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## **OLR Bill Analysis**

### **sSB 955**

#### ***AN ACT CONCERNING PHARMACY AUDITS.***

#### **SUMMARY:**

This bill prescribes how pharmacy audits can be conducted. It specifies the duties of the entity conducting the audit and how pharmacies can validate their records. The bill requires the entity conducting the audit to provide preliminary and final reports to the pharmacy, and allows the pharmacy to appeal the final report. It limits the circumstances when a pharmacy can be subjected to a charge-back or recoupment.

Under the bill, any information collected during an audit is confidential, but the entity conducting the audit may share it with the pharmacy benefits manager (PBM) and the health insurance plan sponsor (e.g., an insurer or self-insured employer) for whom it is being conducted. The entity conducting the audit may not receive payment or other consideration based on the amount claimed or the actual amount recouped from the audited pharmacy.

The bill's provisions do not apply to audits conducted because a PBM, plan sponsor, an entity acting on a PBM or sponsor's behalf, or an employer covered under a health benefit plan reasonably suspects that that the pharmacy being audited is or has been engaged in criminal wrongdoing, willful misrepresentation, or fraud.

The bill allows the insurance commissioner to conduct investigations and hold hearings in connection with these provisions. He may issue subpoenas, administer oaths, compel testimony, and order the production of books, records, and documents. If any person refuses to appear, testify, or produce any book, record, paper or document when ordered, a Superior Court judge may make appropriate orders upon the commissioner's application.

EFFECTIVE DATE: October 1, 2013

### **PHARMACY AUDITS**

Under the bill, a pharmacy audit is one conducted of any pharmacy's records for prescription drugs or prescription devices it dispenses to beneficiaries of a health insurance plan. The audit can be conducted on-site or remotely by or on behalf of a PBM or health insurance plan sponsor.

Audits do not include a concurrent review or desk audit (1) that occurs within three business days of the pharmacy's transmission of a claim to a PBM or plan sponsor or (2) where the PBM or plan sponsor does not demand a charge-back or recoupment. Audits cannot cover a period of more than 24 months after the date a claim was submitted by the pharmacy to the PBM or plan sponsor unless a longer period is required by law.

The bill bars any entity other than a PBM or a plan sponsor from conducting a pharmacy audit unless the entity and manager or sponsor, as applicable, have a written agreement on how the audits will be conducted. Before conducting an audit on the manager's or sponsor's behalf, the entity must notify the pharmacy in writing that it and the manager or sponsor has executed the agreement.

### **DUTIES OF AUDITING ENTITY**

Under the bill, any entity conducting an audit must:

1. give a pharmacy written notice at least 14 calendar days before conducting an audit;
2. not initiate or schedule an audit during the first five business days of any month, unless the pharmacy being audited expressly agrees to an audit during this time;
3. make all determinations regarding the validity of a prescription or other record consistent with the laws governing the dispensing of prescriptions;

4. accept paper or electronic signature logs that document the delivery of prescription drug and device and pharmacist services to a health plan beneficiary or his or her agent;
5. give the pharmacist in charge a complete list of records reviewed before leaving the pharmacy at the end of an on-site portion of an audit; and
6. establish a process for a pharmacy to appeal the final audit report and disclose these procedures to the pharmacy being audited.

In addition, a licensed pharmacist must conduct or be consulted in conducting any audit that involves clinical judgment. Also, the entity conducting an audit has access only to previous pharmacy audit reports of a particular pharmacy conducted by or on behalf of the entity. The bill does not authorize access to any information that is confidential or prohibited from disclosure by law.

#### **VALIDATING RECORDS**

Under the bill, a pharmacy may use authentic and verifiable statements or records to validate the pharmacy record and delivery. These records can include, among other things, medication administration records of a nursing home, assisted living facility, hospital, or a health care provider who can write prescriptions.

A pharmacy may use any valid prescription to validate claims in connection with prescriptions, changes in prescriptions, or refills of prescription drugs. These can include, among other things, medication administration records, faxes, electronic prescriptions, electronically-stored images of prescriptions, electronically-created annotations, or documented telephone calls from the prescribing health care provider or his or her agent. Documentation of an oral prescription order that has been verified by the prescribing health care provider can be used

to validate a claim.

If an entity conducting an audit uses extrapolation (sampling records) to calculate penalties or amounts to be charged back or recouped, the pharmacy may present evidence to validate orders for prescription drugs or prescription devices that are subject to invalidation due to this method. Under the bill, “extrapolation” is the practice of inferring a frequency of dollar amount of overpayments, underpayments, nonvalid claims, or other errors on any portion of claims submitted, based on their frequency or dollar amount actually measured in a sample of claims.

### **REPORTS AND APPEAL**

The entity conducting an audit must provide a preliminary report to the pharmacy within 60 calendar days after it concludes a pharmacy audit and before it issues a final audit report. The entity must give the pharmacy at least 30 calendar days after the pharmacy receives the preliminary report to respond to its findings, including addressing any alleged mistakes or discrepancies and producing documentation to that effect.

The entity must issue a final audit report that considers any responses the pharmacy provides within 120 calendar days after it receives any responses from the pharmacy or, if no responses are received, after the entity concludes the audit. A pharmacy may appeal a final audit report in accordance with the procedures established by the entity, which must provide at least 30 calendar days for filing the appeal.

After an appeal has been decided, the entity that issued the final audit report must provide a written determination of the appeal together with the final audit report to the pharmacy and, if applicable, the PBM and the plan sponsor. If the pharmacy, PBM, or plan sponsor is not satisfied with the determination, it can seek relief under the terms of the contract between the pharmacy and the PBM or sponsor.

### **CHARGE-BACKS AND RECOUPMENT**

The bill bars the entity conducting an audit or person acting on its behalf from (1) imposing a charge-back or recoupment, (2) attempting to charge-back or recoup, or (3) assessing or collecting penalties from a pharmacy until the deadline to file an appeal of a final audit report has passed or the appeals process has been exhausted, whichever is later. If an identified discrepancy in an audit exceeds \$30,000, future payments to the pharmacy in excess of this amount may be withheld pending adjudication of an appeal. No interest may accrue for any party during the audit period, beginning with the notice of the audit and ending with the conclusion of the appeals process.

The bill also bars a charge-back or recoupment for a clerical or recordkeeping error in a required document or record, including a typographical, scrivener's, or computer error, unless the error actually causes financial harm to the PBM, plan sponsor, or a plan beneficiary.

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 18    Nay 0    (03/07/2013)