

Fiscal Estimate Narratives

ETF 3/25/2019

LRB Number	19-2190/1	Introduction Number	SB-100	Estimate Type	Original
Description registration and regulation of pharmacy benefit managers, drug pricing transparency, granting rule-making authority, and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

This bill allows the commissioner of insurance to regulate a pharmacy benefit manager (PBM) by requiring them to register. The bill also establishes certain price transparency requirements and requirements on contracts the PBM enters into with pharmacies, pharmacists, or health benefit plan sponsors. The bill primarily focuses on the PBM's relationship with the pharmacies and the insurance commissioner. Generally, these provisions do not affect the state's group health insurance program.

In consultation with the Group Insurance Board's consulting actuary and the state's current PBM, ETF has determined that Section 13 and Section 16 of the bill may impact the prescription drug benefits under the state's group health insurance program. The fiscal effect of the changes is indeterminate.

Section 13 provides changes to the regulation of prescription drug charges and choice of providers. The following provisions may affect the group health insurance programs administered by ETF:

- The bill provides the group health insurance program may not require or penalize a participant who is covered under the program plan to use or for not using a specific retail, specific mail order pharmacy, or other specific pharmacy within the plan's provider network. The group insurance program does not have a tiered pharmacy network that incentivizes certain pharmacies through reduced cost share for commercial (non-Medicare) participants. However, starting with the 2018 plan year, Medicare-enrolled retirees who participate in our Medicare Part D program are incentivized to use one of two preferred specialty pharmacies for obtaining specialty medications. If a preferred specialty pharmacy is used, the participant pays a \$50 copayment; if a non-preferred pharmacy is used, the participant pays a 40% coinsurance, up to a maximum of \$200. The use of specialty pharmacies increases the quality of clinical services provided to participants and provides costs savings to the state due to negotiated prices with the preferred specialty pharmacy. Because ETF is unable to determine how many participants would stop utilizing the specialty pharmacies under the bill; the fiscal effect is indeterminate.
- The bill limits when changes can be made to the PBMs drug list or formulary. The state's PBM makes periodic updates to the formulary throughout the year when, for example, new drugs are introduced to the market, brand name drugs lose their patent rights or drug manufacturer costs significantly fluctuate. This provides the PBM and the state program the ability to manage the formulary and is a tool to contain costs for the state's group health insurance programs. The fiscal effect of this provision is indeterminate.
- The bill prohibits the group health insurance program from including in a contract for pharmacy services, or allowing a PBM or another entity to include in a contract for pharmacy services, a provision that prohibits or penalizes a pharmacist's disclosure to an individual purchasing a prescribed drug or device of the cost of a prescribed drug or device, a less expensive therapeutically equivalent drug or device, or a less expensive method of purchasing. The state's current PBM places no restriction on disclosure to an individual by the pharmacist in their pharmacy network contracts. This provision is not expected to have a fiscal effect on the program.
- The bill sets a limitation on the amount of cost sharing that a participant who is covered under a health insurance policy or self-insured governmental health plan must pay at the point of sale for a prescription drug as specified in the bill. This provides a participant pays the lesser of: a) applicable copayment, b) allowable claim amount, c) cost without using benefits, and d) amount the pharmacy is reimbursed for the drug from the PBM. The state's prescription drug benefit design already uses "lesser of" logic to ensure the participant pays the lowest costs as

indicated in the bill. This provision is not expected to have a fiscal effect on the program.

- The bill requires the group health insurance program to develop a procedure to ensure that a policy or plan does not deny coverage to a participant during a plan year to new exclusions, limitations, deductibles, copayments, or coinsurance if the prescribed drug or device was covered under the policy or plan for the participant when the participant either enrolled in coverage or renewed coverage and if the prescribing health care provider states that the prescribed drug or device is more suitable for the participant's condition than alternative drugs or devices that are covered under the policy or plan. The state's current PBM has a formulary appeal process in place that protect participants from these changes. This provision is not expected to have a fiscal effect on the program.

Section 16 contains the following provisions which may affect the group health insurance programs administered by ETF:

- The bill restricts the PBM from requiring a participant to obtain a prescription drug from a mail order pharmacy because the prescription drug requires special handling, provider coordination, or patient education. This provision may impact the state's specialty medication program, which requires non-Medicare participants obtain their specialty medications from one of two preferred specialty pharmacies. The required use of specialty pharmacies increases the quality of clinical services provided to participants and provides costs savings to the state due to negotiated prices with the preferred specialty pharmacy. Projected savings for implementing this program for the 2018 plan year were \$1.2 million. The changes proposed in this bill may limit savings to the program. However, because ETF is unable to determine how many participants would stop utilizing the specialty pharmacies under the bill; the fiscal effect is indeterminate.

- The bill limits the PBM's ability to audit pharmacies that participate in their network. These limitations may create opportunities for fraud, waste and abuse, which would directly impact the state's costs for the prescription drug benefits. Furthermore, the bill limits the amount that can be monetarily recovered from pharmacies by restricting recoveries to proven cases of fraud. The fiscal effect of these provisions is indeterminate.

- The bill may restrict the PBM from collecting fees from pharmacies for the adjudication of claims and inclusion or participation in the PBM's pharmacy networks. These fees are typically negotiated between the PBM and pharmacy. The state's current PBM does not negotiate fees to be paid by the pharmacy for services or network participation. This provision is not expected to have a fiscal effect on the program.

Long-Range Fiscal Implications