



**House
Legislative
Analysis
Section**

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DRUG FORMULARIES

House Bill 4479 as enrolled
Public Act 175 of 1999
Sponsor: Rep. Gary Woronchak

House Bill 4480 as enrolled
Public Act 176 of 1999
Sponsor: Rep. Gene DeRossett

House Bill 4481 as enrolled
Public Act 177 of 1999
Sponsor: Rep. Stephen Ehardt

House Committee: Health Policy
Senate Committee: Health Policy

Third Analysis (12-21-99)

THE APPARENT PROBLEM:

Often, there are several medications to treat a particular medical condition. Drug formularies are a set of preapproved drugs selected by a managed health care plan or other insurance plan. A formulary restricts a physician's choice of prescription drugs to treat a particular condition to those drugs found in the formulary. Health care plans that use drug formularies to contain costs associated with prescription drugs usually use a set of criteria to choose the drugs that will make up the formulary. The cost of a drug is but one factor looked at; side effects, effectiveness, and interactions with other medications are also scrutinized before a drug is accepted or rejected. Most health plans with drug formularies have a defined process for the selection of the formularies and utilize one or more committees in the decision-making process. Typically, physicians and pharmacists will be included in a committee. Most plans provide an exception to the restrictions of the formulary if a patient needs a medication that is outside of the formulary.

There are many reasons why a patient may not be able to take a drug on his or her health plan's formulary; for instance, he or she may be allergic to the medications approved for his or her condition, the medications may interact adversely with other medications he or she is taking, or he or she may not respond to the medication. Though no serious problem with health plans that utilize drug formularies are being reported in the state, some people have concerns that future increases in health care costs may force plans to institute harsher

cost containment measures. Legislation in the form of S. 374, known as the Promoting Responsible Managed Care Act of 1999, has been introduced in the U.S. Senate to address this and other health care related concerns. Some people believe that similar language should be added to Michigan health care laws to continue to protect consumers so that access to needed medications that are not on a person's health plan formulary could still be obtained.

THE CONTENT OF THE BILLS:

The bills, in general, would require health insurers that provide prescription drug coverage, but that limit the prescription benefits to those drugs included in a drug formulary (a set of preapproved drugs), to do the following:

- Provide for participation of participating and affiliated physicians, dentists, and pharmacists in the development of the formulary.
- Disclose to health care providers and health professionals, and to members and enrollees upon request, the nature of the formulary restrictions.
- When a nonformulary alternative is a medically necessary and appropriate alternative, provide for an exception from the restriction. The insurer would have to give notice as to whether or not an exception had been granted within 24 hours of receiving the

House Bills 4479, 4480 and 4481 (12-21-99)

information necessary to make a determination regarding an exception. A health insurer would not be prevented from establishing prior authorization requirements or another process for consideration of coverage or a higher cost-sharing for the nonformulary alternatives.

House Bill 4479 would amend the Nonprofit Health Care Corporation Reform Act (MCL 550.1101 et al.) to apply to group and nongroup certificates of Blue Cross and Blue Shield of Michigan. House Bill 4481 would amend the Insurance Code (MCL 500.100 et al.) to apply to expense-incurred hospital, medical, or surgical policies and certificates of commercial health insurance companies. House Bill 4480 would amend the Public Health Code (MCL 333.1101 et al.) to apply to group and individual contracts of health maintenance organizations (HMOs).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills are not anticipated to have a significant fiscal impact on state government. (5-23-99)

ARGUMENTS:

For:

The provisions in the bills are similar to those contained in legislation pending before the U.S. Senate. Though it is reported that most of the health plans in the state that utilize drug formularies provide a mechanism for a physician to request a non-formulary medication, some people believe that protection should be built into laws regulating health plans to ensure the continuation of such a policy. Even though similar provisions are contained in pending federal legislation, Michigan should not wait for federal laws, but should provide added protection for residents with health coverage.

For:

The bills would require health plans that utilize drug formularies to provide for participation of participating physicians, dentists, and pharmacists in the development of the formulary. This is seen as preferable to the common practice of many plans to have in-house physicians and pharmacists sit on formulary committees. It is important that currently practicing physicians, dentists, and pharmacists be a part of the approval process, as they can bring vital information gleaned from their practices to the process.

Response:

The bills state that health insurers must include participating physicians, dentists, and pharmacists in the development of their plan's drug formulary. Reportedly, some people have interpreted this provision as meaning that only some of a plan's participating doctors, dentists, and pharmacists have to be included in the development of the formulary. Since those employed as "in-house" doctors and pharmacists are considered to be "participating" with the plan, some believe that the bills would allow the current practice of only utilizing the input of in-house to continue. The language should be clarified so that doctors, dentists and pharmacists who are out in the field, so to speak, will also be included in formulary decisions.

Against:

Some health plans would prefer to see the language amended to specify that physicians and dentists be allowed to go outside of the formulary only when all the options for that class of drugs in the formulary have been tried first. Going outside of the formulary should be reserved when doing so constitutes the only appropriate medical option.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.