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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Barhorst and Baker

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SUMMARY

- Requires health plan issuers to calculate cost-sharing amounts for prescription drugs based on the price of the drug after all rebates have been applied to the original cost of that drug.
- Prohibits health plan issuers from publishing or disclosing information regarding the actual amount of rebates the health plan issuer receives with respect to a drug or class of drugs, manufacturer, or pharmacy.

DETAILED ANALYSIS

Cost-sharing and rebates

The bill requires health plan issuers to calculate cost-sharing amounts for prescription drugs at the point of sale based on the price of the drug after all rebates have been applied to the original cost.[1]

For example, consider a situation where a drug costs $100 at the point of sale, a health plan issuer implements a 20% cost-sharing requirement on the covered person, and the health plan issuer also receives a $50 rebate for the sale of that drug. Under the bill, the health plan issuer would not be permitted to charge the covered person a $20 for cost-sharing, and then claim the $50 rebate. Instead, the health plan issuer must calculate the drug's price after the rebate, which would be $50 instead of $100. Based on that new reduced price, the cost-sharing amount would also be reduced from $20 to $10.

The bill permits health plan issuers to reduce cost-sharing amounts even further if they wish. So health plan issuers may provide additional reductions to cost-sharing amounts, but

[1] R.C. 3902.63(B).

they cannot impose cost-sharing calculated on a drug's price prior to the application of any rebates.[2]

Rebates

The bill defines "**rebate**" to include both of the following:

- Negotiated price concessions, which include base price concessions and reasonable estimates of any price protection rebates and performance-based price concessions that may accrue directly or indirectly to the health plan issuer during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with the dispensing or administration of a prescription drug. This means that if a health plan issuer expects certain rebates or concessions to accrue throughout a year, a reasonable estimate of that amount is considered a rebate. Additionally, base price concessions are considered rebates for the purposes of the bill regardless of whether they are described as "rebates" by the parties involved.
- Reasonable estimates of any negotiated price concessions, fees, and other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the health plan issuer, and which serve to reduce a health plan issuer's expenses for a prescription drug.[3]

Under the bill a "**price protection rebate**" is a negotiated price concession that accrues directly or indirectly to a health plan issuer, or other party on behalf of the health plan issuer, in the event of an increase in the wholesale acquisition cost of a drug above a specified threshold. In other words, if the wholesale price of a drug increases beyond an agreed upon point, then the health plan issuer (or a third party) is entitled to a rebate which protects them from paying more for the drug than what was negotiated.[4]

Confidentiality

The bill prohibits health plan issuers or their agents from publishing or disclosing information regarding the actual amount of rebates the health plan issuer receives with respect to a product or drug, therapeutic class of products or drugs, manufacturer, or pharmacy. Furthermore, any documents or evidence containing information related to the amount of rebates received are confidential. They are not public records under Ohio's public records law, and may not be released directly, indirectly, or in any manner which could lead to the identification of any product or drug, therapeutic class of products or drugs, manufacturer, or pharmacy. The bill broadly prohibits the release of these documents in any way which could compromise the financial, competitive, or propriety nature of the rebate information.

[2] R.C. 3902.63(C).

[3] R.C. 3902.63(A)(3).

[4] R.C. 3902.63(A)(2).

The bill requires health plan issuers to impose these confidentiality requirements on any agent or third party performing health care or administrative services on behalf of the health plan issuer if that agent or third-party might receive or have access to this information.[5]

Enforcement

The bill's provisions are enforced by the Superintendent of Insurance. A violation of this bill is an unfair and deceptive insurance act or practice. If the Superintendent determines that a violation has occurred, the person or health plan issuer may be subject to orders or other administrative remedies imposed by the Superintendent.[6]

However, the bill clarifies that, in implementing these provisions, the Superintendent of Insurance may only regulate health plan issuers to the extent permitted by applicable law. In other words, contrary state or federal law which limits or preempts the Superintendent's regulation may limit or supersede the provisions of the bill.[7]

Applicability

The bill applies to health plan issuers. Under the bill, "health plan issuer" means an entity subject to the insurance laws and rules of this state, or subject to the jurisdiction of the Superintendent of Insurance, that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including a sickness and accident insurance company, a health insuring corporation, a fraternal benefit society, a self-funded multiple employer welfare arrangement, or a nonfederal, government health plan. This includes third-party administrators, to the extent that the services they provide are subject to the insurance laws and rules of this state.

However, for the purposes of this bill, "health plan issuer" does not include the public employee benefit plan covering state employees paid directly by warrant of the Director of Budget and Management. This includes elected officials.[8]

HISTORY

Action	Date
Introduced	04-30-24

ANHB0509IN-135/ts

[5] R.C. 3902.63(E).

[6] R.C. 3902.63(D) and (F); R.C. 3901.22, not in the bill.

[7] R.C. 3902.63(D).

[8] R.C. 3902.63(A)(1).