LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7293
BILL NUMBER: HB 1393
NOTE PREPARED: Feb 16, 2021
BILL AMENDED:

SUBJECT: Pharmacy Benefit Managers.

FIRST AUTHOR: Rep. Clere
FIRST SPONSOR:
BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill prohibits the inclusion of certain provisions in a contract between a pharmacy benefit manager (PBM) and an entity authorized to participate in the federal 340B Drug Pricing Program. The bill provides that a PBM's violation of the prohibition is an unfair or deceptive act or practice in the business of insurance.

Effective Date: July 1, 2021.

Explanation of State Expenditures: *Summary* - The bill's prohibitions on PBM reimbursement practices and fees for 340B covered entities could result in PBMs increasing reimbursements for prescription drugs dispensed by these entities and collecting less fees. An increase in reimbursements paid by PBMs could influence the state's contracts and subcontracts with PBMs under the Medicaid, Children's Health Insurance Program (CHIP), and state employee health plans. Any increase in General Fund or dedicated fund expenditures for pharmacy benefits under these plans would be dependent on contract specifics and administrative decisions, but would likely be minimal.

Additionally, violations of the bill's provisions by PBMs would be actionable by the Department of Insurance (DOI) as unfair and deceptive acts in the business of insurance under existing law. To the extent the DOI enforces provisions of this bill, agency workload would increase to investigate allegations and provide adjudicative proceedings to determine if an unfair or deceptive act has been committed. Increases in DOI workload are within the routine administrative functions of the agency and are expected to be accomplished within existing resource and funding levels.

Additional Information -

State-Contracted PBMs: The Family and Social Services Administration (FSSA) contracts directly with a PBM to manage pharmacy benefits for the Medicaid fee-for-service population. PBMs are also subcontracted by the state employee health plans and Medicaid managed care organizations to manage pharmacy benefits for state employees and the majority of Medicaid and CHIP members. Any increase in PBM reimbursement to pharmacies for prescriptions dispensed to plan members could potentially influence future contract negotiations between PBMs, managed care organizations, and FSSA and the State Personnel Department (SPD).

Medicaid and CHIP: Medicaid and CHIP are jointly funded between the state and federal governments. The standard state share of costs for most Medicaid medical services for FFY 2021 is 34%, or 10% for the age 19 to 64 expansion population within the Healthy Indiana Plan. The standard state share of CHIP costs is 24%. Under federal COVID-19 relief legislation, the state share of costs is decreased to 28% for traditional Medicaid enrollees and 20% for CHIP enrollees for the duration of the federally declared public health emergency.

State Employee Health Plans: Costs for the state health plans are shared between the state and state employees covered by the plan as determined in the plans' designs, including premiums, coinsurance, copayments, and deductibles. An increase in premiums cost may be mitigated with adjustments to other benefits or to employee compensation packages, or through the division of premium costs between the state and state employees.

Explanation of State Revenues: *Unfair and Deceptive Acts:* If this bill increases the number of unfair and deceptive acts discovered by DOI, revenue to the General Fund will increase from civil penalties paid by violators. The penalty for engaging in an unfair and deceptive act is one or more of the following: (1) a civil penalty between $25,000 and $50,000 for each act or violation and (2) revocation of a person's license or certificate of authority if they knowingly engaged in an unfair or deceptive act. Actual increases in revenue are unknown.

Insurance Premiums Tax: An increase in PBM reimbursements to pharmacies may create upward pressure on premiums collected in the state. Any increase in insurance company premiums will increase General Fund revenue from either insurance premium tax collections or adjusted gross income (AGI) tax collections. Actual increases in revenue as result of the bill are unknown but likely to be minimal.

Additional Information -

Implementation of PBM Licensure: SEA 241-2020 requires PBMs to obtain a license from DOI in order to do business in Indiana. DOI is currently in the rule making process of implementing PBM licensure. The law allows DOI to charge a license fee of up to $500. The law also permits DOI to assess other fines, separate from penalties for unfair and deceptive acts, for violations of statutory requirements by PBMs. These fines, if assessed would likely be deposited in the Department of Insurance Fund.

Explanation of Local Expenditures: The bill potentially impacts local units of government that offer non-ERISA health insurance coverage for employees. Added local health coverage costs may be mitigated with adjustments to other benefits or to the total employee compensation packages, or through the division of costs between the local unit and employees.

Explanation of Local Revenues: County-owned health care facilities that participate in the 340B program could potentially receive higher rates of reimbursement from PBMs as a result of this bill.

State Agencies Affected: Family and Social Services Administration; State Personnel Department; Department of Insurance.

Local Agencies Affected: Local government units offering non-ERISA health care plans for employees; county-owned health care facilities.

Information Sources: IC 27-4-1.

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