

BILL ANALYSIS

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S.B. 591
By: Van de Putte
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires certain specific procedures when auditing a provider that is a pharmacist or pharmacy. The majority of pharmacy claims are filed and adjudicated electronically, allowing a pharmacist or pharmacy and the entity processing the pharmacy claim to almost instantly exchange feedback regarding the claim's acceptance or rejection. Legislation is necessary to address the current environment of the pharmacy claims process and the auditing transactions that are related to the post-adjudication evaluation of these claims. Frequent, unreasonable, abusive, and unfair audits of pharmacists and pharmacies are detracting from these providers' ability to efficiently and effectively operate their business and focus on patient care. This legislation is necessary to ensure that pharmacists and pharmacies have adequate time and resources to fully maintain patient care while simultaneously accommodating the need for reasonable audits. The bill establishes reasonable procedures for the issuers of health plans and those entities that they contract with to perform the audit of pharmacy claims, namely pharmacy benefit managers, to abide by when conducting an audit of a pharmacist or pharmacy.

As proposed, S.B. 591 amends current law relating to procedures for certain audits of pharmacists and pharmacies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 843, Insurance Code, by adding Subchapter O, as follows:

SUBCHAPTER O. AUDITS OF PHARMACISTS AND PHARMACIES

Sec. 843.501. DEFINITIONS. Defines "auditor," "desk audit," and "on-site audit" in this subchapter.

Sec. 843.503. AUDIT REQUIRING PROFESSIONAL JUDGMENT. Requires that an on-site audit or a desk audit involving a pharmacist's clinical or professional judgment be conducted in consultation with a pharmacist licensed by the Texas State Board of Pharmacy (TSBP).

Sec. 843.504. ACCESS TO PHARMACY AREA. Prohibits an auditor from entering the pharmacy area unless escorted by the pharmacist-in-charge as defined by Section 551.003(29) (defining "pharmacist-in-charge" in Chapters 551-566), Occupations Code.

Sec. 843.505. VALIDATION USING CERTAIN RECORDS AUTHORIZED. Authorizes a pharmacist or pharmacy that is being audited to:

- (1) validate a prescription, refill, or change in a prescription with a prescription that complies with rules adopted under Section 554.051 (Rulemaking; General Powers and Duties), Occupations Code; and

(2) validate the delivery of a prescription with a written record of a hospital, physician, or other authorized practitioner of the healing arts.

Sec. 843.506. CALCULATION OF RECOUPMENT; USE OF EXTRAPOLATION PROHIBITED. (a) Prohibits an auditor from calculating the amount of a recoupment based on:

(1) an absence of documentation the pharmacist or pharmacy is not required by law to maintain; or

(2) an error that does not result in actual financial harm to the enrollee, health maintenance organization, or pharmacy benefit manager.

(b) Prohibits a health maintenance organization or pharmacy benefit manager from requiring extrapolation audits as a condition of participation in a contract, network, or program for a pharmacist or pharmacy.

(c) Prohibits an auditor from using extrapolation to complete an on-site audit or a desk audit of a pharmacist or pharmacy. Requires that the amount of a recoupment, notwithstanding Subsection (a)(2), be based on the actual overpayment or underpayment and prohibits it from being based on an extrapolation.

(d) Prohibits an auditor from including a dispensing fee amount in the calculation of an overpayment unless the fee was a duplicate charge or the prescription for which the fee was charged was not dispensed, or was dispensed without the prescriber's authorization.

Sec. 843.507. CLERICAL OR RECORDKEEPING ERROR. Provides that an unintentional clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error, found during an on-site audit or a desk audit is not prima facie evidence of fraud, and prohibits the error from being the basis of a recoupment from a pharmacist or pharmacy without proof of intent to commit fraud.

Sec. 843.508. UNIFORM STANDARDS REQUIRED. Requires an auditor to conduct an on-site audit or a desk audit of similarly situated pharmacists or pharmacies under the same audit standards.

Sec. 843.509. ACCESS TO PREVIOUS AUDIT REPORTS. Authorizes an auditor to have access to audit reports of a pharmacist or pharmacy that were prepared only for the health maintenance organization or pharmacy benefit manager for which the auditor is conducting an audit.

Sec. 843.510. COMPENSATION OF AUDITOR. Prohibits a health maintenance organization, pharmacy benefit manager, or other auditor from basing compensation paid to the individual or entity performing an on-site audit or a desk audit on a percentage of the amount the health maintenance organization, pharmacy benefit manager, or other auditor is entitled to recover as the result of the audit.

Sec. 843.511. CONCLUSION OF AUDIT; SUMMARY; PRELIMINARY AUDIT REPORT. (a) Requires the auditor, at the conclusion of an on-site audit or a desk audit, to provide to the pharmacist or pharmacy a summary of the audit findings, and allow the pharmacist or pharmacy to respond to questions and alleged discrepancies, if any, and comment on and clarify the findings.

(b) Requires the auditor, not later than the 30th day after the date the audit is concluded, to send by certified mail, return receipt requested, to the pharmacist or pharmacy a preliminary audit report stating the results of the audit, including explanations for and the amount of recoupment claimed.

(c) Authorizes the pharmacist or pharmacy to, by providing documentation or otherwise, challenge a result or remedy a discrepancy stated in the preliminary audit report not later than the 30th day after the date the pharmacist or pharmacy receives the report.

Sec. 843.512. FINAL AUDIT REPORT. Requires the auditor, not later than the 90th day after the date the pharmacist or pharmacy receives a preliminary audit report under Section 843.511, to send by certified mail, return receipt requested, to the pharmacist or pharmacy a final audit report that states:

(1) a summary of the pharmacist's or pharmacy's explanation and documentation, if any, submitted in response to the preliminary audit report; and

(2) the audit results, including a description of all alleged discrepancies and explanations for and the amount of recoupments claimed after consideration of the pharmacist's or pharmacy's response to the preliminary audit report.

Sec. 843.513. APPEAL OF FINAL AUDIT REPORT; AUDIT OUTCOME REPORT.

(a) Requires an auditor to establish a process for a pharmacist or pharmacy to wholly or partly appeal a final audit report.

(b) Requires an auditor to use the National Council for Prescription Drug Programs' data interchange standards for pharmacy claim submission to evaluate audited claims and appeals under the process established under Subsection (a).

(c) Requires the auditor, on the date a final audit report is found wholly or partly unsubstantiated after an appeal under the process established under Subsection (a), to reject the report, wholly or partly, as applicable.

(d) Requires the auditor, not later than the 30th day after the date an appeal under the process established under Subsection (a) is concluded, to send by certified mail, return receipt requested, to the pharmacist or pharmacy an audit outcome report that includes:

(1) a summary of the pharmacist's or pharmacy's arguments and documentation, if any, submitted in response to the final audit report; and

(2) the audit results and recoupments claimed after consideration of the pharmacist's or pharmacy's response to the final audit report.

Sec. 843.514. RECOUPMENT AND INTEREST CHARGED AFTER AUDIT. Provides that, if an audit under this subchapter is conducted, the health maintenance organization or pharmacy benefit manager:

(1) is authorized to recoup from the pharmacist or pharmacy an amount based only on a final audit report or, if appealed under the process established under Section 843.513(a), an audit outcome report; and

(2) is prohibited from accruing or assessing interest on an amount due until the later of the date the pharmacist or pharmacy receives the final audit report or, if appealed under the process established under Section 843.513(a), the date of the audit outcome report.

Sec. 843.515. MEDIATION. (a) Authorizes a pharmacist or pharmacy aggrieved by an audit outcome report to require an auditor to participate in mediation under Chapter 154 (Alternative Dispute Resolution Procedures), Civil Practice and Remedies Code.

(b) Requires the pharmacist or pharmacy to elect mediation and notify the auditor not later than the 30th day after the date the pharmacist or pharmacy receives the audit outcome report. Requires that the mediation be completed not later than the

90th day after the date the pharmacist or pharmacy receives the audit outcome report.

(c) Requires that the mediation be conducted by a person qualified as an impartial third party under Section 154.052 (Qualifications of Impartial Third Party), Civil Practice and Remedies Code.

Sec. 843.516. **REMEDIES NOT EXCLUSIVE.** Prohibits this section from being construed to waive a remedy at law available to a pharmacist or pharmacy.

Sec. 843.517. **WAIVER PROHIBITED.** Prohibits the provisions of this subchapter from being waived, voided, or nullified by contract.

Sec. 843.518. **LEGISLATIVE DECLARATION.** Provides that it is the intent of the legislature that the requirements contained in this subchapter regarding audit of claims to providers who are pharmacists or pharmacies apply to all health maintenance organizations and pharmacy benefit managers unless otherwise prohibited by federal law.

SECTION 2. Transfers Section 843.3401, Insurance Code, to Subchapter O, Chapter 843, Insurance Code, as added by this Act, redesignates it as Section 843.502, Insurance Code, and amends it as follows:

Sec. 843.502. New heading: **AUDIT OF PHARMACIST OR PHARMACY; NOTICE; GENERAL PROVISIONS.** Redesignates existing Section 843.3401 as Section 843.502.

(a) Creates this subsection from existing text of existing Subsections (a) and (b). Deletes existing Subsection (b) designation. Requires an auditor, rather than a health maintenance organization or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization, that performs an on-site audit or a desk audit under this chapter of a provider who is a pharmacist or pharmacy to provide the provider reasonable notice of the audit and accommodate the provider's schedule to the greatest extent possible. Deletes existing text prohibiting a health maintenance organization or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization from using extrapolation to complete the audit of a provider who is a pharmacist or pharmacy. Deletes existing text prohibiting a health maintenance organization from requiring extrapolation audits as a condition of participation in the health maintenance organization's contract, network, or program for a provider who is a pharmacist or pharmacy.

(b) Authorizes a pharmacist or pharmacy, not later than the seventh day after the date the pharmacist or pharmacy receives notice under Subsection (a), to reschedule an on-site audit or a desk audit to a date not later than the 14th day after the date the audit is initially scheduled. Authorizes the audit, on agreement of the pharmacist or pharmacy and the auditor, to be rescheduled to a date after the 14th day after the date the audit is initially scheduled.

(c) Prohibits an auditor, unless the pharmacist or pharmacy consents in writing, from scheduling or having an on-site audit or a desk audit conducted before the 30th day after the date the pharmacist or pharmacy receives notice under Subsection (a), more than once annually, or during the first seven calendar days of a month.

(d) Authorizes a pharmacist or pharmacy to be required to submit documents in response to a desk audit not earlier than the 30th day after the date the auditor requests the documents.

(e) Requires that a contract between a pharmacist or pharmacy and a health maintenance organization or a pharmacy benefit manager state detailed audit procedures. Requires the organization or manager, if a health maintenance organization or pharmacy benefit manager proposes a change to the audit procedures for an on-site audit or a desk audit, to notify the pharmacist or

pharmacy in writing of a change in an audit procedure not later than the 60th day before the effective date of the change.

(f) Requires that the list of the claims subject to audit be provided in the notice under Subsection (a) to the pharmacist or pharmacy and authorizes the list to identify the claims only by the prescription numbers or a date range for prescriptions subject to the audit.

(g) Provides that if the auditor:

(1) in an on-site audit or a desk audit applies random sampling procedures to select claims for audit, the sample size is prohibited from being greater than 50 individual prescription claims; or

(2) conducts an on-site audit or a desk audit related to a specific issue, the number of individual prescription claims subject to the audit is prohibited from being greater than 50 and, notwithstanding Subsection (f), are authorized to be identified only by prescription number.

(h) Authorizes a pharmacist or pharmacy, after an audit is initiated, to electronically resubmit a disputed claim if the deadline for submission of a claim under Section 843.337 (Time for Submission of Claim; Duplicate Claims; Acknowledgement of Receipt of Claim) has not expired.

SECTION 3. Amends Chapter 1301, Insurance Code, by adding Subchapter F, as follows:

SUBCHAPTER F. AUDITS OF PHARMACISTS AND PHARMACIES

Sec. 1301.251. DEFINITIONS. Defines "auditor," "desk audit," and "on-site audit" in this subchapter.

Sec. 1301.253. AUDIT REQUIRING PROFESSIONAL JUDGMENT. Requires that an on-site audit or a desk audit involving a pharmacist's clinical or professional judgment be conducted in consultation with a pharmacist licensed by TSBP.

Sec. 1301.254. ACCESS TO PHARMACY AREA. Prohibits an auditor from entering the pharmacy area unless escorted by the pharmacist-in-charge as defined by Section 551.003(29) (defining "pharmacist-in-charge" in Chapters 551-566), Occupations Code.

Sec. 1301.255. VALIDATION USING CERTAIN RECORDS AUTHORIZED. Authorizes a pharmacist or pharmacy that is being audited to:

(1) validate a prescription, refill, or change in a prescription with a prescription that complies with rules adopted under Section 554.051 (Rulemaking; General Powers and Duties), Occupations Code; and

(2) validate the delivery of a prescription with a written record of a hospital, physician, or other authorized practitioner of the healing arts.

Sec. 1301.256. CALCULATION OF RECOUPMENT; EXTRAPOLATION PROHIBITED. (a) Prohibits an auditor from calculating the amount of a recoupment based on:

(1) an absence of documentation the pharmacist or pharmacy is not required by law to maintain; or

(2) an error that does not result in actual financial harm to the insured, insurer, or pharmacy benefit manager.

(b) Prohibits an insurer or pharmacy benefit manager from requiring extrapolation audits as a condition of participation in a contract, network, or program for a pharmacist or pharmacy.

(c) Prohibits an auditor from using extrapolation to complete an on-site audit or a desk audit of a pharmacist or pharmacy. Requires that the amount of a recoupment, notwithstanding Subsection (a)(2), be based on the actual overpayment or underpayment and prohibits it from being based on an extrapolation.

(d) Prohibits an auditor from including a dispensing fee amount in the calculation of an overpayment unless the fee was a duplicate charge or the prescription for which the fee was charged was not dispensed, or was dispensed without the prescriber's authorization.

Sec. 1301.257. CLERICAL OR RECORDKEEPING ERROR. Provides that an unintentional clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error, found during an on-site audit or a desk audit is not prima facie evidence of fraud, and prohibits the error from being the basis of a recoupment from a pharmacist or pharmacy without proof of intent to commit fraud.

Sec. 1301.258. UNIFORM STANDARDS REQUIRED. Requires an auditor to conduct an on-site audit or a desk audit of similarly situated pharmacists or pharmacies under the same audit standards.

Sec. 1301.259. ACCESS TO PREVIOUS AUDIT REPORTS. Authorizes an auditor to have access to audit reports of a pharmacist or pharmacy that were prepared only for the insurer or pharmacy benefit manager for which the auditor is conducting an audit.

Sec. 1301.260. COMPENSATION OF AUDITOR. Prohibits an insurer, pharmacy benefit manager, or other auditor from basing compensation paid to the individual or entity performing an on-site audit or a desk audit on a percentage of the amount the insurer, pharmacy benefit manager, or other auditor is entitled to recover as the result of the audit.

Sec. 1301.261. CONCLUSION OF AUDIT; SUMMARY; PRELIMINARY AUDIT REPORT. (a) Requires an auditor, at the conclusion of an on-site audit or a desk audit, to provide to the pharmacist or pharmacy a summary of the audit findings, and allow the pharmacist or pharmacy to respond to questions and alleged discrepancies, if any, and comment on and clarify the findings.

(b) Requires the auditor, not later than the 30th day after the date the audit is concluded, to send by certified mail, return receipt requested, to the pharmacist or pharmacy a preliminary audit report stating the results of the audit, including explanations for and the amount of recoupment claimed.

(c) Authorizes the pharmacist or pharmacy to, by providing documentation or otherwise, challenge a result or remedy a discrepancy stated in the preliminary audit report not later than the 30th day after the date the pharmacist or pharmacy receives the report.

Sec. 1301.262. FINAL AUDIT REPORT. Requires an auditor, not later than the 90th day after the date the pharmacist or pharmacy receives a preliminary audit report under Section 843.511, to send by certified mail, return receipt requested, to the pharmacist or pharmacy a final audit report that states:

(1) a summary of the pharmacist's or pharmacy's explanation and documentation, if any, submitted in response to the preliminary audit report; and

(2) the audit results, including a description of all alleged discrepancies and explanations for and the amount of recoupments claimed after consideration of the pharmacist's or pharmacy's response to the preliminary audit report.

Sec. 1301.263. APPEAL OF FINAL AUDIT REPORT; AUDIT OUTCOME REPORT.

(a) Requires an auditor to establish a process for a pharmacist or pharmacy to wholly or partly appeal a final audit report.

(b) Requires the auditor to use the National Council for Prescription Drug Programs' data interchange standards for pharmacy claim submission to evaluate audited claims and appeals under the process established under Subsection (a).

(c) Requires the auditor, on the date a final audit report is found wholly or partly unsubstantiated after an appeal under the process established under Subsection (a), to reject the report, wholly or partly, as applicable.

(d) Requires the auditor, not later than the 30th day after the date an appeal under the process established under Subsection (a) is concluded, to send by certified mail, return receipt requested, to the pharmacist or pharmacy an audit outcome report that includes:

(1) a summary of the pharmacist's or pharmacy's arguments and documentation, if any, submitted in response to the final audit report; and

(2) the audit results and recoupments claimed after consideration of the pharmacist's or pharmacy's response to the final audit report.

Sec. 1301.264. RECOUPMENT AND INTEREST CHARGED AFTER AUDIT.

Provides that, if an audit under this subchapter is conducted, the insurer or pharmacy benefit manager:

(1) is authorized to recoup from the pharmacist or pharmacy an amount based only on a final audit report or, if appealed under the process established under Section 1301.263(a), an audit outcome report; and

(2) is prohibited from accruing or assessing interest on an amount due until the later of the date the pharmacist or pharmacy receives the final audit report or, if appealed under the process established under Section 1301.263(a), the date of the audit outcome report.

Sec. 1301.265. MEDIATION. (a) Authorizes a pharmacist or pharmacy aggrieved by an audit outcome report to require an auditor to participate in mediation under Chapter 154 (Alternative Dispute Resolution Procedures), Civil Practice and Remedies Code.

(b) Requires the pharmacist or pharmacy to elect mediation and notify the auditor not later than the 30th day after the date the pharmacist or pharmacy receives the audit outcome report. Requires that the mediation be completed not later than the 90th day after the date the pharmacist or pharmacy receives the audit outcome report.

(c) Requires that the mediation be conducted by a person qualified as an impartial third party under Section 154.052 (Qualifications of Impartial Third Party), Civil Practice and Remedies Code.

Sec. 1301.266. REMEDIES NOT EXCLUSIVE. Prohibits this section from being construed to waive a remedy at law available to a pharmacist or pharmacy.

Sec. 1301.267. WAIVER PROHIBITED. Prohibits the provisions of this subchapter from being waived, voided, or nullified by contract.

Sec. 1301.268. LEGISLATIVE DECLARATION. Provides that it is the intent of the legislature that the requirements contained in this subchapter regarding audit of claims to preferred providers who are pharmacists or pharmacies apply to all insurers and pharmacy benefit managers unless otherwise prohibited by federal law.

SECTION 4. Transfers Section 1301.1041, Insurance Code, to Subchapter F, Chapter 1301, Insurance Code, as added by this Act, redesignates it as Section 1301.252, Insurance Code, and amends it as follows:

Sec. 1301.252. New heading: AUDIT OF PHARMACIST OR PHARMACY; NOTICE; GENERAL PROVISIONS. Redesignates existing Section 1301.1041 as Section 1301.252. (a) Creates this subsection from existing text of existing Subsections (a) and (b). Deletes existing Subsection (b) designation. Requires an auditor that performs an on-site audit or a desk audit of a preferred provider who is a pharmacist or pharmacy, rather than an insurer or a pharmacy benefit manager that administers pharmacy claims for the insurer, to provide the provider reasonable notice of the audit and accommodate the provider's schedule to the greatest extent possible. Deletes existing text prohibiting an insurer or a pharmacy benefit manager that administers pharmacy claims for the insurer from using extrapolation to complete the audit of a preferred provider that is a pharmacist or pharmacy. Deletes existing text prohibiting an insurer from requiring extrapolation audits as a condition of participation in the insurer's contract, network, or program for a preferred provider that is a pharmacist or pharmacy.

(b) Authorizes a pharmacist or pharmacy, not later than the seventh day after the date the pharmacist or pharmacy receives notice under Subsection (a), to reschedule an on-site audit or a desk audit to a date not later than the 14th day after the date the audit is initially scheduled. Authorizes the audit, on agreement of the pharmacist or pharmacy and the auditor, to be rescheduled to a date after the 14th day after the date the audit is initially scheduled.

(c) Prohibits an auditor, unless the pharmacist or pharmacy consents in writing, from scheduling or having an on-site audit or a desk audit conducted before the 30th day after the date the pharmacist or pharmacy receives notice under Subsection (a), more than once annually, or during the first seven calendar days of a month.

(d) Authorizes a pharmacist or pharmacy to be required to submit documents in response to a desk audit not earlier than the 30th day after the date the auditor requests the documents.

(e) Requires that a contract between a pharmacist or pharmacy and an insurer or a pharmacy benefit manager state detailed audit procedures. Requires the insurer or pharmacy benefit manager, if an insurer or pharmacy benefit manager proposes a change to the audit procedures for an on-site audit or a desk audit, to notify the pharmacist or pharmacy in writing of a change in an audit procedure not later than the 60th day before the effective date of the change.

(f) Requires that the list of the claims subject to audit be provided in the notice under Subsection (a) to the pharmacist or pharmacy and authorizes the list to identify the claims only by the prescription numbers or a date range for prescriptions subject to the audit.

(g) Provides that if the auditor:

(1) in an on-site audit or a desk audit applies random sampling procedures to select claims for audit, the sample size is prohibited from being greater than 50 individual prescription claims; or

(2) conducts an on-site audit or a desk audit related to a specific issue, the number of individual prescription claims subject to the audit is prohibited

from being greater than 50 and, notwithstanding Subsection (f), are authorized to be identified only by prescription number.

(h) Authorizes a pharmacist or pharmacy, after an audit is initiated, to electronically resubmit a disputed claim if the deadline for submission of a claim under Section 1301.102 (Submission of Claim) has not expired.

SECTION 5. Makes application of the changes in law made by this Act prospective.

SECTION 6. Effective date: September 1, 2013.