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Senate Bill 656 (Substitute S-2 as reported)  
Sponsor: Senator Bruce Caswell  
Committee: Reforms, Restructuring and Reinventing

Date Completed: 12-2-13

### **RATIONALE**

When a pharmacist dispenses a prescription for a generic drug to a Medicaid recipient, the pharmacy benefits manager (PBM) for the Department of Community Health (DCH) or the contracted health plan reimburses the pharmacist for the cost of the drug based on maximum allowable cost (MAC) pricing. Pharmacy benefit managers research and analyze drug prices, drug availability, industry data, and information from pharmacies in order to calculate MAC pricing for generic drugs.

Some have suggested that some Medicaid PBMs do not update MAC pricing data frequently enough, resulting in reimbursements that either are too low, in which case a pharmacist takes a loss, or too high, in which case the Medicaid reimbursement pays more than the drug is worth. Additionally, some are concerned that processes for reconsidering MAC pricing calculations are not available to pharmacies. Therefore, it has been suggested that the DCH and contracted health plans should provide MAC pricing reconsideration policies to pharmacists and complete pricing reconsiderations within a set time frame.

### **CONTENT**

The bill would add Section 109I to the Social Welfare Act to require the Department of Community Health and contracted health plans to use a process for maximum allowable cost pricing reconsiderations that would have to be available and provided to providers and pharmacists.

The MAC pricing reconsideration process would have to include identification of three national drug codes for the drug in question if there were at least three available. If there were fewer than three, the policy would have to include all available national codes. All codes would have to be actually available and deliverable by a State-licensed wholesaler or manufacturer and fall into the DCH's or contracted health plans' MAC pricing.

A contracted health plan or the DCH would have to complete the reconsideration process in 10 business days, with all notification to the pharmacy in written or electronic form.

The bill states, "This section shall not be construed as requiring the department of community health or contracted health plans to guarantee that the drug in question can be obtained by the pharmacist or provider at or below the department's or contracted health plans' maximum allowable cost pricing."

Proposed MCL 400.109I

## **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 bill would increase transparency in the process by allowing pharmacists access to information regarding MAC pricing. More transparency also could enable pharmacists to find lower prices for generic drugs, which could allow them to be more efficient and competitive.

The bill also would help to eliminate the gap between actual drug costs and what pharmacists are reimbursed. A MAC pricing reconsideration would have to include identification of up to three national drug codes, depending on availability, that are actually available and deliverable. This would assist pharmacists by providing a point of reference while they researched drug availability and cost. Pharmacists also could verify MAC pricing information against actual market conditions.

Pricing reconsiderations would have to be completed in 10 business days. This would address concerns regarding the frequency of updates to MAC pricing data. Some have suggested that MAC pricing for drugs drops quickly in response to changes in the market, but increases slowly, which results in losses for pharmacists seeking reimbursement. A 10-day review would address this problem by requiring MAC pricing calculations to be based on current information.

### **Opposing Argument**

The bill should include a penalty for a PBM's failure to provide MAC pricing reconsideration policy to a pharmacist or provider. If Medicaid PBMs were not forced to comply with disclosure to pharmacists, it is questionable whether they would provide the information required in the bill.

**Response:** Adding penalties for noncompliance would be premature at this time. There is no indication that a Medicaid PBM would act in bad faith and actively refuse to disclose information to pharmacists unless it were under the threat of penalty. If Medicaid PBMs failed to comply with the bill's provisions and acted in bad faith, the Legislature could revisit the issue and act accordingly.

Legislative Analyst: Glenn Steffens

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State government, with the possibility of a slight increase in costs if present trends in generic pharmaceutical prices continue.

The bill would create a price reconsideration process in concert with a longstanding section of boilerplate in the Department of Community Health budget bill, Section 1629. Section 1629 provides that, for Medicaid fee-for-service clients, the DCH must use maximum allowable cost pricing for generic drugs based on wholesale prices from at least two wholesalers that deliver in the State. The section effectively bases Medicaid fee-for-service reimbursement to pharmacies on the two lowest prices available to wholesalers. The entity handling this reimbursement process is the pharmacy benefits manager that the DCH has contracted with, at present Magellan Medicaid Administration.

The bill would create a MAC price reconsideration process for all Medicaid clients, whether fee-for-service or managed care. (Most Medicaid managed care entities contract with PBMs although some handle the services in-house.) It also would require that price reconsiderations be concluded within 10 business days.

There have been concerns that PBM reimbursements are not based on the most-recent prices. The price reconsideration process would help to address lack of timeliness in pricing updates. To give an example, if the reimbursement set by the PBM is based on the price on November 1, 2013, and has not been updated, and the price increases on November 15, 2013, then the

pharmacy will face a loss after November 15, 2013, as it will spend more on the pharmaceutical than it will be reimbursed.

The timeliness of pricing is less of an issue in a noninflationary situation because prices can either increase or decrease, so the pharmacy may see benefits as well as costs due to a lack of timely price updates. However, in the current year, there has reportedly been some significant inflation in wholesale generic drug prices. Without timely updates to the prices, pharmacies could face losses on at least some of their generic products.

The 10-day price reconsideration process would appear to address this issue. There is the potential for a fiscal impact as more up-to-date prices, in an inflationary situation, would lead to a short-term reimbursement increase to pharmacies. (If the MAC price for a product increased from \$50 to \$60 and the update occurred within seven days rather than one month, for example, there would be a small short-term cost increase as the legislation would ensure that the pharmacy received a more accurate reimbursement.)

This possible increased cost would be reflected both in the fee-for-service pharmaceutical reimbursement and in the eventual actuarially sound adjustments to Medicaid managed care rates. It does appear, though, that these adjustments would be short-term due to more accurate pricing and thus not large in absolute terms. It is also the case that, in a noninflationary environment, the updated prices could be larger or smaller.

Fiscal Analyst: Steve Angelotti

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