	HB 1093 2012
1	A bill to be entitled
2	An act relating to pharmacy audits; providing purpose;
3	providing definitions; providing standards and
4	procedures regulating the auditing of pharmacy records
5	conducted on behalf of a pharmacy benefit manager;
6	providing contract requirements and limitations;
7	providing for the delivery of and response to
8	preliminary and final audit reports; providing for the
9	appeal of audits; providing penalties and remedies;
10	providing for applicability; providing an effective
11	date.
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13	Be It Enacted by the Legislature of the State of Florida:
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15	Section 1. Auditing of pharmacy records
16	(1) PURPOSE The purpose of this section is to establish
17	standards for the audit of pharmacy records conducted by or on
18	behalf of a pharmacy benefit manager or other entity listed in
19	paragraph (2)(b).
20	(2) DEFINITIONSAs used in this section, the term:
21	(a) "Audit" means a formal review of the records of a
22	pharmacy by an entity that finances or reimburses the cost of
23	health services or pharmaceutical products.
24	(b) "Entity" means a pharmacy benefit manager, a managed
25	care company, a health plan sponsor, an insurance company, a
26	third-party payor, a state agency, or any company, group, or
27	agent that represents or is engaged by such entities.
28	(c) "Pharmacy benefit manager" means a person, business,



29 or other entity that performs pharmacy benefit management or 30 performs pharmacy benefit management on behalf of a pharmacy benefit manager through a contractual or employment 31 32 relationship. 33 "Pharmacy benefit management" means the provision of (d) 34 administrative services related to processing prescription 35 claims for pharmacy benefit and coverage programs. Such services 36 may include contracting with a network of pharmacies; audit compliance; establishing payment levels for provider pharmacies; 37 negotiating rebate arrangements; and developing and managing 38 formularies, preferred drug lists, and prior authorization 39 40 programs. 41 (3) AUDITING STANDARDS AND PROCEDURES.-An entity 42 conducting an audit of pharmacy records must adhere to the 43 following standards and procedures: 44 (a) The same standards and parameters must be used to 45 audit all pharmacies. 46 (b) An audit that involves clinical or professional 47 judgment must be conducted by, or in consultation with, a 48 pharmacist licensed in this state. 49 An auditing entity conducting an onsite audit must (C) 50 give the pharmacy at least 30 days' written notice before conducting the audit. Such notice must identify the prescription 51 52 numbers to be audited. 53 The audit may not take place during the first 7 days (d) 54 of the month unless otherwise consented to by the pharmacy. 55 (e) The period covered by the audit may not exceed 12 56 months, unless superseded by federal law.

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57	(f) The initial audit may not include more than 1 percent
58	of the average monthly prescription claims, not to exceed 200
59	prescription claims. However, the auditing entity may conduct
60	further audits of prescription claims that have substantiated
61	and documented discrepancies.
62	(g) The pharmacy may use the records, or copies of
63	records, of a hospital, physician, or other authorized
64	practitioner to validate the pharmacy record.
65	(h) Any prescription that complies with state law and rule
66	requirements may be used to validate claims in connection with
67	prescriptions, refills, or changes in prescriptions.
68	(i) Calculations of overpayments may not include
69	dispensing fees.
70	(j) Interest may not accrue during the audit period.
71	(k) If an audit results in the identification of any
72	clerical or recordkeeping errors, such as typographical errors,
73	scrivener's errors, or computer errors, in a required document
74	or record, the pharmacy is not subject to recoupment of funds by
75	the pharmacy benefit manager unless the pharmacy benefit manager
76	can provide proof of intent to commit fraud or such error
77	results in actual financial harm to the pharmacy benefit
78	manager, a health plan managed by a pharmacy benefit manager, or
79	a consumer.
80	(1) The auditing entity must allow the pharmacy to
81	resubmit claims disputed by the audit using any commercially
82	reasonable method, including, but not limited to, faxing,
83	mailing, or electronic submission.
84	(m) An exit interview that provides a pharmacy with an
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85	opportunity to respond to questions and comment on and clarify
86	findings must be conducted at the end of an audit. The time of
87	the interview must be agreed to by the pharmacy.
88	(n) The auditing entity may not collect disputed funds
89	until the audit process, including appeals, is complete.
90	(o) The auditing company or agent may not receive payment
91	based on a percentage of the amount recovered.
92	(p) If not superseded by state or federal law, audit
93	information may not be shared and is confidential. Auditors
94	shall have access only to previous audit reports on a particular
95	pharmacy conducted by the same auditing entity.
96	(4) CONTRACT REQUIREMENTS
97	(a) Each pharmacy network provider contract must provide:
98	1. The methodology and resources used for calculating the
99	maximum allowable cost (MAC) pricing of the pharmacy benefit
100	manager;
101	2. For updating pricing information at least weekly; and
102	3. A process for promptly notifying network pharmacies of
103	pricing updates.
104	(b) The pharmacy network provider contract may not include
105	a provision that allows the use of extrapolation in calculating
106	the recoupment or penalties for audits, unless agreed to by both
107	parties.
108	(c) A pharmacy benefit manager may not automatically
109	enroll a pharmacy in a contract or modify an existing contract
110	without written agreement from an authorized representative of
111	the pharmacy.
112	(d) Unless required by federal law, a contract entered
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113 into or renewed on or after July 1, 2012, may not contain auditing standards, procedures, contract requirements, appeal 114 115 procedures, or reporting requirements that are more restrictive 116 than those contained in this section. 117 (5) AUDIT APPEALS.-118 The auditing entity must establish a written process (a) 119 for appealing preliminary and final audit reports. The process 120 must include an option that offers the pharmacy a final appeal 121 to the health plan sponsor. If the pharmacy or pharmacy benefit 122 manager is not satisfied with an appeal, that party may seek 123 mediation. 124 (b) If unsubstantiated audit discrepancies are discovered 125 following the appeal, they shall be dismissed without further proceeding. 126 127 (6) AUDIT REPORTS.-(a) A preliminary audit report must be delivered to the 128 129 pharmacy, or its corporate office of record, within 60 days 130 after the conclusion of the audit. (b) A pharmacy shall have at least 30 days following 131 132 receipt of the preliminary audit to provide documentation to 133 address any discrepancy found in the audit. (c) A final audit report must be delivered to the 134 135 pharmacy, or its corporate office of record, within 120 days 136 after receipt of the preliminary audit report or final appeal, 137 whichever occurs later. 138 (d) Chargebacks, recoupment, or other penalties may not be 139 assessed until the appeal process has been exhausted and the 140 final report issued.

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141	(e) The auditing entity must also provide a copy of the
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	final report, including the disclosure of any money recouped in
143	the audit, to the plan sponsor.
144	(7) PENALTIES AND REMEDIES.—Any person injured as a result
145	of a violation of this section may bring a civil action against
146	the person, corporation, or business entity violating this
147	section for the recovery of all actual damages occurring as a
148	result thereof.
149	(8) APPLICABILITY
150	(a) This section applies to contracts entered into,
151	amended, extended, or renewed on or after July 1, 2012.
152	(b) This section does not apply to:
153	1. Audits of Medicaid-related pharmacy records conducted
154	pursuant to s. 465.188, Florida Statutes.
155	2. Any investigative audit that involves fraud or willful
156	misrepresentation.
157	Section 2. This act shall take effect July 1, 2012.
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