

HB 4113 A STAFF MEASURE SUMMARY

Carrier: Sen. Gelser Blouin

Senate Committee On Health Care

Action Date: 02/28/24

Action: Do pass the A-Eng bill.

Vote: 5-0-0-0

Yeas: 5 - Bonham, Campos, Gorsek, Hayden, Patterson

Fiscal: Has minimal fiscal impact

Revenue: No revenue impact

Prepared By: Daniel Dietz, LPRO Analyst

Meeting Dates: 2/28

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 generic drugs 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. Applies to health plans issued, renewed, or extended after the effective date of the measure. Takes effect on the 91st day following adjournment sine die.

ISSUES DISCUSSED:

- Cost burden on consumers needing prescription drugs for various conditions
- Out-of-pocket costs to consumers in relation to health insurance premiums and system-wide costs

EFFECT OF AMENDMENT:

No amendment.

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.