

PHARMACY BENEFIT MANAGERS

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<http://www.house.mi.gov/hfa>

House Bill 6435 (proposed substitute H-1)
Sponsor: Rep. Edward J. Canfield, D.O.
Committee: Health Policy
Complete to 12-4-18

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 6435 would amend the Third Party Administrator Act to institute reporting and contractual requirements on *pharmacy benefit managers* (PBMs) and limit the entities qualifying as “carriers.”

Pharmacy benefit manager is defined by the bill as a person that contracts with a pharmacy on behalf of a benefit plan for the pharmacy to provide pharmacy services to individuals covered by the benefit plan and that determines reimbursement to the pharmacy for the pharmacy services provided to individuals covered by the benefit plan. PMB does not include a carrier or an employer sponsoring a benefit plan.

Reporting requirements

Under the bill, by May 1 of each year a PBM would provide the Department of Insurance and Financial Services (DIFS) with a report containing, for the prior calendar year, the aggregate rebates that the PBM received from pharmaceutical manufacturers and did not pass through to the insurer for each of the PBM’s contractual or other relationships with an insurer.

DIFS would also have to publish the above information on a publicly available website in a timely manner, while hiding insurer or health plan identities, drug prices, and rebate amounts. Likewise, the PBM and DIFS could not publish or disclose that information. The bill states that this information is confidential and proprietary information and exempt from disclosure under the Freedom of Information Act (FOIA).

Prohibited contract information

Under the bill, a contract between a PBM and a pharmacy, or between a PBM and any other entity including a manufacturer, could not prohibit or penalize a pharmacy from disclosing to a customer information about any difference between the customer’s out-of-pocket costs and the amount the customer would pay without using health insurance coverage, or certain information about a less expensive therapeutically equivalent drug.

Additionally, that contract could not prohibit or penalize a pharmacy or other entity for selling a less expensive therapeutically equivalent drug than the drug that was originally prescribed.

Definition of a carrier

Currently, for the purposes of the Act, a “carrier” includes an insurer, a medical care corporation, a hospital service corporation, a health maintenance organization (HMO), or a dental care corporation. The bill would limit that category to include an insurer, including an HMO, or a dental care corporation.

Penalty

The bill would prohibit a person from establishing or operating as a pharmacy benefit manager unless he or she registers with the DIFS director. (The DIFS director would establish an annual registration fee for this service.) Violators would be subject to a civil fine of not more than \$7,500.

House Bills 6435 and 5223 are tie-barred together, meaning that neither could take effect unless both were enacted.

MCL 550.902

FISCAL IMPACT:

House Bill 6435 would necessitate an increase in expenditures by the Department of Insurance and Financial Services (DIFS). The bill would require persons to register with DIFS before operating as a pharmacy benefit manager, which would require administrative action by the department. DIFS would also be responsible for publishing on its website information it receives in annual reports from pharmacy benefit managers. Costs for the department to complete these activities are presently indeterminate. The bill would also affect revenues by creating a \$7,500 civil fine for persons who operate as pharmacy benefit managers without registering with DIFS.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.