TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 481 - SB 954

March 10, 2013

SUMMARY OF BILL: Changes certain provisions concerning audits of pharmacy prescription records. States that any clerical or record-keeping error with regards to a claim is subject, in addition to recoupment, to repayment or to be offset unless the claim is for dispensing of an original, refill prescription, or changes to a prescription on the basis of any clerical or record-keeping error, unless: the entity conducting the audit can provide proof of an intent to commit fraud; the error results in actual financial harm to the pharmacy benefits manager (PBM), covered entity, or an insurance plan managed by the PBM or covered entity or patient; the pharmacy or pharmacist fails to correct the errors when the auditing entity requests a correction.

Prohibits any managed health insurance issuer or health insurance issuer from denying any provider of durable medical equipment (DME) the right to participate as a participating provider in any policy, contract or plan as such participation has been offered to any other provider of DME. Authorizes a managed health issuer or health insurance issuer to establish rates or fees in non-urban areas or in specific instances where a managed health insurance issuer or health insurance issuer determines it is necessary to contract with a particular provider in order to meet certain standards or patient care needs. Further prohibits any managed health insurance issuer or health insurance issuer from preventing any person who is a party to or a beneficiary of any policy, contract or plan from selecting a DBM provider of such person's choice to furnish the DME services offered under any contract, policy or plan.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – Exceeds $7,921,000

Increase Federal Expenditures - $14,009,500

Increase Local Expenditures – Exceeds $32,000

Assumptions:

- This bill has an effective date of July 1, 2013, and shall apply to contracts entered into or renewed on or after such effective date.

Assumptions applied to the pharmacy prescription records:

- Tenn. Code. Ann. § 56-7-3103(a)(3) states that any clerical or record-keeping error does not constitute fraud; however, the claims may be subject to recoupment.
- The Department of Finance and Administration's Division of Benefits Administration contracts with a PBM for pharmacy management services.
- In FY11-12, the Division's current PBM recouped approximately $900,000. Benefits Administration estimates that approximately 21 percent is due to erroneous claims submissions and will be not be recoupable resulting in an increase in expenditures in FY13-14 of $189,000 ($900,000 x 21 percent).
- According to the Department of Finance and Administration, Benefits Administration, the State Employee, Local Education, and Local Government health plans will incur increases in expenditures across three plans.
- This amount is applied to the three plans as follows:
    - State Employee Health Plan is $102,060 ($189,000 x 0.54);
    - Local Education Plan is $73,710 ($189,000 x 0.39);
    - Local Government Plan is $13,230 ($189,000 x 0.07).
- The state covers 80 percent of the employees' health costs in the State Employee Health Plan resulting in an increase in state expenditures of at least $81,648 ($102,060 x 0.80).
- The state portion of the Local Education Plan is 45 percent for Local Education instructional staff which is approximately 75 percent of LEA employees and 30 percent for support staff which is approximately 25 percent of LEA staff. The increase in state expenditures is estimated to be at least $30,405 [($73,710 x 0.75 x 0.45) + ($73,710 x 0.25 x 0.30)].
- Each local government that participates in the state sponsored health plan is responsible for paying a percentage of the costs which is determined by the local government. It is assumed that local governments will contribute at least 50 percent of the cost resulting in an increase in local expenditures that will exceed $6,615 ($13,230 x 0.50).
- According to the Bureau of TennCare, requiring the TennCare PBM, in the course of conducting audits of pharmacy prescription records, to provide proof of intent to commit fraud and financial harm or allow the pharmacy a set period of time to correct any such errors will weaken the ability of the PBM to recoup reimbursements.
- In FY11-12, the TennCare recouped a total of approximately $900,000 from clerical and record-keeping errors.
- Due to this act, TennCare estimates that it will be unable to recoup approximately 23 percent of these errors, resulting in an increase of state expenditures in of $207,000 ($900,000 x 23 percent).
- Of the $207,000, approximately $71,415 will be state funds at a rate of 34.5 percent and $135,585 will be federal funds at a 65.5 percent match rate.

Assumptions applied to durable medical equipment providers:

- According to the Bureau, requiring participating MCOs to contract with every DME supplier that meets the criteria established by the bill will impact the TennCare programs expenditures.

- A managed care system is one in which an insurer can negotiate pricing and utilization by contracting with a select number of providers at a lower cost point in return for providing a larger volume of business. An "any willing provider" system can limit the MCOs ability to negotiate price based on volume of business.
- An "any willing provider" system can also impact the authorization requirements necessary to ensure that recipients do not access overlapping or duplicative services from multiple providers offering similar services.
- According to the Bureau, the requirements of the bill can be expected to increase costs by 20 percent. This estimation is based in part on a Government Accountability Office report relative to Medicare DME suppliers.
- In FY11-12, the Bureau expended $105,907,952 for DME equipment.
- It is estimated that the Bureau will incur at least a 20 percent increase in DME equipment costs which will result in an increase in expenditures of $21,181,590.
- Of the $21,181,590, $7,307,649 will be state funds at a 34.5 percent rate and $13,873,941 will be federal funds at a 65.5 percent federal match rate.
- According to the Department of Finance and Administration, Benefits Administration, the State Employee, Local Education, and Local Government health plans will incur increases in DME expenditures of at least 5 percent.
- In FY11-12, DME expenditures are expected to be at least $14,500,000 for all three plans. A five percent increase in expenditures is $725,000. This amount is applied to the three plans as follows:
    - State Employee Health Plan is $391,500 ($725,000 x .54);
    - Local Education Plan is $282,750 ($725,000 x .39);
    - Local Government Plan is $50,750 ($725,000 x .07).
- The state covers 80 percent of the employees' health costs in the State Employee Health Plan resulting in an increase in state expenditures of at least $313,200 ($391,500 x .80).
- The state portion of the Local Education Plan is 45 percent for Local Education instructional staff which is approximately 75 percent of LEA employees and 30 percent for support staff which is approximately 25 percent of LEA staff. The increase in state expenditures is estimated to be at least $116,634 [($282,750 x .75 x .45) + ($282,750 x .25 x .30)].
- Each local government that participates in the state sponsored health plan is responsible for paying a percentage of the costs which is determined by the local government. It is assumed that local governments will contribute at least 50 percent of the cost resulting in an increase in local expenditures that will exceed $25,375 ($50,750 x .50).

Cumulative fiscal impact:

- The estimated total increase in state expenditures is at least $7,920,951 ($81,648 + $30,405 + $71,415 + $7,307,649 + $313,200 + $116,634).
- The estimated total increase in federal expenditures is $14,009,526 ($135,585 + $13,873,941).
- The estimated total increase in local expenditures is at least $31,990 ($6,615 +$25,375).

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

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

Lucian D. Geise, Executive Director

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