

House Bill 1371 (COMMITTEE SUBSTITUTE)

By: Representatives Graves of the 137<sup>th</sup>, Carter of the 159<sup>th</sup>, Harbin of the 118<sup>th</sup>, Stephens of the 164<sup>th</sup>, and Parrish of the 156<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to  
2 pharmacists and pharmacies, so as to enact "The Pharmacy Audit Bill of Rights"; to provide  
3 for a short title; to set out a list of rights of pharmacies undergoing audits; to provide for an  
4 appeal process; to provide for applicability; to provide for related matters; to repeal  
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to pharmacists and  
9 pharmacies, is amended by adding a new Code section to the end of Article 6, relating to  
10 pharmacies, to read as follows:

11 "26-4-118.

12 (a) This Code section shall be known and may be cited as 'The Pharmacy Audit Bill of  
13 Rights.'

14 (b) Notwithstanding any other law, when an audit of the records of a pharmacy is  
15 conducted by a managed care company, insurance company, third-party payor, the  
16 Department of Community Health under Article 7 of Chapter 4 of Title 49, or any entity  
17 that represents such companies, groups, or department, it shall be conducted in accordance  
18 with the following bill of rights:

19 (1) The entity conducting the audit must give the pharmacy notice at least one week prior  
20 to conducting the initial audit for each audit cycle;

21 (2) Any audit which involves clinical or professional judgment must be conducted by a  
22 pharmacist licensed in this state;

23 (3) Any clerical or record keeping error, such as a typographical error, scrivener's error,  
24 or computer error, regarding a required document or record shall not constitute a willful  
25 violation and is not subject to criminal penalties without proof of intent to commit fraud;

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

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

8 (6) Each pharmacy shall be audited under the same standards and parameters as other  
9 pharmacies audited by the entity;

10 (7) A pharmacy shall be allowed at least 30 days following receipt of the preliminary  
11 audit report in which to produce documentation to address any discrepancy found during  
12 an audit;

13 (8) The period covered by an audit may not exceed two years from the date the claim  
14 was submitted to or adjudicated by a managed care company, insurance company,  
15 third-party payor, the Department of Community Health under Article 7 of Chapter 4 of  
16 Title 49, or any entity that represents such companies, groups, or department;

17 (9) An audit may not be initiated or scheduled during the first five days of any month due  
18 to the high volume of prescriptions filled during that time;

19 (10) An entity conducting an audit shall not be remunerated for services based on the  
20 amount of funds identified to be recouped;

21 (11) The preliminary audit report must be delivered to the pharmacy within 90 days after  
22 conclusion of the audit. A final audit report shall be delivered to the pharmacy within six  
23 months after receipt of the preliminary audit report or final appeal, as provided for in  
24 subsection (c), whichever is later; and

25 (12) The audit criteria set forth in this subsection shall apply only to audits of claims  
26 submitted for payment after July 1, 2006. Notwithstanding any other provision in this  
27 subsection, the agency conducting the audit shall not use the accounting practice of  
28 extrapolation in calculating recoupments or penalties for audits.

29 (c) Each entity conducting an audit shall establish a process under which a pharmacy may  
30 obtain a preliminary review of an audit report and may appeal an unfavorable audit report  
31 without the necessity of obtaining legal counsel. The preliminary review and appeal may  
32 be conducted by an ad hoc peer review panel, appointed by the entity, which consists of  
33 pharmacists who maintain an active practice in this state. If, following the preliminary  
34 review, the entity or review panel finds that an unfavorable audit report is unsubstantiated,  
35 the entity shall dismiss the audit report without the necessity of any further proceedings.

36 (d) Each entity conducting an audit shall provide a copy of the final audit report, after  
37 completion of any review process, to the plan sponsor.

1 (e) This Code section shall not apply to any investigative audit which involves fraud,  
2 willful misrepresentation, or abuse under Article 7 of Chapter 4 of Title 49."

3 **SECTION 2.**

4 All laws and parts of laws in conflict with this Act are repealed.