Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 258 of the 130th G.A. **Date**: December 2, 2014

Status: As Enacted **Sponsor**: Sen. Balderson

Local Impact Statement Procedure Required: No

Contents: To establish standards for the performance of pharmacy audits in Ohio and to authorize the continued use of certain analgesics in the practice of optometry

State Fiscal Highlights

- It is possible that fewer recoupments would be paid from pharmacies in state hospitals. However, the Ohio Hospital Association anticipates any such impact to be minimal. On the other hand, according to the Department of Medicaid, it is possible that the state could receive fewer recoupments.

Local Fiscal Highlights

- It is possible that fewer recoupments would be paid from local government pharmacies, such as pharmacies within county hospitals. However, the Ohio Hospital Association anticipates any such impact to be minimal.

Detailed Fiscal Analysis

Conducting an audit

The bill requires an auditing entity to give the pharmacy written notice of the date or dates on which the audit will be performed and the range of prescription numbers from which the auditing entity will select to audit. Further, the bill requires that the notice of the date or dates on which the audit will be performed be given not less than ten business days prior to the audit. Notice of the range of prescription numbers from which the auditing entity will select pharmacy records to audit must be received by the pharmacy not less than seven business days before the date the audit is to commence. The bill also specifies that an auditing entity is not to include a review of a claim for payment for the provision of dangerous drugs or pharmacy services that occurred two years before the date the audit commences.

Absent an indication that there was an error in the actual dispensing of a drug (e.g., a drug was dispensed to the incorrect patient, etc.), the bill specifies that an auditing entity or payer is prohibited from seeking to recoup from a pharmacy any amount that the audit identifies as being the result of a clerical or record keeping error in the absence of financial harm. Additionally the bill prohibits an auditing entity from using extrapolation when calculating a monetary penalty to be imposed or amount to be recouped as a result of the pharmacy audit (the provision does not apply when the accounting practice of extrapolation is required by state or federal law).

The bill specifies that certain conditions do not apply if the auditing entity has evidence indicating fraud or other intentional or willful misrepresentation exists.

The bill subjects an auditing entity to these requirements when the auditing entity is performing a pharmacy audit in Ohio.

Pharmacy rights

The bill authorizes a pharmacy to do any of the following when an audit is being performed: validate a pharmacy record by using original or photocopied records from hospitals, physicians, or other health care provider; validate one or more claims for payment as specified in the bill; and resubmit a disputed or denied claim for payment using any commercially reasonable method of resubmission as long as the time period for resubmissions has not expired.

After the audit

The bill establishes requirements that apply after an audit has been conducted. However, the bill specifies that these conditions do not apply if the auditing entity has evidence indicating fraud or other intentional or willful misrepresentation exists. The bill specifies that a pharmacy is to be given not less than 30 days from the date of the on-site audit to provide the auditing entity any additional information necessary to complete the preliminary audit report. Additionally, the auditing entity must deliver a preliminary audit report to the pharmacy no later than 60 business days after the audit has been completed. A pharmacy that disputes any finding in the preliminary audit report may submit documentation to the auditing entity to appeal the finding. The pharmacy has no less than 30 business days to make this submission and may request an extension. Each auditing entity is to establish in writing separate procedures for a pharmacy to appeal one or more findings in the report. The final audit report is to be delivered to the pharmacy not later than 120 business days after a pharmacy's receipt of a preliminary audit report unless a time extension has been given. If this occurs, the final report is to be delivered no later than 120 days after the pharmacy's submission of the documentation.

Medicaid managed care

The bill specifies that the above provisions do not apply to an auditing entity that is a Medicaid managed care organization if application of those sections to the entity would be in violation of federal law.

Direct fiscal effects

It is possible that fewer recoupments would be paid from pharmacies in state and county hospitals. However, the Ohio Hospital Association anticipates any such impact to be minimal. On the other hand, according to the Department of Medicaid, it is possible that the state could receive fewer recoupments. The bill's provisions would apply to Medicaid managed care organizations as long as application of those sections would not be in violation of federal law.

Indirect fiscal effects

State and local government employee health plans could realize a reduction in the amounts recouped from audit findings. To the extent that audit findings impact rates, governments could experience benefit cost increases.

Analgesic controlled substances in the practice of optometry

The bill allows an optometrist to employ, apply, administer, or prescribe an analgesic controlled substance that is used for the treatment of pain and meets one of the following conditions, the product: (1) is a preparation that contains an amount of codeine per dosage unit, as specified by the Board, and also contains other active, nonnarcotic ingredients, such as acetaminophen or aspirin, in a therapeutic amount, (2) is a preparation that contains an amount of hydrocodone per dosage unit, as specified by the Board, and also contains other active, nonnarcotic ingredients, such as acetaminophen, aspirin, or ibuprofen, in a therapeutic amount, or (3) contains or consists of a drug or dangerous drug that was an analgesic included in the practice of optometry under a therapeutic pharmaceutical agents certificate immediately prior to the effective date of the bill, was not a controlled substance at that time, and subsequently becomes a schedule II, III, IV, or V controlled substance.

Fiscal effect

There should be no fiscal impact as a result of this provision.

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