FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Gallegos	**ORIGINAL DATE**	3/13/2023
SHORT TITLE	Pharmacy Benefit Manager Restrictions	**BILL NUMBER**	Senate Bill 498
		ANALYST	Simon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		Up to $3,000	Up to $3,000	Up to $6,000	Recurring	Health Benefits Fund
Total						

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 14

Sources of Information

LFC Files

<u>Responses Received From</u>
Retiree Health Care Authority
Public School Insurance Authority
General Services Department
Office of Superintendent of Insurance

SUMMARY

Synopsis of Senate Bill 498

Senate Bill 498 would amend the Pharmacy Benefits Manager Regulation Act to expand the maximum-allowable-cost process from generic pharmaceuticals to all pharmaceuticals and to increase the amount of information provided on the maximum-allowable-cost list. Additionally, the bill would require pharmacy benefits managers to set reimbursement rates no lower than a pharmacy is able to purchase the drug from their wholesaler. Finally, the bill would require pharmacy benefits managers to allow any pharmacy access to its preferred pharmacy network and prohibits a manager from restricting an individual's choice in pharmacy.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The state's insurance agencies hold differing views on the potential impact of the bill on public employee benefits. Analysis from the Retiree Health Care Authority (RHCA) and General Services Department (GSD) note the bill would likely result in an increase to administrative costs for pharmacy benefits management services. As self-insured plans, the state's insurance plans pay an administrative fee to their pharmacy benefits managers, fees that could rise with additional appeals proceedings or other administrative costs. Analysis from GSD does not indicate an estimated amount but says the additional fees could be "substantial." Additionally, RHCA anticipates additional claims costs. The agency states independent pharmacies tend to have higher costs than chain pharmacies, which can result in price increases of between 7 percent and 10 percent. RHCA estimated the additional claims cost at $2.3 million for a 7 percent to 10 percent increase for that agency.

Analysis from the Public School Insurance Authority states the bill would not have a material impact on the agency's budget.

SIGNIFICANT ISSUES

To purchase prescription drugs, health insurance plans engage a pharmacy benefits manager to provide prescription drug coverage to the insured. One service offered by these managers is to negotiate prices with retail pharmacies to keep costs lower for the health insurance plan.

Current law requires a pharmacy benefits manager to determine a maximum reimbursement amount for generic pharmaceuticals and to maintain a searchable, electronic list of drugs setting the maximum allowable cost. SB498 would expand this requirement to all pharmaceuticals. Additionally, the bill would expand the information that pharmacy benefits managers would be required to provide to include the average national cost of a particular drug, the average manufacturer price, the average wholesale price, the effective rate of the drug, the discount indexing for the drug, the federal upper limit for the drug, the wholesale acquisition cost of the drug, and any other information used by the manager and the insurer to establish reimbursement rates. Many of these terms, while perhaps widely used in the pharmaceutical and insurance industries, do not appear to be defined in the Pharmacy Benefits Manager Regulation Act.

Section 2 of the bill would require a pharmacy benefits manager to increase the maximum allowable cost for drugs if a pharmacy's wholesaler does not offer that drug at a price that is less than the maximum allowable costs set by the manager. Current law requires pharmacy benefits managers to determine a reimbursement rate based on "objective and verifiable sources," but the bill would add pharmacy acquisition costs by allowing a pharmacy to challenge reimbursement if the proposed reimbursement is below the pharmacy's acquisition costs. The bill defines a pharmacy's acquisition cost as the amount the pharmacy's wholesaler charges for the drug. If the challenge to the manager's maximum cost is successful, the manager must reimburse the pharmacy for the costs of the appeal. However, even if the appeal is denied, the manager must adjust its maximum allowable cost to be above the pharmacy's acquisition cost, which could lead to increased payouts to pharmacies. Because managers must reimburse all pharmacies at the same rate for the same or equivalent service, this could effectively set the price of pharmaceuticals at the price charged by the most expensive wholesaler.

An additional provision of Section 2 would allow a pharmacy to decline to provide services to a patient if the pharmacy would be paid less than its acquisition cost. However, if a pharmacy benefits manager is required to adjust its maximum allowable cost to be above the pharmacy's acquisition costs, it is unclear when this would happen.

Section 3 of the bill would require a pharmacy benefits manager to allow any in-network pharmacies to join a preferred pharmacy network if that pharmacy is willing to accept the terms and conditions of joining the network. The bill defines a "preferred pharmacy network" as a group of pharmacies willing to offer drugs and services at a lower price in exchange for increased volume. However, making it possible for any pharmacy to join a "preferred" network would reduce the potential increase in volume a pharmacy could see from agreeing to a lower price. If all pharmacies are "preferred" then no pharmacy is truly preferred. Additionally, it is unclear how Section 3 of the bill would interact with Section 2, which would require a pharmacy benefits manager to increase its reimbursement rate if a pharmacy's wholesaler does not sell the drug for less than the benefits manager is willing to pay.

A final provision of Section 3 states a pharmacy benefits manager cannot restrict an individual's choice of pharmacy. Currently, some pharmacy benefits managers provide incentives, often in the form of lower copayments, to encourage members to use some pharmacies. For example, some managers encourage members to order from their online pharmacy by providing a lower copayment than from purchasing at a retail pharmacy. It is unclear if this provision is meant to discourage such incentives. Charging a higher price for the same product could be seen as a restriction even though the manager still allows the prescription to be filled at a retail pharmacy.

Additionally, pharmacy benefits managers may require that certain specialty drugs can only be filled by certain pharmacies. In many cases, specialty pharmacies provide consultative and other services to assist the patient in properly administering a specialty drug. Additionally, these drugs are usually quite costly and requiring managers to cover these drugs when filled by any pharmacy could limit the ability of the managers to negotiate for better pricing.

ADMINISTRATIVE IMPLICATIONS

The Office of Superintendent of Insurance notes it currently has one staff member to conduct regulatory enforcement of pharmacy benefits managers. Without additional staffing, the office would likely only be able to enforce this legislation based on complaints, rather than undertaking active enforcement measures.

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