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## **OLR Bill Analysis**

### **SB 14 (File 9, as amended by Senate "A")\***

#### ***AN ACT CONCERNING PHARMACY AUDITS AND ELECTRONIC FUNDS TRANSFER PAYMENTS TO PHARMACIES.***

##### **SUMMARY:**

This bill prescribes how and by whom pharmacy audits can be conducted. It specifies the duties of the auditing entity and how pharmacies can validate their records. It requires the auditing entity to give the audited pharmacy a preliminary review and final report, and allows the pharmacy to appeal the final report. It limits 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 auditing entity 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 the audit is conducted. It bars the auditing entity from compensating its employees or contractors based on the amount claimed or actually recouped from the audited pharmacy.

The bill does not apply to audits conducted when (1) a physical review or review of claims data or statements indicates fraud or other intentional or wilful misrepresentation or (2) other investigative methods indicate a pharmacy is or has been engaged in criminal wrongdoing, fraud, or other intentional or wilful misrepresentation. .

The bill allows the insurance commissioner to conduct investigations and hold hearings in connection with pharmacy audits. He may issue subpoenas, administer oaths, compel testimony, and order 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.

The bill allows anyone aggrieved by the commissioner's order or decision to appeal to the courts and makes related minor and technical changes.

The bill also requires a PBM, upon a pharmacy's written request, to pay claims to the pharmacy by electronic funds transfer. The payment must be made within 20 days if the claim was filed electronically and within 60 days if it was filed on paper.

\*Senate Amendment "A" among other things:

1. reduces, from 14 to 10 days, the amount of notice the auditing entity must give a pharmacy before conducting an audit;
2. bars the entity from basing its employees' or contractors' compensation on the amount claimed or recouped during the audit, rather than barring its compensation being based on these factors;
3. limits the ban on audits during the first five business days of a month to pharmacies that fill, on average, more than 600 prescriptions per week;
4. adds the requirement that the auditing entity provide the pharmacy with a masked list of prescriptions;
5. narrows the use of extrapolation and adds the provisions on misfills;
6. reduces, from 120 to 60 days, the amount of time the auditing entity has to issue the final audit report; and
7. eliminates provisions requiring the auditing entity to establish a process for a pharmacy to appeal the final audit report and disclose the appeal process and time limits to the pharmacy.

EFFECTIVE DATE: October 1, 2014

## **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 a health insurance plan's beneficiaries. The audit can be conducted on-site or remotely by, or on behalf of, a PBM or health insurance plan sponsor.

The bill does not apply to a concurrent review or desk audit (1) that occurs within three business days of the pharmacy's transmitting a claim to a PBM or plan sponsor or (2) where the PBM or plan sponsor does not demand a charge-back or recoupment. The scope of a pharmacy audit is limited to (1) the 24-month period after the date the pharmacy submitted claim to the PBM or plan sponsor, unless a longer period is required by law, and (2) no more than 250 prescriptions.

The bill bars any entity other than a PBM or a plan sponsor from conducting a pharmacy audit unless the auditing 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 have executed the agreement.

The bill bars the entity conducting an audit from compensating, directly or indirectly, any of its employees or contractors based on the amount claimed or the actual amount recouped from the pharmacy being audited.

#### **DUTIES OF AUDITING ENTITY**

Under the bill, an auditing entity must:

1. give a pharmacy at least 10 business days' written notice before conducting an audit;
2. give the pharmacy a masked list of prescriptions (one where the last two numbers of a prescription are marked with an "X") to help it prepare for the audit;
3. not initiate or schedule an audit during the first five business days of any month for a pharmacy that fills, on average, more

than 600 prescriptions per week unless the audited pharmacy expressly agrees;

4. determine the validity of a prescription or other record according to the laws governing the dispensing of prescriptions or as specified in federal risk management programs;
5. accept paper or electronic signature logs documenting delivery of prescription drugs, devices, and pharmacist services to a health plan beneficiary or his or her agent;
6. give a representative of the pharmacy a complete list of records reviewed before leaving the pharmacy at the end of an on-site portion of an audit.

In addition, a licensed pharmacist must conduct or be consulted in conducting any audit that involves clinical judgment. Under the bill, except as otherwise provided by federal or state law, an auditing entity may access only its previous audit reports of the audited pharmacy.

#### **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 authorized to 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. The pharmacy may also use documentation of an oral prescription order if the documentation is verified by the prescribing health care provider.

The entity conducting an audit may not use extrapolation to

calculate penalties or amounts to be charged back or recouped unless otherwise mandated by federal requirements or federal plans. Under the bill, “extrapolation” is the practice of inferring a frequency of dollar amount overpayments, underpayments, nonvalid claims, or other errors on any portion of claims submitted, based on the frequency or dollar amount actually measured in a sample of claims. The entity may not include dispensing fees when calculating overpayments unless a prescription is considered a misfill. A misfill is a prescription that was not dispensed, dispensed in error, or which the prescriber denied the authorization, or charged an extra dispensing fee.

### **REPORTS AND APPEAL**

The auditing entity must give the pharmacy an initial review within 60 calendar days after it concludes a pharmacy audit and before it issues a final audit report. The pharmacy can, within 30 calendar days after it receives the initial review, respond to the auditing entity’s findings.

The entity must issue a final audit report that considers any responses the pharmacy provides, within either 60 calendar days after it receives any pharmacy response or, if none is received, after the entity concludes the audit. A pharmacy may appeal a final audit report according to procedures established by the entity.

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

The bill bars the auditing entity or a 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 for appealing a final audit report has passed or the appeals process is exhausted, whichever is later. If an identified discrepancy in an audit exceeds \$25,000, a provider may withhold future payments to the pharmacy in excess of that amount 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 causes financial harm to the PBM, plan sponsor, or a plan beneficiary.

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 16 Nay 3 (02/25/2014)

General Law Committee

Joint Favorable

Yea 14 Nay 0 (03/31/2014)

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (04/14/2014)