TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

SB 63 - HB 228

March 18, 2013

SUMMARY OF BILL: Requires the Department of Finance and Administration (the Department) to monitor, and cause to be audited by the Department's independent auditor, the pharmacy benefit manager's (PBM's) compliance with the provisions of any state pharmacy benefit contract. The Department is required to undergo an annual risk assessment to determine the contract areas that pose the greatest risk of noncompliance or of fraud, waste, and abuse. The Department is required to consult with the Office of the Comptroller of the Treasury (the Comptroller) in determining the scope and extent of monitoring and auditing plan procedures and to incorporate the results of the annual risk assessment into the monitoring and auditing plan. In addition to the results of the annual risk assessment, the Department is required to design the marketing plan to examine source documentation wherever possible and to include steps for analyzing and testing of specified eligibility, pricing, payment, and other industry related risks to reduce the risk of financial losses due to fraud, waste, and abuse. The Department is required to seek appropriate remedies for contract noncompliance or from occurrences of fraud, waste, or abuse discovered through monitoring or auditing. The Department is authorized to contract with a qualified independent auditor to conduct the auditing required by this legislation. The Commissioner of Finance and Administration is required to report annually, or as requested, on the PBM's compliance with the PBM's contract to the Speakers of the Senate and the House of Representatives and the Fiscal Review Committee.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - Exceeds $286,200

Increase Local Expenditures - Exceeds $25,300*

Assumptions:

- The independent auditing services will be provided by an outside contractor.
- The Department is only required to audit the PBM's compliance relative to the Department's pharmacy benefit contracts. Additional state expenditures would be required if the Department is required to audit PBM compliance relative to TennCare pharmacy benefit contracts or any other state pharmacy benefit contracts.
- According to the Department, implementation of the audit requirements other than monitoring and analyzing physician's prescriptions will require expenditures of at least

$100,000 and may exceed $170,000 depending on the scope of the audit based on estimates by the state's current contractor.

- According to the Department, the audit will require on-site audits of network pharmacies in order to monitor and analyze physician's prescriptions to determine appropriateness of claims. At least 271 pharmacies will be subject to audit in order to establish a statistically significant sample. On-site audits would cost an additional $406,500 ($1,500 per on-site audit x 271 network pharmacies).
- The total cost of the audit requirement is estimated to be at least $506,500.
- According to the Department, Benefits Administration expenditures are funded through member premiums from the benefit funds administered by Benefits Administration. The cost of the audit will be allocated based on the membership of each fund at the time of the audit.
- According to the Department there are six funds that will be impacted by this legislation: State Active, State Retired, Local Education Active, Local Education Retired, Local Government Active, and Local Government Retired. Although the percentages will fluctuate based on changing membership, based on January 2013 fund membership, the allocation is estimated to be as follows (with rounded percentages and minimum dollar amounts):
    - State Active - $227,925 (.45 x $506,500);
    - State Retired - $25,325 (.05 x $506,500);
    - Local Education Active - $182,340 (.36 x $506,500);
    - Local Education Retired - $20,260 (.04 x $506,500);
    - Local Government Active - $45,585 (.09 x $506,500); and
    - Local Government Retired - $5,065 (.01 x $506,500).
- According to the Department, the state funds a percentage of premiums for the State Active and Retired plans. The state share is 80 percent. The state share of the premium costs is estimated to be at least $202,600 [.80 x ($227,925 + $25,325)].
- According to the Department, the state funds a percentage of premiums for the Local Education Active and Local Education Retired plans. The Local Education plans are populated by both instructional and support staff employees. The state share of the premium costs for instructional employees is 45 percent and for support staff employees is 30 percent. Instructional employees are estimated to be 75 percent and support staff 25 percent of the plans. The state share of premium costs is estimated to be $68,378 {.45 x [.75 x ($182,340 + $20,260)]} for instructional employees and $15,195 {.30 x [.25 x ($182,340 + $20,260)]} for support staff employees. The total cost of the state share for Local Education premium costs is estimated to be at least $83,573.
- The total increase in state expenditures is estimated to be at least $286,173 ($202,600 + $83,573). This amount will be paid by the state entities whose employees participate in the plans.
- The total increase in local expenditures will depend on the share of the premiums or direct cash contribution paid by local governments. The average contribution is unknown and contribution rates range up to 100 percent. It is assumed that on average local governments will cover at least 50 percent of the cost resulting in an increase in local expenditures which exceeds $25,325 [($45,585 + $5,065) x .50).

- According to the Comptroller, any increase in expenditures required by assistance provided to the Department can be accommodated within existing resources without an increased appropriation or reduced reversion.

*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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