

By: Truitt

H.B. No. 3176

A BILL TO BE ENTITLED

AN ACT

relating to audits of providers in the Medicaid vendor drug program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0464 to read as follows:

Sec. 32.0464. VENDOR DRUG PROGRAM; AUDITS OF PROVIDERS. (a) The executive commissioner of the Health and Human Services Commission shall adopt rules governing the audit of providers in the vendor drug program.

(b) The rules must:

(1) provide that the agency conducting the audit must notify the provider of the impending audit not later than the seventh day before the date of the audit;

(2) limit the period covered by an audit to one year;

(3) provide that the agency personnel conducting the audit must include a pharmacist licensed in this state;

(4) provide that an audit may not be conducted during the first five days of any month;

(5) provide that each pharmacy must be audited under the same standards and parameters;

(6) provide that the agency may not base a finding of overpayment or underpayment on a projected estimate based on the number of patients served by the provider who have a similar

1 diagnosis or on the number of similar orders or refills for similar
2 drugs, but must base the finding on the actual overpayment or
3 underpayment;

4 (7) provide that the agency conducting the audit shall
5 permit an oral, written, or electronically transmitted order for a
6 prescription drug by a physician to be used to validate the
7 provider's records of orders or refills of narcotics or other drugs
8 for which a prescription is required;

9 (8) provide that the agency conducting the audit shall
10 allow the provider to correct a clerical error or omission in a
11 document required under the medical assistance program if there is
12 no indication that the error or omission demonstrates intent to
13 commit fraud;

14 (9) permit the provider to produce documentation to
15 address any irregularity found during an audit not later than the
16 10th day after the date the audit is completed;

17 (10) provide that the agency conducting the audit
18 shall deliver a preliminary audit report to the provider not later
19 than the 90th day after the date the audit is completed;

20 (11) provide that the agency conducting the audit
21 shall deliver the final audit report to the provider not later than
22 the 180th day after the date the preliminary report is delivered to
23 the provider or the date on which a final decision is issued on an
24 appeal made under Subdivision (12), whichever is later; and

25 (12) establish an ad hoc peer-review panel, composed
26 of pharmacists practicing in this state appointed by the executive
27 commissioner of the Health and Human Services Commission, to

1 administer an informal process through which:

2 (A) a provider may obtain an early review of the
3 audit report or may appeal an unfavorable audit finding without the
4 need to obtain legal counsel; and

5 (B) an unfavorable audit finding that is found to
6 be unsubstantiated may be revised or dismissed without need of
7 further action by the agency.

8 (c) This section does not apply to an audit conducted by the
9 Medicaid fraud control unit of the office of the attorney general.

10 SECTION 2. Not later than January 1, 2006, the executive
11 commissioner of the Health and Human Services Commission shall
12 adopt rules required by Section 32.0464, Human Resources Code, as
13 added by this Act.

14 SECTION 3. If before implementing any provision of this Act
15 a state agency determines that a waiver or authorization from a
16 federal agency is necessary for implementation of that provision,
17 the agency affected by the provision shall request the waiver or
18 authorization and may delay implementing that provision until the
19 waiver or authorization is granted.

20 SECTION 4. This Act takes effect September 1, 2005.