

House Bill 179

By: Representatives Welch of the 110th, Stephens of the 164th, Rutledge of the 109th, Parrish of the 158th, Harden of the 148th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated,
2 relating to pharmacies, so as to change certain provisions relating to The Pharmacy Audit
3 Bill of Rights; to repeal conflicting laws; and for other purposes.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

5 style="text-align:center">**SECTION 1.**

6 Article 6 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to
7 pharmacies, is amended by revising Code Section 26-4-118, relating to The Pharmacy Audit
8 Bill of Rights, as follows:

9 "26-4-118.

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

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

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

19 (2) Any audit which involves clinical or professional judgment must be conducted by or
20 in consultation with a pharmacist;

21 (3) Any clerical or record-keeping error, such as a typographical error, scrivener's error,
22 or computer error, regarding a required document or record may not in and of itself
23 constitute fraud; however, such claims may be subject to recoupment. No such claim
24 shall be subject to criminal penalties without proof of intent to commit fraud;

25 (4) A pharmacy may use the records of a hospital, physician, or other authorized
26 practitioner of the healing arts for drugs or medicinal supplies written or transmitted by

27 any means of communication for purposes of validating the pharmacy record with respect
28 to orders or refills of a legend or narcotic drug;

29 (5) A finding of an overpayment or underpayment may be a projection based on the
30 number of patients served having a similar diagnosis or on the number of similar orders
31 or refills for similar drugs; however, recoupment of claims shall include the dispensing
32 fee if the drugs or medicinal supplies were dispensed by the pharmacy but shall not
33 include the cost of the drugs or medicinal supplies dispensed and must be based on the
34 actual overpayment or underpayment unless the projection for overpayment or
35 underpayment is part of a settlement as agreed to by the pharmacy;

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

38 (7) A pharmacy shall be allowed at least 30 days following the conclusion of an on-site
39 audit or receipt of the preliminary audit report in which to produce documentation to
40 address any discrepancy found during an audit, including to secure and remit any record
41 from a hospital, physician, or other authorized practitioner of the healing arts for drugs
42 or medicinal supplies written or transmitted by any means of communication if the lack
43 of such a record or an error in such a record is identified in the course of an on-site audit
44 or noticed within the preliminary audit report;

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

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

52 (10) The preliminary audit report must be delivered to the pharmacy by certified mail or
53 statutory overnight delivery, return receipt requested, within ~~120~~ 60 days after conclusion
54 of the audit. A final audit report shall be delivered by certified mail or statutory
55 overnight delivery, return receipt requested, to the pharmacy within ~~six months~~ 120 days
56 after receipt of the preliminary audit report or final appeal, as provided for in subsection
57 (c) of this Code section, whichever is later; and

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

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

64 (d) Each entity conducting an audit shall establish an appeals process under which a
65 pharmacy ~~may~~ shall have at least 30 days from the delivery of the preliminary audit report
66 to appeal an unfavorable preliminary audit report to the entity. If, following the appeal, the
67 entity finds that an unfavorable audit report or any portion thereof is unsubstantiated, the
68 entity shall dismiss the audit report or ~~said~~ such portion without the necessity of any further
69 proceedings.

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

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

76 **SECTION 2.**

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