DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Rep. Huebsch:

Please review this draft carefully to ensure it is consistent with your intent and note the following:

1. The drafting instructions indicate that "epilepsy drug" includes a drug for the treatment of convulsions, if substitution with another manufacturer's product "may pose a health risk." Who should decide whether a substitution poses a health risk?

2. This draft preserves a cross−reference in current law indicating that it is professional misconduct for a physician to violate s. 450.13 (2). Under current s. 450.13 (2), a prescribing practitioner may indicate that a pharmacist may not dispense the drug product equivalent of the drug product that is prescribed. It is not clear how a physician could violate s. 450.13 (2), since it neither prohibits nor requires conduct by a physician. Should the draft address this anomaly?

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1. In the language of the model legislation, a "*participating* provider" determines an enrollee's drug therapy. Therefore, I limited the provision to defined network plans, preferred provider plans, and limited service health organizations in ch. 609. Is this what you want? Should the "participating provider" who determines the drug therapy be limited to the one that is actually treating the enrollee for the condition for which the drugs are being prescribed? Who would determine an enrollee's drug therapy if not a provider, the plan? If the plan covers only certain drugs, is the plan in violation of the provision if the drugs that are covered are not the ones that the participating provider would prescribe? Since the draft relates to drugs for the treatment of epilepsy, should this provision [proposed s. 609.31 (1)] be limited to drug therapy for the treatment of epilepsy?

2. "Penalize" is a pretty vague term. What does it mean to "penalize" an enrollee for requesting a specific drug for the treatment of epilepsy? Could it be interpreted to

mean that not covering a drug that is requested by an enrollee is penalizing the enrollee? Could it be interpreted to mean that requiring a higher copay for a drug requested by an enrollee if it is a brand name drug is penalizing the enrollee?

Perhaps there is a good reason, but it seems strange to treat drugs prescribed, dispensed, or requested for the treatment of epilepsy differently from drugs prescribed, dispensed, or requested for the treatment of other conditions. Does prohibiting penalties for prescribing, dispensing, or requesting a specific drug for the treatment of epilepsy imply that an insurer *may* impose a penalty for prescribing, dispensing, or requesting a specific drug for the treatment of another condition?

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