BILL ANALYSIS

Senate Research Center

S.B. 894
By: Buckingham
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 894 addresses deficiencies that exist with the Health and Human Services Commission's (HHSC's) audit coverage of Medicaid managed care organizations (MCOs).

HHSC relies on MCOs to deliver Medicaid services in the state. Currently, HHSC contracts with two audit firms to conduct periodic performance audits and annual agreed-upon procedures (AUP) engagements of MCOs. The purpose of these audits is to certify the accuracy of information the agency uses to determine MCO compliance with contract requirements. However, a report issued by the State Auditor's Office found HHSC consistently failed to effectively use the information gathered to appropriately monitor MCOs or address any of the major issues identified in the audit findings.

To address these inadequacies, S.B. 894 requires HHSC to implement a strategy for improving overall management of audit resources used to verify the accuracy of program and financial information reported by MCOs. It provides for a consistent, well-documented audit selection process to determine which MCO should receive a performance audit as well as to identify the scope and objectives of each audit. It also requires HHSC to establish policies to ensure MCOs have taken action to implement performance audit recommendations.

MCOs are required to issue experience rebates to HHSC based on the MCOs' profits earned through participation in the Medicaid managed care program. HHSC uses AUP engagements to determine MCO compliance with certain financial reporting requirements and help ensure the accuracy and completeness of experience rebates owed by MCOs. S.B. 894 enhances the utility of AUP engagements in order to more effectively identify financial risks and address performance or noncompliance issues.

Under the current system, each MCO contracts with a Pharmacy Benefits Manager (PBM) to provide prescription drug coverage for its members and reports on information regarding PBM compliance with state regulations. By requiring periodic audits of PBMs instead of relying on self-reported information provided by the MCOs, HHSC will obtain greater assurance that the MCOs' PBM contractors are in compliance with state laws in key areas such as pharmacy network adequacy and drug utilization. This shift will also strengthen HHSC's ability to ensure corrective actions are taken to resolve issues discovered through the auditing process.

Through the establishment of an improved billing system within its Medicaid/CHIP division, HHSC will ensure that it is effectively collecting reimbursements from MCOs for contracted audit services in a timely manner. Implementing a more efficient billing process will also improve HHSC's ability to effectively manage the experience rebates collected from MCOs.

S.B. 894 strengthens HHSC oversight by requiring information provided by its External Quality Review Organization, including member surveys and validated paid claims data, be actively used in monitoring MCOs.

Finally, S.B. 894 increases security over HHSC's IT services by strengthening user access controls within its accounts receivable system, requiring daily reconciliations of all agency accounts, and ensuring proper documentation of programming changes.

The committee substitute for S.B. 894 clarifies that the provisions of the bill do not apply to the Office of Inspector General. It also eliminates any potential conflicts that may exist with MCOs conducting audits on PBM contractors by requiring that HHSC manage this responsibility. (Original Author's / Sponsor's Statement of Intent)

S.B. 894 amends current law relating to auditing and verification of information under certain health and human services programs, including the collection of certain payments following an investigation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 531.024172, Government Code) and SECTION 5 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 321.013, Government Code, by adding Subsection (m), to require the State Auditor (auditor), in devising the audit plan under Subsection (c) (relating to the auditor recommending the audit plan for the state for each year to the legislative audit committee), to consider the performance of audits of certain programs operated by health and human services agencies.

SECTION 2. Amends Section 531.024172, Government Code, as follows:

Sec. 531.024172. ELECTRONIC VISIT VERIFICATION SYSTEM. (a) Requires the Health and Human Services Commission (HHSC), not later than March 31, 2018, to conduct a review of the electronic visit verification system in use under this section on August 31, 2017. Provides that, notwithstanding any other provision of this section, HHSC is required to implement a change in law made to this section by S.B. 894, Acts of the 85th Legislature, Regular Session, 2017, only if HHSC determines the implementation is appropriate based on the findings of the review. Authorizes HHSC to combine the review required by this subsection with any similar review required to be conducted by HHSC.

(b) Requires HHSC, subject to Subsection (g), in accordance with federal law, to implement an electronic visit verification system to electronically verify, rather than requires HHSC, if it is cost-effective and feasible, to implement an electronic visit verification system to electronically verify and document, through a telephone, global positioning, or computer-based system that personal care services, attendant care services, or other services identified by HHSC that are provided to recipients under Medicaid, including personal care services or attendant care services provided under the Texas Health Care Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315) or any other Medicaid waiver program, are provided to recipients in accordance with a prior authorization or plan of care. Requires that the electronic visit verification system implemented under this subsection allow for verification of only certain information relating to the delivery of Medicaid services. Deletes existing text defining "acute nursing services."

(c) Requires HHSC to inform each Medicaid recipient who receives personal care services, attendant care services, or other services identified by HHSC that the health care provider providing the services and the recipient are each required to comply with the electronic visit verification system. Requires a managed care organization (MCO) that contracts with HHSC to provide health care services to Medicaid recipients described by this subsection to also inform recipients enrolled in a managed care plan offered by the MCO of those requirements.

(d) Provides that, in implementing the electronic visit verification system, subject to Subsection (e), the executive commissioner of HHSC (executive commissioner) is required to adopt compliance standards for health care providers and HHSC is required to ensure certain standardization and processes.

(e) Requires the executive commissioner, in establishing compliance standards for health care providers under Subsection (d), to consider certain factors.

(f) Requires a health care provider that provides personal care services, attendant care services, or other services identified by HHSC to Medicaid recipients to meet certain criteria.

(g) Authorizes HHSC to recognize a health care provider's proprietary electronic visit verification system as complying with this section and allow the health care provider to use that system for a period determined by HHSC if HHSC makes certain determinations.

(h) Requires HHSC to create a stakeholder work group comprised of representatives of affected health care providers, MCOs, and Medicaid recipients and periodically solicit from that work group input regarding the ongoing operation of the electronic visit verification system under this section.

(i) Authorizes the executive commissioner to adopt rules necessary to implement this section.

SECTION 3. Amends Section 531.120, Government Code, by adding Subsection (c), to require HHSC to provide the notice required by Subsection (a) (relating to a notice of any proposed recoupment of an overpayment or debt and any damages or penalties relating to a proposed recoupment of an overpayment or debt arising out of a fraud or abuse investigation) to a provider that is a hospital not later than the 90th day before the date the overpayment or debt that is the subject of the notice is required to be paid.

SECTION 4. Amends Chapter 533, Government Code, by adding Subchapter B, as follows:

SUBCHAPTER B. STRATEGY FOR MANAGING AUDIT RESOURCES

Sec. 533.051. DEFINITIONS. Defines "accounts receivable tracking system," "agreed-upon procedures engagement," "experience rebate," and "external quality review organization."

Sec. 533.052. APPLICABILITY AND CONSTRUCTION OF SUBCHAPTER. Provides that this subchapter does not apply to and prohibits this subchapter from being construed as affecting the conduct of audits by HHSC's office of inspector general (HHSC OIG) under the authority provided by Subchapter C (Medicaid and Other Health and Human Services Fraud, Abuse, or Overcharges), Chapter 531 (Health and Human Services Commission), including an audit of a MCO conducted by HHSC OIG after coordinating HHSC OIG's audit and oversight activities with HHSC as required by Section 531.102(q) (relating to HHSC OIG coordinating all audit and oversight activities with HHSC), as added by Chapter 837 (S.B. 200), Acts of the 84th Legislature, Regular Session, 2015.

Sec. 533.053. OVERALL STRATEGY FOR MANAGING AUDIT RESOURCES. Requires HHSC to develop and implement an overall strategy for planning, managing, and coordinating audit resources that HHSC uses to verify the accuracy and reliability of program and financial information reported by MCOs.

Sec. 533.054. PERFORMANCE AUDIT SELECTION PROCESS AND FOLLOW-UP. (a) Requires HHSC, to improve HHSC's processes for performance audits of MCOs, to take certain actions.

(b) Requires HHSC, to verify that MCOs correct negative performance audit findings, to take certain actions.

Sec. 533.055. AGREED-UPON PROCEDURES ENGAGEMENTS AND CORRECTIVE ACTION PLANS. Requires HHSC, to enhance HHSC's use of agreed-upon procedures engagements to identify MCOs' performance and compliance issues, to take certain actions.

Sec. 533.056. AUDITS OF PHARMACY BENEFIT MANAGERS. Requires HHSC, to obtain greater assurance about the effectiveness of pharmacy benefit managers' internal controls and compliance with state requirements, to take certain actions.

Sec. 533.057. COLLECTION OF COSTS FOR AUDIT-RELATED SERVICES. Requires HHSC to develop, document, and implement billing processes in the Medicaid and CHIP services department of HHSC to ensure that MCOs reimburse HHSC for audit-related services as required by contract.

Sec. 533.058. COLLECTION ACTIVITIES RELATED TO PROFIT SHARING. Requires HHSC, to strengthen HHSC's process for collecting shared profits from MCOs, to develop, document, and implement monitoring processes in the Medicaid and CHIP services department of HHSC to ensure that HHSC takes certain actions.

Sec. 533.059. USE OF INFORMATION FROM EXTERNAL QUALITY REVIEWS. (a) Requires HHSC, to enhance HHSC's monitoring of MCOs, to use the information provided by the external quality review organization, including certain information.

(b) Requires HHSC to document how HHSC uses the information described by Subsection (a) to monitor MCOs.

Sec. 533.060. SECURITY AND PROCESSING CONTROLS OVER INFORMATION TECHNOLOGY SYSTEMS. Requires HHSC to strengthen user access controls for HHSC's accounts receivable tracking system and network folders that HHSC uses to manage the collection of experience rebates; document daily reconciliations of deposits recorded in the accounts receivable tracking system to the transactions processed in certain systems; and develop, document, and implement a process to ensure that HHSC formally documents certain information.

SECTION 5. (a) Requires HHSC, as soon as practicable after March 31, 2018, and to the extent appropriate based on the review conducted by HHSC under Section 531.024172(a), Government Code, as amended by this Act, to implement an electronic visit verification system that complies with Section 531.024172, Government Code, as amended by this Act.

(b) Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt the rules necessary to implement Subchapter B, Chapter 533, Government Code, as added by this Act.

SECTION 6. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such a waiver or authorization is granted.

SECTION 7. Effective date: September 1, 2017.