

State Corporation Commission

2019 Fiscal Impact Statement

1. Bill Number: HB2561

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☒ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Pillion

3. Committee: Education and Health

4. Title: Pharmacy audits; pharmacy benefit managers.

5. Summary: Pharmacy audits; pharmacy benefits managers. Requires that any contract between a carrier and its intermediary pursuant to which the intermediary has the right or obligation to conduct audits of participating pharmacy providers and any provider contract between a carrier and a participating pharmacy provider or its contracting agent pursuant to which the carrier has the right or obligation to conduct audits of participating pharmacy providers contain certain terms and provisions relating to audits and that will apply in the absence of fraud. The terms and provisions (i) require at least 14 days written notice before conducting the initial audit for each audit cycle; (ii) prohibit the initiation or scheduling of an onsite audit during the first five calendar days of any month or on a Monday; (iii) prohibit an onsite audit of a particular pharmacy location on behalf of a particular carrier more than once in a 12-month period; (iv) require each pharmacy shall be audited under the same standards and parameters as every other similarly situated pharmacy; (v) require any audit issues that involve clinical or professional judgment to be conducted by a pharmacist who has available for consultation a pharmacist licensed by the Commonwealth; (vi) require each audit to be conducted by a field agent who possesses the requisite knowledge and experience in pharmacy practice; (vii) require audits to be conducted in the Commonwealth in compliance with federal and state laws, rules and regulations; (viii) require prescriptions to be considered valid prescriptions if they are compliant with the then-current Board of Pharmacy rules and regulations and have been successfully adjudicated upon a clean claim submission; (ix) require electronic records and documentation to be acceptable for auditing under the same terms, conditions, and validation and for the same purposes as their paper analogs; (x) permit a pharmacy to use the historical records of a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written and transmitted by any documented means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug; (xi) require validation and documentation at the time of dispensing of appropriate days' supply and drug dosing to be based on manufacturer guidelines and definitions or, in the case of topical products or titrated products, based on the professional judgment of the pharmacist in communication with the patient or prescriber; (xii) require a pharmacy's usual and customary price for compounded medications to be considered the reimbursable cost unless the pricing methodology is published in the provider contract and signed by both parties or their agents; (xiii) prohibit a carrier or its intermediary from making charge backs or seeking recoupment from a pharmacy, or assessing or collecting penalties from a pharmacy, until the time period for filing an appeal to an initial audit report has passed or until the appeals process has been exhausted, whichever is later; (xiv) establish requirements for a preliminary audit report; (xv) require a pharmacy to be allowed at least 60 calendar days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit or to file an appeal; (xvi) establish time periods during which a final

audit report containing claim level information for any discrepancy found and total dollar amount of claims subject to recovery is required to be delivered to the pharmacy or its pharmacy corporate office; (xvii) prohibit a carrier or its intermediary from recovering from the pharmacy payment of claims that is identified through the audit process to be the responsibility of another payer; (xviii) prohibit recoupment of amounts paid to a pharmacy for any claim shall be made solely on the basis of a prescriber's or patient's lack of response to a request made by a carrier or its intermediary; (xix) require a carrier or its intermediary to issue its initial audit findings in conformity with the laws of the Commonwealth; and (xx) prohibit a carrier or its intermediary from retroactively denying a claim in certain circumstances.

6. Budget amendment necessary: No

7. Fiscal Impact Estimates: No Fiscal Impact on the State Corporation Commission. According to the Virginia Department of Health and the Virginia Dept. of Health Professions, fiscal impact estimates are not available.

8. Fiscal Implications: None on the State Corporation Commission or the Department of Health Professions. According to the Virginia Department of Health, the fiscal impact of House Bill 2561 is indeterminate.

9. Specific agency or political subdivisions affected: State Corporation Commission Bureau of Insurance, Virginia Department of Health, and Department of Health Professions

10. Technical amendment necessary: No. The technical amendment suggested by the Bureau of Insurance was included in the amendment in the nature of a substitute to House Bill 2561.

11. Other comments: None

Date: 02/11/19/V. Tompkins