



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5947 (Substitute H-3 as reported without amendment)
House Bill 5970 (Substitute H-2 as reported without amendment)
Sponsor: Representative Brian Palmer
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 10-27-04

RATIONALE

Manufacturers of pharmaceuticals and medical devices often offer nationwide rebates for their products by distributing coupons, or paying part of a consumer's co-pay. Michigan residents with insurance coverage for these products are precluded from taking advantage of these special offers under the Health Care False Claim Act (HCFCFA), which prohibits a person from giving or receiving a kickback or bribe. Reportedly, some pharmaceutical and medical device manufacturers are concerned that a consumer rebate could be considered a kickback under the statute, and have denied rebates or coupons presented by Michigan consumers. It has been suggested that the Act be amended to specify that a consumer rebate on pharmaceutical or medical devices would not violate the prohibition against kickbacks.

CONTENT

House Bills 5947 (H-3) and 5970 (H-2) would amend the Health Care False Claim Act to provide that a rebate or discount to a consumer for specific health services would not violate a prohibition against giving or receiving a kickback or bribe, or receiving a rebate for referring an individual to another person for the furnishing of health care benefits.

House Bill 5947 (H-3) would apply to a rebate or discount from a medical supply or device manufacturer, or from a company that licenses or distributes medical supplies or devices for a manufacturer to a consumer for his or her use of a medical supply or

device manufactured, licensed, or distributed by that manufacturer or company. House Bill 5970 (H-2) would apply to a drug manufacturer or a company that licenses or distributes the drugs of a manufacturer to a consumer for his or her use of a drug manufactured, licensed, or distributed by that manufacturer or company.

Under the Act, a person who solicits, offers, pays, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part by a health care corporation or health care insurer, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of health care benefits, is guilty of a felony punishable by imprisonment for up to four years and/or a maximum fine of \$50,000.

The bills state that they would not alter any copayment, deductible, coinsurance, or other cost-sharing requirements under a contract, certificate, or policy issued by a health care corporation or health care insurer.

The bills are tie-barred to each other.

Proposed MCL 752.1004b (H.B. 5947)
Proposed MCL 752.1004a (H.B. 5970)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

As health care costs rise, consumers with insurance coverage often are required to pay higher co-pays and deductibles. Manufacturer coupons and discounts can result in significant savings on critical products. Since the statute does not define the term "kickback", however, some pharmaceutical and medical device manufacturers are concerned that their otherwise-nationwide rebate programs would violate the Michigan law, and the manufacturers do not provide rebates to Michigan consumers. Attorney General Mike Cox declined to issue an official opinion as to whether a consumer rebate violates the Act, stating, "The issuance of an Attorney General opinion that recognizes any one form of 'rebate' as exempt from prosecution that the Legislature has not expressly excluded from the HCFCFA's prohibitions could be exploited in an attempt to avoid criminal liability for conduct that clearly constitutes a kickback intended to be illegal under the HCFCFA" (10-17-03 letter to Representative Palmer).

Manufacturer rebates can help alleviate the burden of purchasing needed prescription drugs and medical devices. Some people are on multiple medications, some of which are very expensive or not readily available. A person using a drug on a trial basis might not want to pay full price for a prescription that he or she might not use in its entirety. Effective management of conditions such as diabetes and hypertension requires home monitoring equipment for blood sugar levels and blood pressure. Michigan is said to be the only state that has not passed legislation specifying that consumers' use of manufacturer rebates is not illegal. The bills would clarify the law and promote access to the medications and equipment necessary for people to manage their health.

Legislative Analyst: Julie Koval

FISCAL IMPACT

According to the Department of Corrections Statistical Report, in 2001 there was only one offender convicted of violating the applicable section prohibiting kickbacks or bribes. That offender received either a fine or a delayed or suspended sentence. Although there are no available data on whether the offender would have been exempt under the bills, if one assumes that

future convictions will be similar to those of the past, the bill would have no significant fiscal impact on the State or local government.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.