TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

SB 2458 - HB 2661

April 26, 2022

SUMMARY OF BILL AS AMENDED (018123, 018205): Revises requirements for a pharmacy benefits manager's (PBM) process through which a contracted pharmacy may contest that the reimbursement received was less than the actual cost. Requires a PBM to reimburse the pharmacy at least the actual cost for the drug or device if the pharmacy prevails in the appeal. Requires a PBM to pay a dispensing fee not less than the amount paid by TennCare for a low-volume pharmacy.

Requires a PBM to allow all patients, participants, and beneficiaries of a benefit plan to utilize any pharmacy within the state that accepts the terms and conditions established for at least one of the networks of pharmacies within the state. Authorizes a PBM to establish a preferred network of pharmacies and a non-preferred network of pharmacies. A PBM cannot prohibit a pharmacy from participating in either type of network as long as the pharmacy agrees to the same terms and conditions that the PBM has established for other participating pharmacies.

Requires the Department of Commerce and Insurance to institute an external appeal process. Any information obtained or produced by the department pursuant to an audit of a pharmacy benefits manager is confidential and not a public record, yet audit findings by the department based upon a completed audit of a PBM are public record. The proposed legislation takes effect upon becoming law for the purposes of promulgating rules and January 1, 2023 for all other purposes and applies to policies, plans contracts and agreements that are entered into, amended or renewed to take effect on or after such date.

FISCAL IMPACT OF BILL AS AMENDED:

Increase State Expenditures – $239,600/FY22-23/Department of Commerce and Insurance
$360,600/FY23-24 and Subsequent Years/
Department of Commerce and Insurance

Exceeds $2,778,900/FY22-23/General Fund
Exceeds $5,557,800/FY23-24 and Subsequent Years/General Fund

Increase Federal Expenditures – Exceeds $215,600/FY22-23
Exceeds $431,300/FY23-24 and Subsequent Years

Increase Local Expenditures – Exceeds $977,900/FY22-23*
Exceeds $1,955,800/FY23-24 and Subsequent Years*

Assumptions for the bill as amended:

- DCI and its Commissioner will promulgate rules to effectuate an external appeal process. This analysis assumes that the department will institute an external appeal process that will result in additional expenditures to the department.
- DCI expects to contract this work to a third-party independent dispute resolution (IDR) company.
- The average charge of an IDR is about $489. Assuming DCI will have 1,000 claims per year going through this appeal process, this will create a recurring expenditure of $489,000 (1,000 x $489). However, DCI plans to implement a rule where the party that loses the appeal must pay this cost, so assuming each party wins half of the appeals, it will lead to an increase in state expenditures of $244,500 ($489,000 x 50%). With an effective date of January 1, 2023, the increase in expenditures in FY22-23 will be for six months and is estimated to be $122,250.
- DCI will also require an additional Associate Counsel position to oversee this process, which will create a recurring increase in state expenditures of $109,958 ($88,356 salary + $21,602 benefits) and $6,100 for administrative cost allocation, and a one-time cost of $1,300 for office equipment. It is assumed DCI will hire this position in early FY22-23 to assist in the promulgation of rules and contracting process; therefore, costs incurred for the additional position will be for a full year.
- The total increase in state expenditures to DCI in FY22-23 will be $239,608 ($122,250 + $109,958 + $6,100 + $1,300) in FY22-23 and $360,558 ($244,500 + $109,958 + $6,100) in FY23-24 and subsequent years.
- Any sanctions that a PBM or covered entity is subjected to will be able to be handled within existing resources and will not create a significant increase in the court system.
- The proposed legislation states that the professional dispensing fee (PDF) must not be less than the amount paid by the TennCare program. The PDF to a low-volume pharmacy of less than 65,000 prescriptions filled annually is $11.98.
- The CoverKids, CoverRx, and State Government Insurance Plans (SGIP) will incur increases in expenditures to meet the PDF requirements. Current PDFs for each program are as follows:
    - CoverKids = $0.50
    - CoverRx = $3.00
    - SGIP = $0.15
- The total increase in expenditures for each plan is estimated as follows:

Program	Total Prescriptions	Less than 65,000	Current PDF Expenditures	New PDF Expenditures	Increase Expenditures
CoverKids	144,032	16,852	$ 8,426	$ 201,884	$ 193,458
CoverRx	496,826	170,908	$ 512,724	$ 2,047,480	$ 1,534,755
State Employee and Higher Education	2,334,790	224,485	$ 33,673	$ 2,689,329	$ 2,655,656
Local Education	1,751,093	437,773	$ 65,666	$ 5,244,522	$ 5,178,856
Local Government	404,098	101,025	$ 15,154	$ 1,210,274	$ 1,195,121

- Based on each individual plan's funding structure, the following is a breakdown of the estimated increase in expenditures per plan by funding source:

Program	State	Federal	Local
CoverKids	$ 45,822	$ 147,636	$ -
CoverRx	$ 1,534,755	$ -	$ -
State Employee and Higher Education	$ 1,840,901	$ 283,624	$ -
Local Education	$ 2,136,278	$ -	$ 760,645
Local Government	$ -	$ -	$ 1,195,121
Total	$ 5,557,757	$ 431,260	$ 1,955,765

- The proposed legislation applies to plans, contracts, and agreements effective on or after January 1, 2023; therefore, the estimated increases in FY22-23 will be incurred for six months and are estimated as follows:
    - State expenditures increase will be $2,778,879;
    - Federal expenditures increase will be $215,630;
    - Local expenditures increase will be $977,883.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

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