BILL SUMMARY
2nd Session of the 59th Legislature

Bill No.:	**SB 1670**
Version:	**FA1**
Request Number:	**11041**
Author:	**Rep. McEntire**
Date:	**4/25/2024**
Impact:	**OMES: $1,500,000**

Research Analysis

The floor substitute to Senate Bill 1670 authorizes The Attorney General to promulgate rules to implement the provisions of the Pharmacy Audit Integrity Act. The measure requires that the audit date on the written notice be the date the on-site audit occurs. For all other audit types, the audit date must be when the pharmacy provides the documentation requested in the notice. The measure stipulates that upon recouping funds from a pharmacy, the patient must first be refunded the portion of the recovered funds they originally paid.

An audit will be considered null and void if the entity conducting the audit fails to follow any of the requirements outlined in the measure. Any violation of the specified provisions by a pharmacy benefits manager (PBM) or auditing entity will be deemed a violation of the Pharmacy Audit Integrity Act.

Audits initiated based on or involving fraud, willful misrepresentation, or abuse must be clearly declared as such, with supporting evidence provided. Any funds recovered from audits deemed null and void must be promptly returned to affected pharmacies. Additionally, entities conducting such audits must notify the Office of the Attorney General beforehand, provide preliminary and final reports, and grant unrestricted access to relevant documents.

The measure stipulates that certain entities, such as self-funded employers and pharmacies offering exclusive discount programs, are not considered pharmacy benefits managers unless they undertake specific pharmacy-related activities. It empowers the Office of the Attorney General to instruct the Insurance Commissioner to take disciplinary actions against pharmacy benefits managers for deceptive practices or law violations. Penalties include license censure, suspension, revocation, and administrative fines for each offense. The Attorney General may also levy civil or administrative fines ranging from $100 to $10,000 per violation, with additional penalties for investigation non-compliance.

If a below-cost reimbursement appeal is denied, the PBM must furnish a detailed explanation, including the National Drug Code (NDC) number and the names of wholesalers offering the drug at a lower price. If the provided NDC number isn't available below the acquisition cost from the primary wholesaler, the PBM must retroactively adjust the reimbursement amount and allow the pharmacy to reverse and rebill the claim. Furthermore, in the event of a drug shortage listed on the FDA Drug Shortages Database, PBMs must reimburse pharmacies at no less than the wholesale acquisition cost for the specific NDC number being dispensed.

The specified reimbursement appeal requirements apply universally to all drugs, medical products, or devices regardless of the payment methodology. Various reimbursement methodologies, such as average acquisition cost, average manufacturer price, and federal upper limits, are explicitly mentioned as falling under this provision. Additionally, these appeal

requirements also cover any other terms utilized by pharmacy benefits managers or health benefit plan insurers to determine reimbursement rates to pharmacists or pharmacies for pharmacist services.

CHANGES BETWEEN FLOOR SUBSTITUTE AND ENGROSSED VERSION

The floor substitute adds language stipulating that certain provisions of the measure will not apply to any audit initiated based on or involving fraud, willful misrepresentation, or abuse.

Prepared By: Matthew Brenchley

Fiscal Analysis

1670 modifies the requirements of pharmacy benefits managers (PBM) conducting audits on pharmacies under the Pharmacy Audit Integrity Act. The measure creates additional appeals processes for medications in shortage or reimbursed below the pharmacies acquisition cost. When a below-cost reimbursement appeal is denied, PBMs must provide the National Drug Code (NDC) number and the name of the wholesaler(s) where the drug is in stock, within the state, and available for purchase by the dispensing pharmacy at a price below the PBM's reimbursement price. If the NDC number provided is not available below the acquisition cost obtained from the wholesaler whom the dispensing pharmacy purchases majority of the prescription drugs that are dispensed, the PBM must immediately adjust the reimbursement amount and allow the pharmacy to reverse and rebill the claim. If a drug is placed on the FDA Drug Shortages Database, PBMs must reimburse claims to pharmacies at no less than the acquisition cost for the NDC number being dispensed.

Officials from the Employees Group Insurance Division of the Oklahoma Office of Management and Enterprise Services (OMES-EGID) estimate a fiscal impact of One Million Five Hundred Thousand Dollars ($1,500,000) to the HealthChoice plan annually based on the following claim scenarios, primarily related to the NDC reimbursement portion of the measure.

1. "Pharmacy reimbursement is based off a plan's/PBM's maximum allowable cost (MAC list) for most generics. The cost of individual NDC's MAC reimbursement being below a health plan's reimbursement level – when in aggregate the pharmacy is being reimbursed above cost – could increase due to the appeals process, the FDA's shortage list or other unforeseeable circumstances.

2. The appeal process allows the pharmacy to protest the NDC reimbursement based on the prices from the wholesaler the pharmacy uses, not market averages. Pharmacies could select a higher priced wholesaler and take advantage of this purchasing behavior.

3. The burden of managing such a process could lead to increased reimbursement by a Plan/PBM, broadly raising the reimbursement levels of the MAC lists. This would increase plan and participant costs, in an effort to reduce the risk of fines or penalties.

4. The list of medications on the FDA shortage list could increase this amount to the higher end of the range, assuming significant appeals are submitted.

5. The audit portion of this Bill could have longer-term impacts on the plan as it raises the burden of proof on the auditor. This can lead to more difficulty recouping costs, based on the language requiring 'in writing…suspicion of fraud, willful misrepresentation'.

a. While the Bill intends to reduce the burden on ethical pharmacies, unscrupulous pharmacies could take advantage of the added burden on the audit process."

In addition, SB 1670 authorizes the Attorney General (AG) to promulgate rules to implement the provisions of the Pharmacy Audit Integrity Act. Officials from the AG's Office confirmed the requirements of this measure are feasible within current budgetary resources.

Therefore, the fiscal impact on the state budget for FY-25 is $1,500,000.

The floor substitute does not change the fiscal impact of this measure, as anticipated by OMES-EGID above.

Prepared By: Alexandra Ladner, House Fiscal Staff

Other Considerations

None.