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Senate Bill 656 (Substitute S-4 as reported by the Committee of the Whole)
Sponsor: Senator Bruce Caswell
Committee: Reforms, Restructuring and Reinventing

CONTENT

The bill would amend the Social Welfare Act to require the Department of Community Health (DCH) and contracted health plans to use a process for maximum allowable cost (MAC) 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 process 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, "The Department of Community Health and contracted health plans cannot be held accountable for failing to provide information for which they do not have access."

Proposed MCL 400.109I

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.

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Fiscal Analyst: Steve Angelotti

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