Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 823 (as introduced 2-14-18)
Sponsor: Senator Margaret E. O'Brien
Committee: Health Policy

Date Completed: 5-1-18

CONTENT

The bill would amend the Social Welfare Act to exclude drugs for the treatment of cancer being provided under a contract between the Department of Health and Human Services and a health maintenance organization from provisions concerning Medicaid prior authorization.

Section 109h of the Act prohibits the Department of Health and Human Services (DHHS), if it develops a prior authorization process for prescription drugs as part of the pharmaceutical services offered under the Medicaid program, from requiring prior authorization for certain single source brand name, generic equivalent of a multiple source brand name, or other prescription drugs.

The Act defines "prior authorization" as a process implemented by the DHHS that conditions, delays, or denies the delivery of particular pharmaceutical services to Medicaid beneficiaries upon application of predetermined criteria by the DHHS or its agents for those pharmaceutical services covered by the DHHS on a fee-for-service basis or pursuant to a contract for those services. The process may require a prescriber to verify with the DHHS or its agent that the proposed medical use of a prescription drug being prescribed for a patient meets the predetermined criteria for a prescription drug that is otherwise covered under the Act, or require a prescriber to obtain authorization from the DHHS or its agent before prescribing or dispensing a prescription drug that is not included on a preferred drug list or that is subject to special access or reimbursement restrictions.

Section 109h does not apply to drugs being provided under a contract between the DHHS and a health maintenance organization. The bill would refer to drugs for the treatment of cancer.

The bill would take effect 90 days after its enactment.

MCL 400.109h Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill appears intended to codify limitations on the use of prior authorization that currently are defined in DHHS budgetary boilerplate. That language (Sec. 1875 of Article X of 2017 PA 107) bars the use of prior authorization by Medicaid managed care organizations for certain medications, in particular a number of behavioral health medications, medications to treat epilepsy or seizure disorder, and organ replacement therapy medications. The bill also would effectively bar the use of prior authorization by Medicaid managed care organizations for medications used to treat human immunodeficiency virus (HIV) and acquired

immunodeficiency syndrome (AIDS). The HIV/AIDS medication restriction was added to the version of Section 1875 included in the proposed FY 2018-19 DHHS budget adopted by the Senate Appropriation Committee on April 25, 2018, but had not been included in Section 1875 before then. The exemption for cancer medications, effectively allowing Medicaid managed care organizations to use prior authorization for cancer medications, would continue.

If the language in the bill were interpreted narrowly, the only fiscal impact would be the inclusion of HIV/AIDS medications on the list of medications that could not be made subject to prior authorization by Medicaid managed care organizations. This would likely lead to a minor increase in State costs due to the Federal requirement that Medicaid managed care organizations be paid actuarially sound rates.

A broader interpretation of the language would lead to a greater increase in costs. If the language were interpreted as barring prior authorization by Medicaid managed care organizations for all medications except those used to treat cancer, this would effectively end the prior authorization process for Medicaid managed care organizations for all but cancer medications and would lead to a significant increase in pharmaceutical costs for Medicaid managed care organizations, an increase that would effectively be borne by the State due to the actuarial soundness requirement.

Fiscal Analyst: Steve Angelotti

SAS\S1718\s823sa