

CONSUMER PRESCRIPTION PROTECTION

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House Bill 4987 (Substitute H-2)
Sponsor: Rep. Gary A. Newell

House Bill 5435 (Substitute H-1)
Sponsor: Rep. Scott Hummel

House Bill 5437 (Substitute H-1)
Sponsor: Rep. Jim Plakas

House Bill 5436 (Substitute H-1)
Sponsor: Rep. Randy Richardville

House Bill 5438 (Substitute H-1)
Sponsor: Rep. Paula K. Zelenko

Committee: Health Policy

Complete to 3-12-04

A SUMMARY OF HOUSE BILLS 4987 AND HOUSE BILLS 5435-5438

The bills would amend various acts to ensure, among other things, that costs of prescription drugs for patients with prescription health care benefits would be the same whether provided by community or mail-order pharmacies, allow community pharmacies to dispense multi-month supplies of prescription drugs, regulate pharmacy benefit managers, and allow companies in Michigan to operate as mail-order pharmacies. The bills are tie-barred to each other, meaning that none of the bills could take effect unless all of them were enacted. The effective date for all the bills would be July 1, 2004.

House Bill 4987 and House Bill 5437 would require insurers that issue policies or certificates providing for pharmaceutical services to do both of the following:

- Apply the same coinsurance, copayments, and deductibles to the same strength, quantity, and days' supply of the same covered prescription drug filled by a pharmacy provider participating or under contract with the HMO or insurer who had agreed to the contract's terms, conditions, explicit product cost determination, and dispensing or other service fees.
- Not set a limit on the quantity of drugs or days' supply of drugs that an enrollee or insured could obtain at any one time. This would not apply, however, if the HMO or insurer applied the limit uniformly to all participating pharmacy providers who had agreed to the contract's terms, conditions, explicit product cost determination, and dispensing or other service fees.

An insurer could still apply different coinsurance, copayment, and deductible factors between generic and brand name drugs and between formulary and nonformulary drugs.

The bill would only apply to policies, certificates, and contracts delivered, issued for delivery, or renewed on or after July 1, 2004.

House Bill 4987 would amend the Insurance Code (MCL 500.3406r) to apply to health maintenance organizations and commercial insurers. House Bill 5437 would amend the Nonprofit Health Care Corporation Reform Act (MCL 1416d), which regulates Blue Cross and Blue Shield of Michigan, to apply to group or nongroup certificates offered by BCBSM.

House Bill 5435 would add Chapter 12A, entitled “Pharmacy Benefit Managers”, to the Insurance Code (MCL 500.1251 et. al.) to provide for the regulation of pharmacy benefit managers. The term “pharmacy benefit manager” or “PBM” would be defined as a person or wholly or partially owned subsidiary of the person that administers the prescription drug or device portion of a benefit plan. A PBM would not include a carrier (HMO, commercial insurer, or Blue Cross Blue Shield of Michigan) or employer sponsoring a benefit plan.

The bill would require a PBM to obtain and maintain a certificate of authority under provisions of Chapter 12A or under the Third Party Administrator Act. The bill, among other things, would do the following:

- Specify criteria under which a PBM would be subject to the bill’s provisions.
- Require a PBM to apply for a certificate of authority and specify the forms, documents, and information to be provided with an application.
- Require the commissioner of the Office of Financial and Insurance Services (OFIS) to issue a certificate of authority to a PBM having adequate facilities, personnel, and managers to act as a PBM and that otherwise satisfies Chapter 12A. If an application were disapproved, a written notice with the reasons for the disapproval would have to be sent to the applicant.
- Establish a filing fee for either an application for a PBM certificate of authority or for an annual statement of a PBM of \$500. Revenue from these fees would be designated for the OFIS to cover costs of administering the bill’s provisions.
- Require each PBM acting within the state to prepare an annual statement concerning its affairs by March 1 of each year.
- Grant the commissioner, among other things, the rights of examination, suspension, revocation, and limitation of authority, as well as liquidations and receiverships.
- Prohibit the termination of a pharmacy or pharmacist’s affiliation or participation with a carrier or in a network or panel due to efforts to invoke rights under contract by that pharmacist or pharmacy.

- Provide for administrative and civil penalties for violations of the bill's provisions.
- Require the commissioner to submit a report to the legislature on or before April 1, 2007 that detailed the impact of the bill on health plans and individuals covered by plans, carriers, and PBMs, as well as an estimation of the total financial impact on the state during the preceding legislative biennium.

House Bill 5436 would amend the Public Health Code (MCL 333.17706 et. al.) to define "mail-order pharmacy" and require an out-of-state mail-order pharmacy that dispensed prescription drugs or devices to residents of Michigan to be licensed under the code. To be licensed in this state, an out-of-state mail-order pharmacy would have to be licensed, certified, or registered to operate in the state in which it was domiciled and be in good standing. Each pharmacy licensed under the code, including an out-of-state pharmacy, would have to designate a pharmacist agent to be responsible for receiving and responding to inquiries regarding compliance with state and federal laws that regulate the distribution of drugs and the practice of pharmacy. A pharmacist agent would have to be a pharmacist licensed in the state. A pharmacist could be designated as a pharmacist agent for more than one pharmacy.

The bill would establish the duties and responsibilities of a pharmacist agent. A pharmacist agent for an out-of-state mail-order pharmacy licensed to do business in the state would have to assume responsibility for each prescription drug or device sold, delivered, or dispensed to Michigan residents by a pharmacist under his or her personal charge who was not licensed under the health code. The bill would also require a mail-order pharmacy that did not provide a patient with the ability to counsel verbally or face-to-face about a new prescription to provide the patient with a toll-free telephone service to facilitate direct communication with a licensed pharmacist should the patient have a question or concern about the prescription drug or device that was received.

Further, the bill would grant rule-making authority to govern mail-order pharmacies doing business in the state to the state Board of Pharmacy. The rules could not prohibit a mail-order pharmacy from providing prescription drugs to Michigan residents, but could regulate the dispensing of certain prescription drugs as it related to the effectiveness, safety, or diversion of that drug. The board could also authorize the inspection of mail-order pharmacies from which prescriptions were sold, delivered, or dispensed to residents of the state regarding compliance with the bill and any rules promulgated under it.

House Bill 5438 would amend the Prudent Purchaser Act (MCL 550.52 et.al.). A prudent purchaser agreement is an agreement between an organization and a health care provider under provisions of the act. A pharmacy provider on a provider panel that provided prescription drugs or devices to residents of the state would have to comply with Part 177 (Pharmacy Practice and Drug Control) of the Public Health Code.

The bill would create several new requirements for an organization that established a provider panel of pharmacy providers; for instance, all pharmacy providers in the panel would have to be reimbursed the same amount for the same strength, quantity, and days'

supply of the same covered prescription drug. Also, a patient would maintain the right to receive a 30-day supply of medication, at the same co-pay as for mail-order or Internet, if a prescription was not received on a timely basis. A pharmacy's or pharmacist's affiliation or participation in a panel could not be terminated because of efforts to invoke his or her rights under the prudent purchaser agreement.

The bill would also prohibit an organization that established a provider panel of pharmacy providers from several engaging in certain conduct, including setting a limit on the quantity of drugs or days' supply of drugs that would be reimbursed, unless the limit was applied uniformly to all pharmacy providers in the panel. An organization could petition the commissioner of the Office of Financial and Insurance Services (OFIS) for permission to apply dispensing or other service reimbursement fees and terms on a dissimilar basis to pharmacy providers in the panel. The commissioner would have to grant the petition if criteria specified in the bill were met. An organization's contract with a purchaser of coverage that was based on a collective bargaining agreement between the purchaser of coverage and the purchaser's employees that had been in effect on July 1, 2004 would not be subject to these provisions until that agreement's expiration.

The bill would also require an organization that established a provider panel of pharmacy providers to do the following:

- Disclose certain information in writing annually on or before March 1 to the commissioner and to all purchasers of its coverage pertaining to financial relationships with other individuals and businesses associated with the pharmaceutical industry; agreements to bill a benefit plan for prescription drugs at amounts higher than for a pharmacy; agreements to share revenue, other than through a provider agreement, with a mail-order or Internet pharmacy company; agreements to sell prescription drug data; and agreements with pharmaceutical manufacturers that involve favoring the manufacturer's products over that of a competitor's or placing the manufacturer's product on the preferred drug list or formulary of the organization or of the purchaser of coverage.
- Disclose its ownership interest in a mail-order or Internet pharmacy to a purchaser of its coverage and to persons who have coverage.
- Disclose to a purchaser its databank source and prices used in its pricing calculations.

- Electronically notify pharmacy providers on the panel of any additions or deletions of purchasers of coverage or covered lines or of changes in benefit design within 30 days of the addition, deletion, or change.

Legislative Analyst: S. Stutzky

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