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Office of Research and Drafting

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H.B. 63
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Lipps and West

Local Impact Statement Procedure Required: No

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Highlights

- Requiring the Department of Insurance to create a web form used by consumers to submit complaints associated with violations of drug price disclosure requirements may increase departmental administrative expenditures. There may be additional costs for monitoring compliance with those requirements, but the bill seems to permit the Department to base such monitoring exclusively on consumer complaints. In that case, any increase in administrative costs would likely be minimal. Any such costs would be paid from the Department of Insurance Operating Fund (Fund 5540).
- The bill allows the Superintendent of Insurance to suspend or revoke a certificate of authority of a pharmacy benefit manager (PBM) or other administrator (as defined in R.C. 3959.01) if it fails to comply with the bill's requirements, and allows the Superintendent to penalize an administrator or a health insurer for such a failure. Revenue from the penalty on an insurer could be between $1,000 and $10,000; total revenue collected would depend on health insurers' compliance with the bill. Any revenue from the penalties would be deposited into Fund 5540.
- The bill does not explicitly require the State Board of Pharmacy to monitor compliance with requirements imposed on pharmacists, pharmacy interns, and terminal distributors of dangerous drugs when they file a prescription. If the Board undertakes any such monitoring, that would likely increase its administrative costs paid from the Board's appropriation item 887609, Operating Expenses (Fund 4K90). Any increase in such costs may be offset by any penalties collected by the Board.
- No direct fiscal effect on political subdivisions.

Detailed Analysis

Limitations on cost-sharing

The bill prohibits health plan issuers, pharmacy benefit managers (PBMs), or any other administrators from requiring cost-sharing in an amount greater than the lesser of either of the following: (1) the amount an individual would pay for the drug if the drug were to be purchased without coverage under a health benefit plan, or (2) the net reimbursement paid to the pharmacy for the prescription drug by the health plan issuers, PBMs, or other administrators. The bill defines "cost-sharing" as the cost to an individual insured under a health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the plan. The bill also prohibits health plan issuers, PBMs, or other administrators from directing a pharmacy to collect cost-sharing in an amount greater than the price or the net reimbursement stated above.

The bill specifies that health plan issuers, PBMs, or other administrators are prohibited from retroactively adjusting a pharmacy claim for reimbursement of a prescription drug unless the adjustment is the result of either of the following: (1) a pharmacy audit, or (2) a technical billing error. The bill also prohibits health plan issuers, PBMs, or other administrators from charging a fee related to a claim unless the amount of the fee can be determined at the time of claim adjudication.

The bill defines "health plan issuer" as it is defined in continuing law in R.C. 3922.01. Generally, the definition includes sickness and accident insurance companies, health insuring corporations, fraternal benefit societies, self-funded multiple employer welfare arrangements, nonfederal government health plans, and certain third-party administrators licensed under Chapter 3959 of the Revised Code. "PBM" is defined in R.C. 3959.01 as an entity that contracts with pharmacies on behalf of an employer, a multiple employer welfare arrangement, public employee benefit plan, state agency, insurer, managed care organization, or other third-party payer to provide pharmacy health benefit services or administration.

Department of Insurance

The bill allows the Superintendent of Insurance to suspend for up to two years, revoke, or not renew any license issued to a PBM, or other administrator, if the PBM or administrator violates the bill's requirements; the process for doing so follows ongoing law for such regulatory actions. Under existing law, the Superintendent may assess a penalty to any association, company, or corporation, including a health insuring corporation, that violates any insurance law in this state.

The bill requires the Department of Insurance to create a web form that consumers can use to submit complaints associated with violations of the bill's requirements. If a pharmacist, pharmacy intern, or terminal distributor of dangerous drugs has information indicating that the cost-sharing amount required by the patient's health benefit plan exceeds the permitted amount, the bill requires the person to provide such information to the patient and ensure that the patient is not charged the higher amount.

Requirements under the bill apply to contracts for pharmacy services and to health benefit plans entered into or amended on or after the bill's effective date.

Direct fiscal effect

The bill explicitly specifies one new duty for the Department of Insurance, which is to create a web form to be used by consumers to submit complaints associated with violations of drug price disclosure requirements. The bill implicitly expands the scope of the Department's regulatory duties, though, to include monitoring of cost-sharing payments at the point of sale of purchases of prescription drugs. The bill does not specify a method for monitoring such transactions, and it appears that the Department could base such monitoring entirely on complaints from consumers. If the Department interprets the bill that way, the Department may experience an increase in administrative costs that would likely be minimal. If the Department were able to reconfigure its existing online consumer complaint form to include the consumer complaints required under this bill, that circumstance would further contribute to keeping costs minimal. Any costs incurred by the Department would be paid from the Department of Insurance Operating Fund (Fund 5540). If the bill is intended to require the Department to begin monitoring all cost-sharing payments for compliance, the administrative costs could be quite large.

Under existing law, the Superintendent of Insurance may impose penalties related to any violations of insurance law, with the proceeds deposited into Fund 5540. Thus, any increase in administrative costs may be offset at least in part by any penalties collected by the Superintendent. Revenue to Fund 5540 would depend on compliance with the bill's requirements.

The bill may also increase administrative costs for the State Board of Pharmacy to monitor compliance with the bill's requirement related to pharmacists, pharmacy interns, and terminal distributors of dangerous drugs when they fill a prescription. The bill does not specify whether the Board is required to monitor compliance, and no method is specified if it does so. Consequently, it is difficult to estimate the magnitude of any administrative costs. Any increase in such costs would be paid from the Board's appropriation item 887609, Operating Expenses (Fund 4K90). Any increase in such costs may be offset by any fines and penalties collected by the Board.

According to a Department of Administrative Services (DAS) official, the bill has no direct fiscal effect on the state's self-insured health benefit plan and the plan already meets the requirements under the bill. The bill has no direct fiscal effect on local governments' health benefit plans.

Indirect fiscal effect

In general, cost-sharing in this context is used to incentivize enrollees' utilization of generic drugs and otherwise limit costs of prescription drugs they use, which ultimately serves the purpose of keeping insurance premiums from rising steeply. Potentially, the bill's requirement related to drug price cost-sharing may lead some health benefit plans to raise premiums to cover additional prescription costs. Thus, the bill may also increase insurance premiums for public employee benefit plans. Any increase in insurance premiums would increase costs to local governments that provide health benefits to employees and their dependents. If some of the local government plans already meet the requirements under this bill, those plans would experience no indirect fiscal impact. However, LBO economists are uncertain about the magnitude of any such increases.

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