



Legislative Council Staff

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Fiscal Note

Drafting Number:	LLS 21-0462	Date:	May 3, 2021
Prime Sponsors:	Rep. Hooton Sen. Sonnenberg; Buckner	Bill Status:	House Health & Insurance
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Bill Topic: PHARMACY BENEFIT MANAGER & INSURER REQUIREMENTS

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill establishes requirements and restrictions on health insurance carrier and pharmacy benefit manager (PBM) business practices, and establishes standards for responding to consumer requests for benefit data. It has an indeterminate effect on state expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

The bill requires health insurance carriers to file information on the use of pharmacy benefit managers (PBMs) with state regulators, establishes restrictions on health insurance carrier and PBM business practices, and establishes standards for responding to consumer requests for pharmacy benefit data.

Filings. Beginning in 2022, health insurance carriers must submit a list of all PBMs the carrier uses to the Commissioner of Insurance along with rate filing submissions. This information is deemed proprietary and is not subject to open records requests.

PBM business practices. Beginning in 2022, PBMs are prohibited from the following:

- precluding a covered individual from obtaining a drug at an in-network retail pharmacy, except in cases of FDA restrictions or drug-specific circumstances making a retail pharmacy unable to safely provide it;
- charging a fee for the adjudication of a pharmacist services claim that exceeds the lesser of \$0.25 or 25 percent of the dispensing fee;
- requiring pharmacy accreditation or other standards inconsistent with or more stringent than those applicable to similar PBM-affiliated pharmacies within the same PBM network; or
- failing to designate as a preferred pharmacy a pharmacy in a county with under 20,000 people.

Access to benefit data. Upon request of a covered individual, a provider, carrier, or PBM must provide specified coverage data that is up-to-date and provided in real time. The bill prohibits certain practices that would restrict or discourage access to this information. The following information must be provided upon request:

- the individual's eligibility for the drug in question;
- a list of any clinically appropriate alternative drugs that are covered by the individual's plan;
- cost-sharing information for the drug and alternatives; and
- any applicable utilization management practices for the drug or alternatives.

Removal of prescription drug from plan. Beginning in 2022, if a health insurance carrier or PBM removes coverage of a prescription drug, it is required to notify any customers who have been prescribed that drug and allow them to continue using the drug for the remainder of the benefit year at the same coverage level.

Pharmacy audits. Except in cases of suspected fraud, health insurance carriers and PBMs are prohibited from conducting an on-site audit of a pharmacy more than once per year.

Background

A PBM is a business that administers or manages prescription drug benefits, including claims processing services, on behalf of a health insurance carrier. A PBM may be a separate business that contracts with a carrier, or may have common ownership or otherwise be associated with the health insurance carrier.

State Expenditures

The bill increases workload in the Department of Regulatory Agencies and has an indeterminate, though likely minimal, impact on state agencies that work with PBMs.

Department of Regulatory Agencies. Workload for the department will increase to receive lists of PBM relationships from health insurance carriers. Rulemaking is required to facilitate the submission of this information and to update various regulations to conform with the bill. This work can be accomplished within existing appropriations.

Other state agencies. Several state agencies work with PBMs, including the Department of Personnel and Administration, which utilizes a PBM in the administration of state employee health insurance. Some provisions of the bill may increase costs or reduce revenue to PBMs. The magnitude of this is indeterminate, though presumed not to be substantial, and it is unknown to what extent it would be passed on to the state. To the extent that state costs for PBM contracts change, any such costs or savings will accrue to the state through the annual budget process.

Local Government

As with the state government, local governments may experience a fiscal impact to the extent that costs for PBM contracts change.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Health Care Policy and Financing

Personnel

Regulatory Agencies