HB 4113 A STAFF MEASURE SUMMARY

Carrier: Rep. Levy E

House Committee On Behavioral Health and Health Care

Action Date:	02/14/24
Action:	Do pass with amendments. (Printed A-Eng.)
Vote:	11-0-0-0
Yeas:	11 - Bowman, Conrad, Dexter, Diehl, Goodwin, Javadi, Nelson, Nosse, Pham H, Tran, Yunker
Fiscal:	Has minimal fiscal impact
Revenue:	No revenue impact
Prepared By:	Brian Nieubuurt, LPRO Analyst
Meeting Dates:	2/7, 2/14

WHAT THE MEASURE DOES:

The measure requires an insurer offering a health plan that provides pharmacy benefits to include all amounts paid by the enrollee, or paid on behalf of the enrollee by another person, to the cost of a covered prescription drug, when calculating the enrollee's contribution to an out-of-pocket maximum in specified circumstances.

Detailed Summary:

Defines "health plan" and "generic equivalent" for purposes of the measure. Exempts calculation of generic drugs from the requirement, and drugs for which there are generic options and the enrollee has not sought prior authorization or completed step therapy before obtaining the brand name drug.

ISSUES DISCUSSED:

- Cost-shifting that occurs with copay assistance programs
- Recent federal regulatory and legal activity

EFFECT OF AMENDMENT:

Clarifies application to plans offered by the Public Employees' Benefit Board (PEBB), Oregon Educators Benefit Board (OEBB), and to high deductible health plans.

BACKGROUND:

Prescription drug manufacturers sometimes offset the out-of-pocket cost of brand name drugs by offering copay assistance programs. Historically, amounts paid towards the cost of drugs (regardless of source) would count towards the patient's deductible. However, copayment assistance programs also have the potential to encourage people to use high-cost medications when cheaper, generic versions may be available. Therefore, health insurers have begun to implement "copay accumulator" programs that do not count amounts paid using copayment assistance programs towards the insured's deductible. In 2021, the Health and Human Services Department (HHS) adopted rules authorizing the use of copay accumulators. In 2022, patient advocacy groups filed suit seeking to invalidate those rules. In September 2023, a federal district court struck down the copay accumulator rules, noting that neither HHS nor the Centers for Medicare and Medicaid Services (CMS) had adopted a definition of "cost sharing" that could support the exclusion of copayment assistance from deductible calculations. While the federal government initially appealed that ruling, the appeal was dropped in January 2024.