and health  
14      maintenance organizations that transfer a certain  
15      payment obligation to pharmacy benefit managers remain  
16      responsible for specified violations; providing an  
17      effective date.

18  
19   Be It Enacted by the Legislature of the State of Florida:

20  
21       Section 1. Subsections (1) and (3) of section 624.3161,  
22      Florida Statutes, are amended to read:

23       624.3161 Market conduct examinations.—

24       (1) As often as it deems necessary, the office shall  
25      examine each pharmacy benefit manager as defined in s. 624.490;  
26      each licensed rating organization;~~;~~ each advisory organization;~~;~~  
27      each group, association, carrier~~;~~ as defined in s. 440.02, or  
28      other organization of insurers which engages in joint  
29      underwriting or joint reinsurance;~~;~~ and each authorized insurer

14-00145A-22

20221476\_\_

30 transacting in this state any class of insurance to which the  
31 provisions of chapter 627 are applicable. The examination shall  
32 be for the purpose of ascertaining compliance by the person  
33 examined with the applicable provisions of chapters 440, 624,  
34 626, 627, and 635.

35 (3) The examination may be conducted by an independent  
36 professional examiner under contract to the office, in which  
37 case payment shall be made directly to the contracted examiner  
38 by the insurer or person examined in accordance with the rates  
39 and terms agreed to by the office and the examiner.

40 Section 2. Present subsection (6) of section 624.490,  
41 Florida Statutes, is redesignated as subsection (7), and a new  
42 subsection (6) is added to that section, to read:

43 624.490 Registration of pharmacy benefit managers.—

44 (6) A person who fails to register with the office while  
45 operating as a pharmacy benefit manager is subject to a fine of  
46 \$10,000 for each violation.

47 Section 3. Section 465.1885, Florida Statutes, is  
48 transferred, renumbered as section 624.491, Florida Statutes,  
49 and amended to read:

50 624.491 ~~465.1885~~ Pharmacy audits; ~~rights~~.—

51 (1) A health insurer or health maintenance organization  
52 providing pharmacy benefits through a major medical individual  
53 or group health insurance policy or a health maintenance  
54 organization contract, respectively, must comply with the  
55 requirements of this section when the health insurer or health  
56 maintenance organization or any person or entity acting on  
57 behalf of the health insurer or health maintenance organization,  
58 including, but not limited to, a pharmacy benefit manager as

14-00145A-22

20221476\_\_

59 defined in s. 624.490, audits the records of a pharmacy licensed  
60 under chapter 465. The person or entity conducting such audit  
61 must ~~If an audit of the records of a pharmacy licensed under~~  
62 ~~this chapter is conducted directly or indirectly by a managed~~  
63 ~~care company, an insurance company, a third party payor, a~~  
64 ~~pharmacy benefit manager, or an entity that represents~~  
65 ~~responsible parties such as companies or groups, referred to as~~  
66 ~~an "entity" in this section, the pharmacy has the following~~  
67 ~~rights:~~

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

71 (b) Not schedule an ~~To have the~~ onsite audit during  
72 ~~scheduled after~~ the first 3 calendar days of a month unless the  
73 pharmacist consents otherwise.

74 (c) Limit the duration of ~~To have~~ the audit period ~~limited~~  
75 to 24 months after the date a claim is submitted to or  
76 adjudicated by the entity.

77 (d) In the case of ~~To have~~ an audit that requires clinical  
78 or professional judgment, conduct the audit in consultation  
79 with, or allow the audit to be conducted by, ~~or in consultation~~  
80 ~~with~~ a pharmacist.

81 (e) Allow the pharmacy to use the written and verifiable  
82 records of a hospital, physician, or other authorized  
83 practitioner, which are transmitted by any means of  
84 communication, to validate the pharmacy records in accordance  
85 with state and federal law.

86 (f) Reimburse the pharmacy ~~To be reimbursed~~ for a claim  
87 that was retroactively denied for a clerical error,

14-00145A-22

20221476\_\_

88 typographical error, scrivener's error, or computer error if the  
89 prescription was properly and correctly dispensed, unless a  
90 pattern of such errors exists, fraudulent billing is alleged, or  
91 the error results in actual financial loss to the entity.

92 (g) Provide the pharmacy with a copy of ~~To receive~~ the  
93 preliminary audit report within 120 days after the conclusion of  
94 the audit.

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

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

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

104 (2) ~~The rights contained in~~ This section does ~~de~~ not apply  
105 to:

106 (a) Audits in which suspected fraudulent activity or other  
107 intentional or willful misrepresentation is evidenced by a  
108 physical review, review of claims data or statements, or other  
109 investigative methods;

110 (b) Audits of claims paid for by federally funded programs;  
111 or

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

115 (3) An entity that audits a pharmacy located within a  
116 Health Care Fraud Prevention and Enforcement Action Team (HEAT)

14-00145A-22

20221476\_\_

117 Task Force area designated by the United States Department of  
118 Health and Human Services and the United States Department of  
119 Justice may dispense with the notice requirements of paragraph  
120 (1) (a) if such pharmacy has been a member of a credentialed  
121 provider network for less than 12 months.

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

126 (5) A health insurer or health maintenance organization  
127 that, under terms of a contract, transfers to a pharmacy benefit  
128 manager the obligation to pay a pharmacy licensed under chapter  
129 465 for any pharmacy benefit claims arising from services  
130 provided to or for the benefit of an insured or subscriber  
131 remains responsible for a violation of this section.

132 Section 4. This act shall take effect July 1, 2022.