State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1726/P3
TJD:cdc

DOA:.....Ames, BB0219 – Prescription drug transparency

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

1. Registration of pharmacy benefit managers; drug cost reporting

This bill generally requires certain prescription drug cost reporting by drug manufacturers, pharmacy benefit managers, insurers, and hospitals. The bill also requires pharmacy benefit managers to register with OCI in order to perform activities of a pharmacy benefit manager in Wisconsin.

Under the bill, each insurer that offers a health insurance policy that covers prescription drugs must submit to OCI an annual report that identifies the 25 prescription drugs that are the highest cost to the insurer and the 25 prescription drugs that have the highest cost increases over the 12 months before the submission of the report. Health insurance policies are referred to in the bill as disability insurance policies.

The bill requires a drug manufacturer to notify OCI if it increases the wholesale acquisition cost of a brand-name or generic drug on the market in this state by more that an amount specified in the bill, or if it intends to introduce to market a brand-name or generic drug that has an annual wholesale acquisition cost of more than a specified amount. The manufacturer must include with the notice justification for and documentation regarding the price increase. The bill requires each manufacturer to provide OCI an annual description of each manufacturer-sponsored patient assistance program in effect during the previous

year. Each manufacturer must also report to OCI the value of price concessions provided to each pharmacy benefit manager for each drug sold.

The bill requires pharmacy benefit managers to report to OCI the amount received from manufacturers as drug rebates and the value of price concessions provided by manufacturers for each drug. The bill also requires each hospital participating in the federal drug–pricing program, known as the 340B program, to report to OCI the per unit margin for each drug covered under the 340B program dispensed in the previous year, the total margin, and how the margin revenue was used. OCI is required under the bill to publicly post information submitted, analyze data collected, publish a report on emerging trends in prescription prices and price increases, and annually conduct a public hearing based on that analysis. OCI must also conduct a statistically–valid survey of pharmacies in this state regarding whether the pharmacy agreed to not disclose that customer drug benefit cost sharing exceeds the cost of the dispensed drug.

The bill requires OCI to ensure that every health insurance policy that covers prescription drugs does not restrict a pharmacy or pharmacist from or penalize a pharmacy or pharmacist for informing an insured of a difference between the price of a drug or biological product under the policy and the price the insured would pay without using health insurance coverage.

This proposal may contain a health insurance mandate requiring a social and financial impact report under s. 601.423, stats.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 632.796 of the statutes is created to read:

632.796 Drug cost report. (1) DEFINITION. In this section, "disability insurance policy" has the meaning given in s. 632.895 (1) (a).

(2) REPORT REQUIRED. Annually, at the time the insurer files its rate request with the commissioner, each insurer that offers a disability insurance policy that covers prescription drugs shall submit to the commissioner a report that identifies the 25 prescription drugs that are the highest cost to the insurer and the 25 prescription drugs that have the highest cost increases over the 12 months before the submission of the report.

SECTION 2. 632.865 (3) of the statutes is created to read:

632.865 **(3)** REGISTRATION REQUIRED. (a) No person may perform any activities of a pharmacy benefit manager in this state without first registering with the commissioner under this subsection.

(b) The commissioner shall establish a registration procedure for pharmacy benefit managers. The commissioner may promulgate any rules necessary to implement the registration procedure under this paragraph.

SECTION 3. 632.866 of the statutes is created to read:

632.866 Prescription drug cost reporting. (1) DEFINITIONS. In this section:

(a) "Brand–name drug" means a prescription drug approved under 21 USC 355 (b) or 42 USC 262.

(b) "Covered hospital" means an entity described in 42 USC 256b (a) (4) (L) to (N) that participates in the federal drug–pricing program under 42 USC 256b.

(c) "Disability insurance policy" has the meaning given in s. 632.895 (1) (a).

(d) "Generic drug" means a prescription drug approved under 21 USC 355 (j).

(e) "Manufacturer" has the meaning given in s. 450.01 (12). "Manufacturer" does not include an entity that is engaged only in the dispensing, as defined in s. 450.01 (7), of a brand–name drug or a generic drug.

(f) "Manufacturer–sponsored assistance program" means a program offered by a manufacturer or an intermediary under contract with a manufacturer through which a brand–name drug or a generic drug is provided to a patient at no charge or at a discount.

(g) "Margin" means, for a covered hospital, the difference between the net cost of a brand–name drug or generic drug covered under the federal drug–pricing program under 42 USC 256b and the net payment by the covered hospital for that brand–name drug or generic drug.

(h) "Net payment" means the amount paid for a brand–name drug or generic drug after all discounts and rebates have been applied.

(i) "Pharmacy benefit manager" has the meaning given in s. 632.865 (1) (c).

(j) "Wholesale acquisition cost" means the most recently reported manufacturer list or catalog price for a brand–name drug or a generic drug available to wholesalers or direct purchasers in the United States, before application of discounts, rebates, or reductions in price.

(2) PRICE INCREASE OR INTRODUCTION NOTICE; JUSTIFICATION REPORT. (a) A manufacturer shall notify the commissioner if it is increasing the wholesale acquisition cost of a brand–name drug on the market in this state by more than 10 percent or by more than $10,000 during any 12–month period or if it intends to introduce to market in this state a brand–name drug that has an annual wholesale acquisition cost of $30,000 or more.

(b) A manufacturer shall notify the commissioner if it is increasing the wholesale acquisition cost of a generic drug by more than 25 percent or by more than $300 during any 12–month period or if it intends to introduce to market a generic drug that has an annual wholesale acquisition cost of $3,000 or more.

(c) The manufacturer shall provide the notice under par. (a) or (b) in writing at least 30 days before the planned effective date of the cost increase or drug introduction with a justification that includes all documents and research related to the manufacturer's selection of the cost increase or introduction price and a description of life cycle management, market competition and context, and estimated value or cost–effectiveness of the product.

(3) NET PRICES PAID BY PHARMACY BENEFIT MANAGERS. By March 1 annually, the manufacturer shall report to the commissioner the value of price concessions,

expressed as a percentage of the wholesale acquisition cost, provided to each pharmacy benefit manager for each drug sold in this state.

(4) REBATES AND PRICE CONCESSIONS. By March 1 annually, each pharmacy benefit manager shall report to the commissioner the amount received from manufacturers as drug rebates and the value of price concessions, expressed as a percentage of the wholesale acquisition cost, provided by manufacturers for each drug.

(5) HOSPITAL MARGIN SPENDING. By March 1 annually, each covered hospital operating in this state shall report to the commissioner the per unit margin for each drug covered under the federal drug pricing program under 42 USC 256b dispensed in the previous year multiplied by the number of units dispensed at that margin and how the margin revenue was used.

(6) MANUFACTURER-SPONSORED ASSISTANCE PROGRAMS. By March 1 annually, each manufacturer shall provide the commissioner with a description of each manufacturer–sponsored patient assistance program in effect during the previous year that includes all of the following:

(a) The terms of the programs.

(b) The number of prescriptions provided to state residents under the program.

(c) The total market value of assistance provided to residents of this state under the program.

(7) CERTIFICATION AND PENALTIES FOR NONCOMPLIANCE. Each manufacturer and covered hospital that is required to report under this section shall certify each report as accurate under the penalty of perjury. A manufacturer or covered hospital that fails to submit a report required under this section is subject to a forfeiture of no more than $10,000 each day the report is overdue.

(8) HEARING AND PUBLIC REPORTING. (a) The commissioner shall publicly post manufacturer price justification documents and covered hospital documentation of how each hospital spends the margin revenue. The commissioner shall keep any trade secret or proprietary information confidential.

(b) The commissioner shall analyze data collected under this section and publish annually a report on emerging trends in prescription prices and price increases, and shall annually conduct a public hearing based on the analysis under this paragraph. The report under this paragraph shall include analysis of manufacturer prices and price increases, analysis of hospital–specific margins and how that revenue is spent or allocated on a hospital–specific basis, and analysis of how pharmacy benefit manager discounts and net costs compare to retail prices paid by patients.

(9) ALLOWING COST DISCLOSURE TO INSURED. The commissioner shall ensure that every disability insurance policy that covers prescription drugs or biological products does not restrict a pharmacy or pharmacist that dispenses a prescription drug or biological product from informing and does not penalize a pharmacy or pharmacist for informing an insured under a policy of a difference between the negotiated price of, or copayment or coinsurance for, the drug or biological product under the policy and the price the insured would pay for the drug or biological product if the insured obtained the drug or biological product without using any health insurance coverage.

SECTION 9123. Nonstatutory provisions; Office of Commissioner of Insurance.

(1) PRESCRIPTION DRUG COST SURVEY. The commissioner of insurance shall conduct a statistically–valid survey of pharmacies in this state regarding whether

the pharmacy agreed to not disclose that customer drug benefit cost sharing exceeds the cost of the dispensed drug.

(END)