

The Senate Insurance and Labor Committee offered the following substitute to HB 1371:

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 amend Article 7 of Chapter 4 of Title 49 of
5 the Official Code of Georgia Annotated, relating to medical assistance generally, so as to
6 provide pharmacies the opportunity to cure violations of a procedural nature identified
7 pursuant to an audit or determination by other means prior to disallowing an otherwise valid
8 claim; to provide that a pharmacy shall have the opportunity for a hearing on a violation of
9 a procedural matter; to provide for an effective date and applicability; to provide for related
10 matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

12 Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to pharmacists and
13 pharmacies, is amended by adding a new Code section to the end of Article 6, relating to
14 pharmacies, to read as follows:
15

16 "26-4-118.

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

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

24 (1) The entity conducting the initial on-site audit must give the pharmacy notice at least
25 one week prior to conducting the initial on-site audit for each audit cycle;

26 (2) Any audit which involves clinical or professional judgment must be conducted by a
27 pharmacist;

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

4 (4) A pharmacy may use the records of a hospital, physician, or other authorized
5 practitioner of the healing arts for drugs or medicinal supplies written or transmitted by
6 any means of communication for purposes of validating the pharmacy record with respect
7 to orders or refills of a legend or narcotic drug;

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

12 (6) Each pharmacy shall be audited under the same standards and parameters as other
13 similarly situated pharmacies audited by the entity;

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

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

21 (9) An audit may not be initiated or scheduled during the first seven calendar days of any
22 month due to the high volume of prescriptions filled during that time unless otherwise
23 consented to by the pharmacy;

24 (10) The preliminary audit report must be delivered to the pharmacy within 120 days
25 after conclusion of the audit. A final audit report shall be delivered to the pharmacy
26 within six months after receipt of the preliminary audit report or final appeal, as provided
27 for in subsection (c), whichever is later; and

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

32 (c) Recoupments of any disputed funds shall only occur after final internal disposition of
33 the audit, including the appeals process as set forth in subsection (d) of this Code section.

34 (d) Each entity conducting an audit shall establish an appeals process under which a
35 pharmacy may appeal an unfavorable preliminary audit report to the entity. If, following
36 the appeal, the entity finds that an unfavorable audit report or any portion thereof is

1 unsubstantiated, the entity shall dismiss the audit report or said portion without the
2 necessity of any further proceedings.

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

5 (f) This Code section shall not apply to any investigative audit which involves fraud,
6 willful misrepresentation, or abuse including without limitation investigative audits under
7 Article 7 of Chapter 4 of Title 49, Code Section 33-1-16, or any other statutory provision
8 which authorizes investigations relating to insurance fraud."

9 **SECTION 2.**

10 Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
11 medical assistance generally, is amended by inserting a new Code section to read as follows:

12 "49-4-152.5.

13 A pharmacy providing medications pursuant to this article for medical assistance shall be
14 given the opportunity to cure any violation of a procedural nature identified pursuant to an
15 audit under Code Sections 26-4-118 or 49-4-151 or determination by other means,
16 including, but not limited to, the inclusion of a default physician identifier for claims that
17 are otherwise valid. Any such violation of a procedural nature for a claim which is
18 otherwise valid shall not be deemed to be an overpayment or disallowed claim by the
19 department."

20 **SECTION 3.**

21 Said article is further amended in Code Section 49-4-153, relating to administrative hearings
22 and appeals, judicial review, and contested cases involving imposition of remedial or
23 punitive measures against a nursing facility, by striking subparagraph (b)(2)(A) and inserting
24 in lieu thereof the following:

25 "(2)(A) A provider of medical assistance may request a hearing on a decision of the
26 Department of Community Health with respect to a denial or nonpayment of or the
27 determination of the amount of reimbursement paid or payable to such provider on a
28 certain item of medical or remedial care or service rendered by such provider by filing
29 a written request for a hearing in accordance with Code Sections 50-13-13 and
30 50-13-15 with the Department of Community Health. The Department of Community
31 Health shall, within 15 business days of receiving the request for hearing from the
32 provider, transmit a copy of the provider's request for hearing to the Office of State
33 Administrative Hearings. The provider's request for hearing shall identify the issues
34 under appeal and specify the relief requested by the provider. The request for hearing
35 shall be filed no later than 15 business days after the provider of medical assistance

1 receives the decision of the Department of Community Health which is the basis for the
2 appeal. A pharmacy may request a hearing on a decision of the Department of
3 Community Health or a care management or other organization contracted by the
4 department with respect to a denial or nonpayment of or the determination of the
5 amount of reimbursement paid or payable to such pharmacy pursuant to the results of
6 an audit or determination by other means on a certain service rendered by such
7 pharmacy. A pharmacy shall be given the opportunity to cure any violation of a
8 procedural nature, including, but not limited to, the inclusion of a default physician
9 identifier for claims that are otherwise valid. Any such violation of a procedural nature
10 which is otherwise valid shall not be deemed to be an overpayment or disallowed claim
11 by the Department of Community Health or a care management or other organization
12 contracted by the department."

13 SECTION 4.

- 14 (a) This Act shall become effective upon its approval by the Governor or upon its becoming
15 law without such approval.
- 16 (b) Sections 2 and 3 of this Act shall apply to any claim submitted or pending on or after
17 March 15, 2006.

18 SECTION 5.

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