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Bill Analysis
Legislative Service Commission

Sub. S.B. 251*
126th General Assembly
(As Reported by S. Health, Human Services & Aging)

Sens. Spada, Hagan

BILL SUMMARY

Basis for drug pricing and manufacturer payments

- Eliminates all existing laws that provide for the Ohio's Best Rx Program's drug prices and manufacturer rebates to be based on the weighted average prices and rebates that apply under the health benefit plans offered to state employees and retirees.
- Removes all references in existing law to the duties of the Department of Administrative Services and the five state retirement systems relative to the Program.
- Replaces the Program's drug pricing system and manufacturer payment standards with the following provisions:
 - (1) The Ohio Department of Job and Family Services (ODJFS) must annually designate formulas for use in establishing the Program's base price for each drug.
 - (2) When a drug manufacturer chooses to enter into an agreement to participate in the Program by making payments for a particular drug, the manufacturer must specify a "per unit" payment amount for the drug that the manufacturer believes is greater than or comparable to the payment amount generally payable by the manufacturer for the same drug when dispensed to a person using the health benefits provided to state employees and retirees in Ohio or another state.

* *This analysis was prepared before the report of the Senate Health, Human Services and Aging Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

Consulting pharmacy benefit manager

- Requires any pharmacy benefit manager (PBM) that provides services relative to the outpatient drug coverage included in a health benefit plan offered to the employees or retirees of a state agency or political subdivision in Ohio to serve as a "consulting PBM" for the Ohio's Best Rx Program, if the PBM is selected by ODJFS to serve in that capacity.
- Requires the selected PBM to serve as the Program's consulting PBM for one year, permits the PBM to be selected for succeeding years, and requires the PBM to provide its services without charge.
- Allows ODJFS to ask the Attorney General to apply for an injunction if the PBM fails to fulfill its duties as the Program's consulting PBM.

Verification services provided by the consulting PBM

- Identifies the consulting PBM's duties as verification of the Program's drug pricing formulas and manufacturer payments and requires ODJFS to use the information derived from the PBM's verification services when designating the Program's pricing formulas and negotiating for payments from drug manufacturers.
- Establishes the following procedures for the provision of verification services by the consulting PBM:
 - Brand name drug prices:** The consulting PBM must compare ODJFS's formula to the formula most commonly used by the PBM and verify whether the discount percentage included in ODJFS's formula is more than two percentage points below the discount percentage included in the PBM's formula.
 - Generic drug prices:** ODJFS must identify the 50 generic drugs most frequently purchased under the Program in the preceding year and the weighted average base price that resulted from its generic drug pricing formula. The consulting PBM must compare ODJFS's weighted average base price for the drugs to the equivalent part of the PBM's weighted average payment rate for the same drugs. The consulting PBM must verify whether the discount percentage reflected in ODJFS's weighted average base price is more than two percentage points below the discount percentage included in the PBM's weighted average payment rate.

--**Manufacturer payment amounts:** Annually, ODJFS must select ten drugs included in manufacturer agreements in the preceding year and submit information on the per unit payment amount for those drugs to the consulting PBM. The consulting PBM must verify whether any of the payment amounts were more than 2% lower than the payment amounts negotiated by the PBM for the same drugs. If so, the PBM must identify which of the drugs were subject to the lower payment amounts. ODJFS may publish aggregate information about the drugs in the sample that had the same or higher payment amounts. ODJFS is no longer authorized to ask that a drug be placed on a prior authorization list used by the health benefit plans offered to state employees and retirees if the plans receive a rebate for the drug from the manufacturer, but the manufacturer has not entered into an agreement to participate in the Program.

Audits of the consulting PBM

- Permits ODJFS to ask the consulting PBM to provide for an audit of its relevant contracts with drug manufacturers and pharmacies to determine whether the PBM has provided valid information when verifying the Program's drug pricing formulas and manufacturer payment amounts.
- Authorizes ODJFS to ask for a regularly occurring audit every three years and to ask for a special audit at any time it believes the consulting PBM is not acting in good faith.
- Requires ODJFS to pay the cost of a special audit if the audit findings demonstrate that the PBM acted in good faith and the Director of ODJFS did not specify in writing the reason for requesting the audit.

Confidentiality regarding the consulting PBM

- Provides for the confidentiality of the information provided by a consulting PBM through its verification services, as well as the information contained in or derived from the audits of the PBM.
- Requires all records received from the consulting PBM to be destroyed promptly after ODJFS has completed the purpose for which the information in the records was obtained.
- Prohibits ODJFS from delegating its functions related to the receipt of information from the consulting PBM or an audit of the PBM to any person serving under contract with ODJFS as the Program's administrator.

Eligibility expansion

- Expands eligibility for participation in the Program as follows:
 - Income level:** Increases the Program's family income limitation to 300% (from 250%) of the federal poverty guidelines.¹
 - Loss of coverage from business reorganization:** Exempts a person from the Program's four-month waiting period after drug coverage ends if the coverage ended due to being temporarily or permanently discharged from employment as the result of a business reorganization.
 - Workers' Compensation:** Provides that drug coverage under the Workers' Compensation Program does not cause a person to be ineligible for the Ohio's Best Rx Program.
 - Medicare Part D:** Provides that drug coverage under a Medicare prescription drug plan does not make a person ineligible, but only if all of the following are the case for the particular drug being purchased: (1) the person is responsible for the full cost, (2) the drug is not subject to a rebate from the manufacturer under the person's Medicare plan, and (3) the manufacturer has agreed to the Program's inclusion of persons with Medicare drug coverage.

Application process

- Specifies that the Program's application process may include procedures for submitting applications by telephone or through the Internet.

Annual reapplication

- Eliminates the requirement that Program participants apply each year for re-enrollment in the Program.
- Eliminates all provisions related to the annual expiration of a person's enrollment in the Program.

Confirming enrollment

- Requires the entity dispensing a drug under the Program to confirm a person's enrollment.

¹ Persons age 60 or older are not subject to an income limitation under the Ohio's Best Rx Program.

- Specifies that a person's enrollment may be confirmed by telephone, through the Internet, or by any other electronic means when the person's enrollment card or Program identification number is unavailable at the time a drug is being purchased.

Referrals to patient assistance programs

- Provides that a drug manufacturer's payment agreement with the Program may include terms under which Program participants are referred to patient assistance programs operated by the drug manufacturer, if the manufacturer also agrees to make referrals to the Program.

Medicaid best price

- Requires ODJFS to seek confirmation from the Centers for Medicare and Medicaid Services that a drug manufacturer's payments under the Ohio's Best Rx Program are exempt from the manufacturer's "best price" computations that are used to establish the amount of the manufacturer's rebate payments under Medicaid.

Donations

- Permits ODJFS to accept donations to the Program, which are to be included in ODJFS's determination of whether it is necessary to charge fees to cover the Program's administrative costs.

Subsidies for drug costs

- Permits ODJFS to provide Program participants with subsidies, if funds are available, to assist them with the cost of purchasing drugs through the Program, including the cost of any dispensing fees charged.

Delegation of duties to a Program administrator

- Specifies the process to be used by ODJFS in delegating powers and duties under its existing authority to contract with a person to serve as the Program's administrator.
- Provides that statutory references to ODJFS are references to the Program administrator if a particular power or duty has been delegated.

Mail order system

- Specifies that the Program may have only one drug mail order system.

- Clarifies that the mail order system is not permitted to charge a professional fee for dispensing a drug under the Program.
- Prohibits ODJFS and the drug mail order system from promoting the purchase of drugs through the system by using information collected under the Program regarding the drugs purchased by participants from other participating pharmacies.

Covered drugs

- Requires the Program to include discounted prices for all drugs that require a prescription.

Program purpose

- Specifies that the purpose of the Program is to provide outpatient prescription drug discounts to Ohio residents enrolled in the Program by meeting its eligibility requirements, including eligible persons who are age 60 or older, eligible persons who have low incomes but are not eligible for Medicaid, and other eligible individuals who do not have health benefits that cover outpatient drugs.

Transfer to the Department of Aging

- Requires the Department of Aging, rather than ODJFS to administer the Program beginning July 1, 2007.
- Transfers to the Department of Aging all of the Program's functions, obligations, administrative rules, orders, determinations, employees, and unexpended funds.
- Permits the Department of Aging, in anticipation of the Program's transfer, to enter into a contract with a person to serve as the Program's administrator beginning on or after July 1, 2007.

Interaction with the Golden Buckeye Card Program

- Eliminates on July 1, 2007, the prescription drug discount component of the Golden Buckeye Card Program.
- Adds persons with disabilities who qualify for the Golden Buckeye Card Program as a category of persons who are eligible for the Ohio's Best Rx Program.

- Permits the Department of Aging to coordinate the Ohio's Best Rx Program with the basic Golden Buckeye Card Program.
- Authorizes the establishment of a card that serves as both a Golden Buckeye Card and an Ohio's Best Rx Program enrollment card, identified by including the names of both programs on the card or a combined name selected by the Department of Aging.

HISTORY

ACTION	DATE
Introduced	01-11-06
Reported, S. Health, Human Services & Aging	---

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