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Michigan Association of Health Plans

BILLS MAHP OPPOSES: HB 5938, HB 5939 and HB 5944

PBM Reform Bill – HB 5938 (Sponsor: Rep. Liberati)
MAHP OPPOSES THE BILL

Concerns with Bill:

- Employee Retirement Income Security Act (ERISA) of 1974 preempts any and all state laws that "relate to" any employer benefit plan. Current legislation includes language that would be in conflict with federal ERISA laws; for this reason many states that adopted laws regulating PBMs have had state lawsuits challenging the regulation.
- Sec. 19 (pages 9-10) limits the ability of a PBM to provide an incentive for mail order or exclusive specialty arrangements. This may result in increased costs to employers or purchasers because they can no longer provide this coverage option. State of Michigan Retirees use such an arrangement, how will this impact the costs to the state.
- Sec. 23 (3)(b) (page 12) requires PBMs to report discounts from wholesale distributors; however, manufacturer transparency bill does not require disclosure of rebates to wholesale distributors. These should be consistent.
- Sec. 23 (4) (page 13) requires director to conduct an annual review of ALL de-identified claims. This would be a significant burden and unrealistic (over 125 Million prescription drug claims in 2019). The review should be a random sample of de-identified claims.

Amendment suggestions:

- Sec. 23 (1) (page 12) change reporting timeline to **Jan. 1, 2022** (if timeline is not changed in manufacturer transparency bill).
  Rationale: to be consistent for both the PBM and Manufacturer transparency bill.
- Sec. 23 (4) (page 13) change language to "requires director to conduct an annual review of ~~ALL de-identified claims~~ **A RANDOM SAMPLE OF DE-IDENTIFIED CLAIMS.**
  Rationale: the current language would be very burdensome for the department as an annual review of all de-identified claims would be over 125 Million claims.
- Page 16: add **NOTHING IN THIS LAW IS INTENTED OR SHOULD BE CONSTRUED TO BE IN CONFLICT WITH EXISTING RELEVANT LAW.**

Non-Medical Switching Bill – HB 5939 (Sponsor: Health Policy Chair/Rep. Vaupel)
MAHP OPPOSES THE BILL

Concerns with Bill:

- Language allowing formulary utilization change if the drug had a price increase was dropped in the enrolled bill from the draft bill. Recommend adding language allowing formulary management drug changes if drug price is increased similar to that required in drug transparency bill (10% or more in one year or 20% over a 3 year period) to be consistent with drug transparency language.
- Grandfathering requirement (page 4 (ix)) for the remainder of plan year is in conflict with existing state and federal grandfathering requirements. Medicaid grandfathering requirement of 60 days and Medicare requirement of 90 days.
- Medical necessity language that is more regulating than existing prescription drug exception process and in conflict with existing state and federal allowances under Medicaid and Medicare.

Amendment suggestions:

- Sec. 3406v **change** (x) line 4 (page 3) **THE DRUG HAS HAD A PRICE INCREASE OF 10% OR MORE**

  IN ONE YEAR OR 20% OR MORE OVER A 3 YEAR PERIOD. Then renumber old (x) to (xi).
  Rationale: To be consistent with language required in the manufacturer transparency legislation.
  Note: draft 2 version of the bill did have language indicating price increase, but was removed from enrolled version.
- Sec. 3406v (ix) line 11 (page 4 (ix)) change language "~~for the remainder of plan year~~ **FOR UP TO 90 DAYS.**
  Rationale: current language is in conflict with existing state and federal grandfathering requirements. Medicaid grandfathering requirement of 60 days and Medicare requirement of 90 days
- Sec. 3406v **change** (x) line 12 (page 4) **THE DRUG HAS HAD A PRICE INCREASE OF 10% OR MORE**

  IN ONE YEAR OR 20% OR MORE OVER A 3 YEAR PERIOD. Then renumber old (x) to (xi).
  Rationale: To be consistent with language required in the manufacturer transparency legislation.
- Page 5: add **NOTHING IN THIS LAW IS INTENTED OR SHOULD BE CONSTRUED TO BE IN CONFLICT WITH EXISTING RELEVANT LAW.**

Accumulators Bill - HB 5944 (Sponsor: Rep. Frederick)

MAHP OPPOSES THE BILL

Concern with bill:

- Coupons reduce the rate of generic utilization by incentivizing use of higher cost brand drugs. While coupons may reduce the initial cost to the patient initially, they do not reduce the price of the drug paid by the health insurance provider or the employer.
- Medicaid and Medicare prohibit the use of coupons as they are deemed an illegal kickback which induces a patient to use a specific drug and passes the high cost on to the taxpayer.
- Health plans use copay coupon accumulators to properly account for third-party payments and to ensure all actual patient cost-sharing is counted towards their deductible. Language in this bill prohibit health plans from excluding manufacturer coupon dollars from the deductible or out-of-pocket costs. This conflicts with existing Medicare regulations that allows for the exclusion of the value of manufacturer copay assistance from counting toward an enrollee's deductible or annual cost-sharing limit.[1]
- Employee Retirement Income Security Act (ERISA) of 1974 preempts any and all state laws that "relate to" any employer benefit plan. Current legislation includes language that would be in conflict with federal ERISA laws.

Amendment

- Add new section (2) on page 2, line 4 (then renumber)
  (2) A PHARMACEUTICAL MANUFACTURER THAT OFFERS ANY DISCOUNT, REBATE, PRODUCT VOUCHER, OR OTHER REDUCTION IN AN INDIVIDUAL'S OUT-OF-POCKET EXPENSES, INCLUDING, A COPAYMENT, COINSURANCE, OR DEDUCTIBLE, FOR ANY PRESCRIPTION DRUG SHALL CONTINUE OFFERING THE DISCOUNT, REBATE, PRODUCT VOUCHER, OR OTHER REDUCTION IN AN INDIVIDUAL'S OUT-OF-POCKET EXPENSES, INCLUDING, A COPAYMENT, COINSURANCE, OR DEDUCTIBLE AFTER THE INDIVIDUAL'S DEDUCTIBLE HAS BEEN REACHED.

[1] federalregister.gov/d/2020-10045

Rationale: Many manufacturers provide coupons for branded drugs for patients for a limited time only. When the coupon is no longer available then the patient has a significant change in their cost sharing requirements. If the intent is to lower the cost for the patient, since the drug would normally be a higher cost share, then the manufacturer should continue to provide that same coupon incentive throughout the year.

- Add new section (3) on page 2, line 7 (then renumber)

(3)A PHARMACEUTICAL MANUFACTURER SHALL NOT OFFER ANY DISCOUNT, REBATE, PRODUCT VOUCHER, OR OTHER REDUCTION IN AN INDIVIDUAL'S OUT-OF-POCKET EXPENSES, INCLUDING, A COPAYMENT, COINSURANCE, OR DEDUCTIBLE, FOR ANY PRESCRIPTION DRUG FOR THE PURPOSE OF ATTAINING MEDICAL STABILITY ON THE PRESCRIPTION DRUG.

Rationale: Many manufacturers provide coupons for branded drugs for patients for a limited time only. When the coupon is no longer available then the patient has a significant change in their cost sharing requirements. If the intent is to lower the cost for the patient, since the drug would normally be a higher cost share, then the manufacturer should continue to provide that same coupon incentive throughout the year.

BILLS MAHP SUPPORTS: HB 5937, HB 5940 and HB 5941

Manufacturer Transparency Bill - HB 5937 (Sponsor: Health Policy Chair/Rep. Vaupel

MAHP SUPPORTS THE BILL

- At present 19 states (AR, CA, CO, CT, FL, IA, LA, MN, ME, MD, NV, NJ, NH, NY, OR, TX, VT, WA & WV) have adopted laws governing drug price transparency.
- Of those states that passed drug price transparency legislation, 15 states (CA, CT, FL, IA, LA, ME, MN, NV, NJ, NY, OR, TX, VT, WA & WV) have state sponsored websites that include drug pricing information for consumers and industry.
- 84.4% of MI residents support legislation that would require drug manufacturer price transparency.[2]
- Cost threshold for reporting drug price increases (10% or more in one year or 20% over a 3 year period), higher than MAHP recommended (5%) but better than draft.
- For full disclosure, would like to see language similar to Nevada that requires manufacturers to disclose all payment to patient advocacy organizations regardless of the nature of payment including research, education, and donations.

Amendment suggestion:

- Sec. 5 (1) line 28 (Page 2) change reporting timeline to beginning **Jan. 1, 2021.**
  Rationale: to be consistent for both the PBM and Manufacturer transparency bill.
- Sec. 5 (ii) line 8 (Page 3) language addition "the aggregate amount of rebates paid by the drug manufacturer to pharmacy benefits managers **AND WHOLESALE DRUG DISTRIBUTOR.**
  Rationale: to be consistent for both the PBM and Manufacturer transparency bill.

[2] Mitchell Research & Communications – Michigan Statewide Poll, May 2020.

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- Sec 2 new language (h) (Page5) **THE AGGREGATE AMOUNT PAID TO EACH NONPROFIT PATIENT ADVOCACY ORGANIZATION REGARDLESS OF THE NATURE OF PAYMENT INCLUDING RESEARCH, EDUCATION, AND DONATIONS.**

Manufacturer Gift Bill – HB 5940 (Sponsor: Rep. Wozniak)
MAHP SUPPORTS THE BILL

- Would like to see similar reporting requirements in MI for pharmaceutical sales representatives as passed in Nevada.

Amendment suggestion:

- Page 3 new language **(D) BEGINNING JAN. 1, 2022, EACH YEAR, EACH PERSON WHO WAS INCLUDED ON A LIST OF PHARMACEUTICAL SALES REPRESENTATIVES SUBMITTED PURSUANT TO SUBSECTION 1 AT ANY TIME DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR SHALL SUBMIT TO THE DEPARTMENT A REPORT, WHICH MUST INCLUDE, FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR:**

(1) A LIST OF LICENSED HEALTH CARE PROVIDERS, CERTIFIED OR REGISTERED IN THIS STATE, LICENSED PHARMACIES AND LICENSED MEDICAL FACILITIES TO WHOM THE PHARMACEUTICAL SALES REPRESENTATIVE PROVIDED:

(A) ANY TYPE OF COMPENSATION WITH A VALUE THAT EXCEEDS $25; OR

(B) TOTAL COMPENSATION WITH A VALUE THAT EXCEEDS $100 IN AGGREGATE; AND

(2)THE NAME AND MANUFACTURER OF EACH PRESCRIPTION DRUG FOR WHICH THE PHARMACEUTICAL SALES REPRESENTATIVE PROVIDED A FREE SAMPLE TO LICENSED HEALTH CARE PROVIDER OR LICENSED MEDICAL FACILITY IN THIS STATE, AND THE NAME OF EACH SUCH PERSON TO WHOM A FREE SAMPLE WAS PROVIDED.

(E) THE DEPARTMENT SHALL PREPARE AN ANNUAL REPORT FROM THE INFORMATION SUBMITTED UNDER THIS ACT. THE REPORT MUST CONTAIN AGGREGATE DATA AND MUST NOT CONTAIN ANY INFORMATION THAT WOULD REVEAL THE IDENTITY OF ANY PERSON OR ENTITY. ON OR BEFORE JUNE 1 OF EACH YEAR, THE DEPARTMENT SHALL:

(1) POST THE REPORT ON THE INTERNET WEBSITE MAINTAINED BY THE DEPARTMENT; AND

(2) SUBMIT THE REPORT TO THE HOUSE AND SENATE HEALTH POLICY COMMITTEE, THE HOUSE AND SENATE FISCAL AGENCIES, AND THE HOUSE AND SENATE POLICY OFFICES.

Third Party Gag Clause – HB 5941 (Sponsor: Rep. Wentworth)
MAHP SUPPORTS THE BILL

BILLS MAHP NEUTRAL: HB 5942 and HB 5943

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PHC GAG Clause 340B Bill – HB 5942 (Sponsor: Rep. Kahle)
MAHP NEUTRAL ON THE BILL
Generic Equivalent Rebate Bill – HB 5943 (Sponsor: Rep. Carter)
MAHP NEUTRAL ON THE BILL

BILL MAHP NO POSITION: HB 5945

Hospital Charge Master – HB 5945 (Rep. Pacquette)
MAHP NO POSITION ON THE BILL

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