By Senator Latvala

16-01148A-12 20121602__

A bill to be entitled

An act relating to pharmacies; amending s. 465.188, F.S.; revising requirements for the audit of Medicaid-related pharmacy records; authorizing third-party payor and third-party administrator audits of pharmacies; providing that claims containing certain errors are not subject to financial recoupment under certain circumstances; specifying that certain audit criteria apply to third-party claims submitted after a specified date; prohibiting certain accounting practices used for calculating the recoupment of claims; prohibiting the audit criteria from requiring the recoupment of claims except under certain circumstances; providing procedures for the audit of third-party payor and third-party administrator audits; prohibiting a third-party payor or state agency from requiring the delivery by mail of pharmacy provider services and prescription drugs; authorizing a third-party payor or state agency to offer an incentive program for the delivery of prescription drugs by mail; providing an effective date.

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

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

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

(1) Notwithstanding any other provision of law, when an audit of ~~the~~ Medicaid-related, third-party payor, or third-party

administrator records of a pharmacy permittee ~~licensed~~ under this chapter ~~465~~ is conducted, such audit must be conducted as provided in this section.

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

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

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

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

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

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

and parameters.

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

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

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

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

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

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

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

of a third-party payor or third-party administrator audit, shall establish a process under which a pharmacist may obtain a preliminary review of an audit report and may appeal an unfavorable audit report without the necessity of obtaining legal counsel. The preliminary review and appeal may be conducted by an ad hoc peer review panel, appointed by the agency, in the case of a Medicaid-related audit, or appointed by the third-party payor or third-party administrator contracting with the pharmacy, in the case of a third-party payor or third-party administrator audit, which consists of pharmacists who maintain an active practice. If, following the preliminary review, the ~~agency or~~ review panel finds that an unfavorable audit report is unsubstantiated, the agency, in the case of a Medicaid-related audit, or the third-party payor or third-party administrator contracting with the pharmacy, in the case of a third-party payor or third-party administrator audit, shall dismiss the audit report without the necessity of any further proceedings.

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

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

Section 2. Notwithstanding any other provision of law, a third-party payor or state agency may not require, by contract, administrative rule, or condition of participation in a pharmacy

provider network, the delivery of pharmacy provider services and prescription drugs by mail. However, a third-party payor or state agency may offer an incentive program for the delivery of prescription drugs by mail.

Section 3. This act shall take effect July 1, 2012.