



April 1, 2019

**SUMMARY OF ORIGINAL BILL:** Establishes that clerical or recordkeeping errors, including an omission, identified during an audit of records of a pharmacist or pharmacy are not evidence of fraud or intentional misrepresentation. Prohibits those errors identified in an audit from being the basis of a recoupment unless it results in an overpayment to the pharmacy or the wrong medication being dispensed to the patient.

Authorizes a pharmacy to submit amended claims within 30 days of the discovery of a clerical or recordkeeping error if the prescription was dispensed according to the requirements of state and federal law.

Establishes that any recoupment related to clerical or recordkeeping errors does not include the cost of the drug or dispensed product, except in cases of fraud or other intentional and willful misrepresentation, dispensing in excess of the pharmacy benefits contract established by the plan sponsor; or prescriptions not filled in accordance with the prescriber's order.

Prohibits pharmacy benefits managers (PBMs) from charging a pharmacist or pharmacy fees that are not apparent or added after a claim is adjudicated. Prohibits PBMs from including any term or condition in their contract with a pharmacy that requires a pharmacist to dispense a drug or other product to a patient. Prohibits PBMs from notifying a member that a pharmacy has been removed from the PBM's network until the after the PBM has notified the pharmacy.

Requires 30 days' notice from a PBM regarding any change to the PBM's pharmacy contract that affects the terms of reimbursement, the process for verifying benefits and eligibility, the dispute resolution procedure, the formulary drug verification procedure, and the procedure for contract termination.

Requires mutual agreement between PBMs and pharmacies on every contract. Prohibits PBMs from causing or permitting the use of untrue, deceptive or misleading marketing materials.

Requires PBMs pay a pharmacy for services rendered in the event that a PBM drops the pharmacy from the PBM's network. Requires PBMs pay all pharmacies in their network at least as much as they pay themselves or their own affiliated pharmacies for the same drug, dispensed product, or service. Prohibits PBMs from designating a drug or dispensed product as a "specialty drug" solely due to the cost of the drug.

Requires the Comptroller of the Treasury (COT) to perform an annual audit of all PBM's providing services funded by this state. Requires the audit to address, at minimum: (1) wholesale acquisition costs of pharmaceuticals; (2) rebates obtained by the health insurance issuer or their

contracted pharmacy benefits manager from pharmaceutical manufacturers; (3) any fees or payments made to the health insurance issuer or their contracted pharmacy benefits manager by this state; (4) payments to pharmacies, including any differential in payments to contracted pharmacies based on volume of prescriptions dispensed, ownership, or ownership interest by the pharmacy benefits manager; and (5) arrangements between pharmaceutical manufacturers and health insurance issuers or their contracted pharmacy benefits managers.

Requires, by April 1 of each year, the COT to provide a report containing the audit findings to the Speaker of the House of Representatives, the Speaker of the Senate, and the Chairs of the Senate Commerce and Labor Committee, Senate Health and Welfare Committee, Health Committee of the House of Representatives, and Insurance Committee of the House of Representatives.

#### FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$550,000/One-Time  
\$711,800/Recurring

Other Fiscal Impact – To the extent a pharmacy benefits manager chooses to reimburse a competing pharmacy at the lower rate than it reimbursed itself, the decrease in state expenditures is estimated to be \$9,500,000. However, to the extent a pharmacy benefits manager chooses to reimburse the competing pharmacies at the higher rate than it reimburses itself, the increase in state expenditures is estimated to be \$2,900,000.

If pharmaceutical manufacturers were to withdraw from participating in the supplemental rebate program, or if a pharmacist or a pharmacy is no longer contractually required to follow the Division of TennCare’s formulary management guidelines, there would be a potential recurring increase in state expenditures of \$21,931,600 and recurring federal expenditures of \$41,408,800.

#### IMPACT TO COMMERCE OF ORIGINAL BILL:

Increase Business Revenue – \$550,000/One-Time

**SUMMARY OF AMENDMENT (006583):** Deletes all language after the enacting clause. Establishes that clerical or recordkeeping errors, including an omission, identified during an audit of records of a pharmacist or pharmacy are not evidence of fraud or intentional misrepresentation. Prohibits those errors identified in an audit from being the basis of a recoupment unless it results in an overpayment to the pharmacy or the wrong medication being dispensed to the patient.

Authorizes a pharmacy or pharmacist to correct a clerical or recordkeeping error by submitting an amended claim during the designated time frame following receipt of the preliminary audit report if the prescription was dispensed according to the requirements of state and federal law.

Establishes that any recoupment related to clerical or recordkeeping errors does not include the cost of the drug or dispensed product, except in cases of fraud or other intentional and willful misrepresentation, dispensing in excess of the pharmacy benefits contract established by the plan sponsor; or prescriptions not filled in accordance with the prescriber's order.

Prohibits pharmacy benefits managers (PBMs) from charging a pharmacist or pharmacy fees that are not apparent or reported on the remittance advice of an adjudicated claim. Clarifies that this section does not prohibit a PBM from entering into an agreement with a pharmacy or pharmacist which includes prospective performance-based incentives and increases payment to pharmacies or pharmacists.

Prohibits PBMs from including any term or condition in their contract with a pharmacy that requires a pharmacist to dispense a drug or other product to a patient contrary to a pharmacist's professional judgment.

Requires 30 days' notice from a PBM regarding any change to the PBM's pharmacy contract that affects the terms of reimbursement, the process for verifying benefits and eligibility, the dispute resolution procedure, the formulary drug verification procedure, and the procedure for contract termination. Clarifies that this does not prohibit a PBM from taking action without notice against a pharmacy or pharmacist in its network for a fraudulent claim or service.

Requires mutual agreement between PBMs and pharmacies on every contract. Prohibits PBMs from causing or permitting the use of untrue, deceptive or misleading marketing materials.

Requires PBMs pay a pharmacy for services rendered prior to the pharmacy being removed from the network in the event that a PBM drops the pharmacy from the PBM's network. Clarifies that properly rendered services do not include any services related to a fraudulent claim or intentional misrepresentation. Prohibits a PBM from engaging in a pattern or practice of reimbursing pharmacies or pharmacists in this state less than the amount the PBM reimburses a PBM affiliate for the same drug, dispensed product, or service.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

### **Increase State Expenditures – Less than \$137,300**

Assumptions for the bill as amended:

- Pursuant to Tenn. Code Ann. § 56-7-3103(a)(3), any clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error, regarding a required

document or record may not, in and of itself, constitute fraud; however, the claims may be subject to recoupment.

- Passage of the proposed legislation would prohibit those errors identified in an audit from being the basis of a recoupment.
- Based on information provided by The Department of Finance and Administration Benefits Administration (Benefits Administration), the total amount of audit recoupments returned to the state in FY18-19 was \$942,906.
- Of the \$942,906, Benefits Administration identified \$137,261 attributed to clerical or recordkeeping errors that did not also result in an actual overpayment to the pharmacy or in the wrong medication being dispensed.
- The recurring increase in state expenditures associated with the change in recoupments is estimated to be less than \$137,261.
- Based on information provided by the Division of TennCare (TennCare), the proposed legislation will have no impact on TennCare's supplemental rebate program; therefore, any fiscal is estimated to be not significant.

## **IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:**

### **NOT SIGNIFICANT**

Assumptions for the bill as amended:

- Any net impact to commerce is estimated to be not significant.
- Any impact on private sector jobs in Tennessee is estimated to be not significant.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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