

CHAPTER 2022-200

House Bill No. 357

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

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

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

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

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

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

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

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

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

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

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

(2) ~~The rights contained in~~ This section does ~~do not~~ apply to:

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

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

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

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

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

(5) A health insurer or health maintenance organization that, under terms of a contract, transfers to a pharmacy benefit manager the obligation

to pay a pharmacy licensed under chapter 465 for any pharmacy benefit claims arising from services provided to or for the benefit of an insured or subscriber remains responsible for a violation of this section.

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

624.490 Registration of pharmacy benefit managers.—

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

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

Approved by the Governor June 20, 2022.

Filed in Office Secretary of State June 20, 2022.