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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

H.B. 505
(1_135_2199-5)
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 505's Bill Analysis](#)

Version: In House Insurance

Primary Sponsors: Reps. Barhorst and Stewart

Local Impact Statement Procedure Required: No

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Highlights

- The bill's requirements would increase the Department of Insurance's administrative costs. Any increase would be paid from the Department of Insurance Operating Fund (Fund 5540).

Detailed Analysis

Health plan issuer

The bill prohibits a health plan issuer that offers, issues, or administers a health benefit plan that covers pharmacy services, including prescription drug coverage, from requiring a pharmacy, as a condition of participation in the health plan issuer's network, to meet accreditation standards or certification requirements that are inconsistent with or in addition to those of the State Board of Pharmacy. Under the bill, health plan issuers include health insuring corporations, multiple employer welfare arrangements, sickness and accident insurers, public employee benefit plans, and pharmacy benefit managers (PBMs). The bill specifies that "health plan issuer" also includes an auditing entity.

The prohibition applies to health benefit plans that are delivered, issued for delivery, or renewed on or after the bill's effective date and to contracts between health plan issuers and pharmacies entered into, modified, or renewed on or after the bill's effective date.

Pharmacy benefit managers

The bill prohibits a PBM from reimbursing an Ohio pharmacy an amount less than the amount that the PBM reimburses a pharmacy affiliated with the PBM for providing the same drug product. The bill allows an Ohio pharmacy to decline to provide a drug product to an individual or PBM if – as a result of a maximum allowable cost list – the Ohio pharmacy would be paid less than the actual acquisition cost of providing the drug product. The bill also prohibits a PBM from

retaliating against an Ohio pharmacy for reporting an alleged violation of, or for exercising a right or remedy, under the bill.

The bill requires, on or before the 15th day of each month, each PBM to provide to the Superintendent of Insurance and to its contracted insurers and plan sponsors, including contracted public employee benefit plans and contracted employers offering a self-insurance program, an electronic report in a machine-readable format of all drug claims processed the previous month. The bill specifies information that must be included in the monthly report.

The bill prohibits any agreement between a PBM and an insurer or plan sponsor, including a service agreement that is entered into, amended, or renewed on or after the bill's effective date from prohibiting disclosure of any of the information that must be included in the report. However, a PBM is not required to disclose information deemed proprietary or confidential by the service agreement between the PBM and an insurer or plan sponsor that is entered into before the bill's effective date and in effect on the date the information would otherwise be submitted as part of the report. The bill also specifies a minimum drug reimbursement amount and dispensing fee that a PBM must pay to a contracted pharmacy for a claim for a drug product dispensed under insurance policies on or after the 91st day following the bill's effective date.

The bill's requirements and prohibitions may increase PBMs' administrative costs. The effect on the state's and local governments' drug costs would depend on the terms of each health benefit plan's contract with a PBM.

Superintendent of Insurance

The bill allows any covered person or pharmacy affected by a violation under the bill to file a formal complaint to the Superintendent of Insurance. The bill also allows an Ohio pharmacy to file a formal complaint to the Superintendent alleging that a PBM has violated the bill provisions.

The bill requires the Superintendent to evaluate any such complaint. If the Superintendent determines, based on such complaint, that a health plan issuer, one or more of its intermediaries, or a PBM has violated the bill's prohibition, the Superintendent must (1) issue a notice of violation to the health plan issuer, intermediary, or PBM that clearly explains the violation, and (2) impose an administrative penalty on the health plan issuer, intermediary, or PBM of \$1,000 for each violation. The bill provides that each day that such violation continues after receipt of notice about the violation is considered a separate violation for the purposes of the administrative penalty. The Superintendent is required to afford the health plan issuer, intermediary, or PBM an opportunity for an adjudication hearing under existing law before imposing an administrative penalty under the bill. The bill allows the health plan issuer, intermediary, or PBM to appeal the Superintendent's determination and imposition of an administrative penalty. The bill specifies that any administrative penalty collected under this bill must be deposited into the state treasury to the credit of the Department of Insurance's existing fund, the Department of Insurance Operating Fund (Fund 5540).

The bill requires the Superintendent, not later than 90 days after the bill's effective date, to calculate a minimum dispensing fee to be paid for each drug product dispensed based on data collected by a survey conducted by the Ohio Department of Medicaid (ODM). The Superintendent must also update the fee calculation when ODM updates the survey data. The bill requires the Superintendent to publish the amount of the minimum dispensing fee and the

dates that such fee applies, including updated information on a publicly accessible website maintained by the Department of Insurance.

The bill requires the Superintendent to adopt rules in accordance with Chapter 119 of the Revised Code (i.e., a rulemaking procedure by which the state agency must publish a public notice of its intention and conduct a public hearing on its proposed rules) for the purposes of implementing and administering the bill's requirements.

The bill's requirements would increase the Department of Insurance's administrative costs. Any increase would be paid from the Department of Insurance Operating Fund (Fund 5540).

Synopsis of Fiscal Effect Changes

The substitute bill, I_135_2199-5, modifies requirements for the Superintendent of Insurance and some definitions. These provisions would not change the fiscal impact under the As Introduced version.

The previous version of the bill contained provisions pertaining to the Ohio Department of Medicaid and the Department's Single Pharmacy Benefit Manager. These provisions likely would have caused increased administrative and service costs for the Department. The substitute bill removed these provisions and eliminates their fiscal effect.