

House Bill 179 (AS PASSED HOUSE AND SENATE)

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 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 including but not limited to a~~
22 ~~typographical error, scrivener's error, or computer error, regarding a required document~~
23 ~~or record may not in and of itself constitute fraud, ; however, such claims may be subject~~
24 ~~to recoupment.~~ No such claim shall be subject to criminal penalties without proof of
25 intent to commit fraud; No recoupment of the cost of drugs or medicinal supplies
26 properly dispensed shall be allowed if such error has occurred and been resolved in

27 accordance with paragraph (4) of this subsection; provided, however, that recoupment
 28 shall be allowed to the extent that such error resulted in an overpayment, underpayment,
 29 or improper dispensing of drugs or medicinal supplies.

30 (4) A pharmacy shall be allowed at least 30 days following the conclusion of an on-site
 31 audit or receipt of the preliminary audit report in which to correct a clerical or
 32 record-keeping error or produce documentation to address any discrepancy found during
 33 an audit, including to secure and remit an appropriate copy of the record from a hospital,
 34 physician, or other authorized practitioner of the healing arts for drugs or medicinal
 35 supplies written or transmitted by any means of communication if the lack of such a
 36 record or an error in such a record is identified in the course of an on-site audit or noticed
 37 within the preliminary audit report;

38 ~~(4)~~(5) A pharmacy may use the records of a hospital, physician, or other authorized
 39 practitioner of the healing arts for drugs or medicinal supplies written or transmitted by
 40 any means of communication for purposes of validating the pharmacy record with respect
 41 to orders or refills of a legend or narcotic drug;

42 ~~(5)~~(6) A finding of an overpayment or underpayment may be a projection based on the
 43 number of patients served having a similar diagnosis or on the number of similar orders
 44 or refills for similar drugs; however, recoupment of claims must be based on the actual
 45 overpayment or underpayment unless the projection for overpayment or underpayment
 46 is part of a settlement as agreed to by the pharmacy;

47 ~~(6)~~(7) Each pharmacy shall be audited under the same standards and parameters as other
 48 similarly situated pharmacies audited by the entity;

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

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

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

59 (10) The preliminary audit report must be delivered to the pharmacy within 120 days
 60 after conclusion of the audit. A final audit report shall be delivered to the pharmacy
 61 within six months after receipt of the preliminary audit report or final appeal, as provided
 62 for in subsection (c) of this Code section, whichever is later; and

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

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

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

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

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

81 (g) The provisions of paragraph (3) of subsection (b) of this Code section shall not apply
82 to the Department of Community Health conducting audits under Article 7 of Chapter 4 of
83 Title 49."

84 **SECTION 2.**

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