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BILL



ANALYSIS

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Senate Bill 47 (as reported without amendment)
Sponsor: Senator Roger Kahn, M.D.
Committee: Health Policy

Date Completed: 3-10-09

RATIONALE

Surveys conducted around the State by the Attorney General have shown significant disparities in the prices of prescription drugs from pharmacy to pharmacy, as well as between stores in the same area and sometimes between stores owned by the same chain. For the more than 1.0 million Michigan residents without health insurance, the underinsured, and senior citizens on fixed incomes, the cost of prescription drugs is a significant concern. In July 2006, the Department of Community Health (DCH) launched a website, www.michigandrugprices.com, to provide the public with information. Initially, the website included the average prices of various drugs, enabling consumers who purchased those drugs to compare the price they paid at a specific pharmacy to the statewide average. The site was later modified to allow consumers to search by zip code for the prices charged by individual local pharmacies for 30 different medications. Subsequently, the DCH expanded the website. According to the website, the drugs selected for it are 150 of the most commonly prescribed drugs in Michigan and, in most cases, the prices reflect the cost for generic drugs.

Although the website reportedly has been popular with consumers, some people believe that requirements for it should be in statute, and that the site could be improved with the inclusion of price information for brand names and their generic equivalents, as well as a mechanism to correct inaccurate price information in a timely manner.

CONTENT

The bill would amend the Public Health Code to require the Department of Community Health to create and operate a website containing price information on prescription drugs; and require the DCH to establish and maintain a toll-free telephone number for information on prescription drug programs available in the State.

Prescription Drug Website

The bill would require the DCH to create and operate a website to educate consumers about the price of certain prescription drugs and to provide links to other helpful websites, including those that may assist and educate consumers on the availability of public and private programs that offer access to discounted or free prescription drugs in compliance with Federal and State rules and regulations.

The DCH would have to include all of the following on the prescription drug website:

- A list of the 150 most commonly prescribed brand name drug products, as reported by the State's Medicaid program.
- If not on that list, the most commonly prescribed brand name drug products used for the treatment of all major illnesses and diseases, as determined by the DCH.
- If available, the generically equivalent drug products for the listed brand name drugs.

- The usual and customary price of each listed brand name drug and generic equivalent.

The price information on the website would have to display conspicuously all of the following:

- If available, the generically equivalent drug product for each brand name drug product.
- The price attributable to each brand name and generically equivalent drug product.
- The dosage, including the number of doses and dosage strength, upon which the posted price was based.
- The name, street address, and city or other identifiable location of the pharmacy at which the listed drug product could be purchased at a posted price.

Additionally, the website would have to include a minimum of five links to other websites (as described above) and the DCH's toll-free telephone number created under the bill. The website also would have to include advisory statements alerting consumers of the need to tell their health professional and pharmacist about all the medications they were taking and to ask how to avoid harmful interactions between those medications, if any; and that the posted price was only for the strength and quantity of the listed drug product.

At least once a month, the DCH would have to obtain from the person that it contracted to serve as its pharmacy benefits manager (PBM) for the Medicaid program the usual and customary drug price for the most commonly prescribed drugs identified to the PBM by each pharmacy filling or refilling a prescription under the Medicaid program. The DCH would have to include this information on the website. The bill specifies that these provisions would not require a pharmacy that filled or refilled a prescription drug under the Medicaid program to provide any information in addition to that currently being reported to the Medicaid PBM.

Under the bill, "usual and customary price" would mean the price that is comparable to what a pharmacy would charge a cash-paying customer without insurance. The term would not include discounts, special

promotions, or other programs initiated to reduce prices for product costs available to the general public or to a special population.

Accuracy of Price Information; Annual Report

The DCH would have to establish a mechanism by which a pharmacy listed on the website could notify the Department of an incorrect usual and customary price for a drug available at that pharmacy and submit the correct price. The mechanism would have to allow the pharmacy to submit the correct price to the DCH in a format prescribed by the Department via electronic mail, facsimile, toll-free telephone number, or other method of electronic submission. Within three business days of receiving the submission, the DCH would have to verify whether the information submitted was accurate and, if so, update the website with the correct price.

Beginning June 1, 2009, the DCH would have to prepare and submit an annual report that assessed the accuracy of the usual and customary prices posted on the website as received from the Medicaid PBM and from any other PBM that supplied information to the Department. The DCH would have to include in the report the number of notifications of incorrect prices received from pharmacies, the number of those notifications that were verified, and the number of drug product prices that were corrected on the website. The DCH would have to submit the report to the Governor, the Legislature, and representatives of the House and Senate Fiscal Agencies.

Prescription Drug Telephone Number

The bill would require the DCH to establish and maintain a toll-free telephone number that a person could call for information on prescription drug programs available in Michigan, including free and discounted drug programs. The Department could use an existing toll-free telephone line to satisfy this requirement.

Proposed MCL 333.9721

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The existing website reportedly has been effective in saving consumers money on their prescription drugs, but improvements could make the site even more useful. The inclusion of both brand name drugs and their less expensive generic equivalents, as well as the prices for each, would help people comparison shop and save more. Also, providing customers with easy access to pricing information could give pharmacies an incentive to keep prices down.

Additionally, the bill would require the DCH to develop a mechanism by which a pharmacy could correct inaccurate price information posted on the site, and would require the DCH to report to the Legislature on the accuracy of the information every year.

Opposing Argument

The legislation is unnecessary. The DCH already is maintaining the website and, in some respects, the functionality goes beyond what the bill would require. For example, the bill would require that the information be updated monthly, while the Department currently updates the site approximately every two weeks.

With regard to the website's accuracy, relying on data from the Medicaid PBM to determine the usual and customary price would be problematic in several ways that ultimately could lessen the site's benefit to consumers. First, it can be several weeks from the time a prescription is sold until the claim is submitted to the PBM and the PBM submits the information to the DCH. Drug prices could change during that time, so there would be no guarantee that the information presented to consumers was up-to-date. In addition, some drugs are not prescribed frequently, so the only claims data for those drugs in the PBM's possession might be weeks or months old; again, there would be no guarantee that the website would reflect the current price. For certain drugs, it is possible that there would be little to no useful pricing information that could be posted on the website. Without an automated error reporting and correction system, the bill's requirement that the Department verify and correct the information within three business days would be impractical. Currently, updates to the website necessitate a few days' work per month by one person. Under the bill,

however, thousands of pharmacists potentially could be contacting the DCH on a daily basis with price changes on hundreds of drugs. More funding and staff could be needed to respond to those calls within the prescribed time period.

Response: Although the DCH has implemented and continues to operate the website without legislation, it would be prudent to establish in statute such a valuable consumer resource. The price of prescription drugs is of concern to many, and it is important to ensure that the site is functioning in the future.

Funding for the website should not be a significant concern. Since the site is already up and running, only the nominal costs of maintaining it and implementing the reporting mechanism would remain. The State already receives the required price information from the Medicaid PBM, so expanding the information that is included should not be overly burdensome.

Opposing Argument

Pharmacists serve as a safeguard by identifying potential dangerous drug interactions in customers taking more than one medication. If the website were to prompt consumers to buy their medications from several pharmacies, the likelihood of adverse interactions could increase.

Response: The bill would require that the website inform customers that it is important for them to tell any pharmacist who fills their prescriptions about all of the medications they use. If customers were to keep their pharmacists informed, the increased risk would be negligible.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would require that the DCH significantly expand the existing prescription drug website. The Department could be expected to incur additional administrative costs associated with updating and maintaining a more comprehensive and detailed prescription drug website. Section 285 of Public Act 246 of 2008 (the DCH budget act for FY 2008-09) directs the DCH to complete a study on the costs associated with expanding the State's prescription drug website and report any findings to the Legislature by May 1, 2009. This study

should provide a reasonable estimate of the fiscal impact associated with expanding the website.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.