HB 1850 -- PHARMACY AUDITS

SPONSOR: Hewkin

This bill modifies provisions governing audits of pharmacies. Currently, a managed care company, insurance company, third party payor, or other entity representing those companies or groups conducts the audit. This bill adds pharmacy benefits managers or their subcontractors or representatives to the list of entities.

Currently, a pharmacy must be provided with one week's notice prior to conducting the initial on-site audit. This bill changes that provision to 14 days, and requires specific prescriptions to be identified for audit.

The bill provides that any audit involving clinical judgment must be conducted by, or in consultation with, a pharmacist licensed by the Board of Pharmacy who must be made available to the audited pharmacy to discuss clinical rationale. Additionally, the bill allows for a pharmacy to have the right to submit amended claims within 30 days of the discovery of an error to correct clerical or record-keeping errors in lieu of recoupment if the prescription was appropriately dispensed.

This bill limits audits to 25 prescriptions that have been randomly selected, and an entity conducting audits is prohibited from initiating an audit of a pharmacy more than two times in a calendar year. Any prescription information request by an entity that could result in recoupment counts as an audit.

A recoupment is not to be based on:

(1) Documentation requirements that are in addition to or exceeding requirements for maintaining documentation prescribed by the Board of Pharmacy; or

(2) A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the Board of Pharmacy.

Recoupment is only to occur following the correction of a claim and must be limited to amounts adjudicated by the pharmacy benefits manager. Additionally, except for Medicare claims, eligibility approval for a drug, prescriber, or patient must not be reversed unless the pharmacy or pharmacist obtained the adjudication by fraud or misrepresentation.

Any entity conducting an audit is not to be compensated, nor shall any of its employees be compensated, based on amounts recouped. Moreover, entities are prohibited from charging a fee for conducting an on-site or desk audit unless there is a finding of fraud.

The bill specifies that the period covered by the audit must not exceed a two-year period that begins on the date a claim being audited was submitted for payment, unless there has been a previous finding of fraud or as otherwise provided by state or federal law.

Current law requires the delivery of the preliminary audit report to the pharmacy within 120 days of the conclusion of the audit, with reasonable extensions. This bill provides that if an audit report is not delivered to the pharmacy within that time frame, the audit must be deemed free of discrepancies, and no recoupment shall be permitted.

The bill prohibits the limitation of days' supply for unit-of-use items beyond manufacturer recommendations and establishes provisions for situations when the only commercially available package size exceeds an entity's maximum days' supply.

This bill establishes provisions for any entity conducting a wholesale invoice audit to comply with, including what will be accepted as evidence and what may or may not form the basis for recoupment.

The bill requires the Department of Health and Senior Services to establish a critical access care pharmacy program to ensure the sustainability of critical access care pharmacies throughout the state.

This bill requires pharmacy benefits managers to provide plan sponsors with the sponsor's pharmacy claims data as reasonably requested by the plan sponsor. It additionally requires pharmacy benefits managers to provide to each plan sponsor and the Department of Commerce and Insurance with documentation of any benefit design that encourages or requires enrollees to fill prescriptions at the pharmacy benefits manager's affiliates.

The bill requires pharmacy benefits managers to have a fiduciary duty to each plan sponsor, and all required disclosures must be provided to the plan sponsor in a universally accessible format.

If a pharmacy benefits manager has an affiliate, the pharmacy benefits manager is required to disclose to the plan sponsor and the Department of Commerce and Insurance:

(1) The amount charged per dosage unit to the affiliate; and

(2) The median amount charged per dosage unit at in-network pharmacies that are not affiliates.

The Department of Commerce and Insurance may audit a pharmacy benefits manager to ensure compliance with the provisions of this bill.