

HOUSE BILL No. 4938

May 13, 2009, Introduced by Reps. Roy Schmidt, Meadows, Johnson, Slavens, Melton, Simpson, Haugh, Slezak, Ball, Corriveau, Young, Lipton, Marleau, Liss, Mayes, Scripps and Lisa Brown and referred to the Committee on Health Policy.

A bill to establish a bulk prescription drug purchasing cooperative; to establish a prescription drug benefit plan for certain residents of this state; to prescribe certain powers and duties of certain state agencies and departments; and to provide for the promulgation of rules.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "Michigan prescription cooperative and gold benefit plan".

3 (2) For the purposes of this act, the words and phrases
4 defined in sections 3 to 7 have the meanings ascribed to them in
5 those sections.

6 Sec. 3. (1) "Administrator" means the administrator of the

1 gold benefit plan.

2 (2) "Committee" means the Michigan prescription cooperative
3 and gold benefit plan committee created in section 17.

4 (3) "Department" means the department of management and
5 budget.

6 (4) "Fund" means the Michigan bulk prescription drug
7 purchasing cooperative and gold benefit plan fund created in
8 section 19.

9 (5) "Gold benefit plan" means the Michigan bulk prescription
10 drug purchasing cooperative and gold benefit plan established in
11 section 9.

12 Sec. 5. (1) "Participating pharmacy" means a pharmacy or other
13 business that dispenses prescription drugs at retail, is licensed
14 under article 15 of the public health code, 1978 PA 368, MCL
15 333.16101 to 333.18838, and that voluntarily agrees to dispense
16 prescription drugs at the plan price under the gold benefit plan.

17 (2) "Pharmacy benefit manager" means an entity that, in
18 addition to being a prescription drug claims processor, negotiates
19 and executes contracts with pharmacies, manages preferred drug
20 lists, negotiates rebates with prescription drug manufacturers, and
21 serves as an intermediary between the gold benefit plan,
22 prescription drug manufacturers, and pharmacies.

23 (3) "Plan price" means the reimbursement rates and
24 prescription drug prices established by the administrator.

25 (4) "Prescriber" means that term as defined in section 17708
26 of the public health code, 1978 PA 368, MCL 333.17708, other than a
27 licensed veterinarian.

1 (5) "Prescription drug" means that term as defined in section
2 17708 of the public health code, 1978 PA 368, MCL 333.17708.

3 (6) "Prescription drug claims processor" means an entity that
4 processes and pays prescription drug claims, adjudicates pharmacy
5 claims, transmits prescription drug prices and claims data between
6 pharmacies and the gold benefit plan, and processes related
7 payments to pharmacies.

8 (7) "Prescription drug manufacturer" means manufacturer as
9 defined in section 17706 of the public health code, 1978 PA 368,
10 333.17706.

11 Sec. 7. (1) "Underinsured" means an individual who is a
12 resident of this state and who is covered by a health insurance
13 policy or certificate, health maintenance organization contract,
14 health care corporation certificate, or other health care payment
15 or benefits plan, which policy, certificate, contract, or plan pays
16 80% or less of prescription drug costs. Underinsured includes an
17 individual who is eligible for medicare part D prescription drug
18 coverage.

19 (2) "Uninsured" means an individual who is a resident of this
20 state and who does not have prescription drug coverage under a
21 health insurance policy or certificate, health maintenance
22 organization contract, health care corporation certificate, or
23 other public or private health care payment or benefits plan.

24 Sec. 9. The Michigan bulk prescription drug purchasing
25 cooperative and gold benefit plan is established in the department.
26 The gold benefit plan shall do all of the following:

27 (a) Purchase prescription drugs or reimburse pharmacies for

1 prescription drugs in order to receive discounted prices and
2 rebates.

3 (b) Make prescription drugs available at the lowest possible
4 cost to participants in the gold benefit plan.

5 (c) Maintain a list of prescription drugs recommended as the
6 most effective prescription drugs available at the best possible
7 prices.

8 Sec. 11. (1) The department shall appoint an administrator of
9 the gold benefit plan. In order to maximize the state's purchasing
10 power and reduce the costs of prescription drugs in this state, the
11 administrator shall combine the pharmaceutical purchasing power
12 from each purchasing participant of the gold benefit plan.

13 (2) The administrator shall do all of the following:

14 (a) Negotiate price discounts and rebates on prescription
15 drugs with prescription drug manufacturers.

16 (b) Purchase prescription drugs on behalf of participants in
17 the gold benefit plan.

18 (c) Maintain a preferred drug list based upon the
19 recommendation of the committee and a cost analysis that identifies
20 the most effective prescription drugs available at the best
21 possible prices.

22 (d) Analyze the cost-effectiveness and price differential of
23 utilizing a pharmacy benefits manager or prescription drug claims
24 processor to service the multiple programs covered under the gold
25 benefit plan.

26 (e) Issue a request for proposal and contract with an entity
27 to provide the functions of a prescription drug claims processor

1 for the gold benefit plan, including the ability to receive and
2 transmit prescriptions via electronic means in a manner that
3 complies with the electronic prescription drug program established
4 under the medicare improvements for patients and providers act of
5 2008, Public Law 110-275.

6 (f) Determine plan prices and reimburse pharmacies for
7 prescription drugs.

8 (g) After reviewing the recommendation under section 17, adopt
9 and implement a preferred drug list for the gold benefit plan.

10 (h) Develop a system for allocating and distributing the
11 operational costs of the gold benefit plan and any rebates obtained
12 to participants of the gold benefit plan.

13 (i) Cooperate with other states or regional consortia in the
14 bulk purchase of prescription drugs.

15 (j) Establish the terms and conditions for a pharmacy to
16 become a participating pharmacy. A pharmacy that is willing to
17 accept the terms and conditions established by the administrator
18 may apply to become a participating pharmacy in the gold benefit
19 plan.

20 (3) The administrator may do any of the following:

21 (a) Establish different reimbursement rates or prescription
22 drug prices for pharmacies in rural areas to maintain statewide
23 access for uninsured or underinsured individuals in the gold
24 benefit plan.

25 (b) Contract with a pharmacy benefit manager or prescription
26 drug claims processor to perform on behalf of the administrator any
27 of the duties required in subsection (1)(a), (b), and (c).

1 (4) The administrator shall not do any of the following:

2 (a) Establish a state-managed wholesale or retail drug
3 distribution or dispensing system.

4 (b) Require pharmacies to maintain or allocate separate
5 inventories for prescription drugs dispensed through the gold
6 benefit plan.

7 Sec. 13. (1) Except as otherwise provided in this section,
8 each agency or department that administers a program funded in
9 whole or in part by this state that provides pharmaceutical
10 benefits for, including, but not limited to, state employees,
11 retirees, teachers, elders, or prisoners shall participate in the
12 gold benefit plan. Unless the administrator and the department of
13 human services determine that it may participate, the state agency
14 that receives federal medicaid funds and is responsible for
15 implementing the state's medical assistance program shall not
16 participate in the gold benefit plan.

17 (2) Any entity that provides prescription drugs either
18 directly or indirectly through some form of coverage to residents
19 of this state may participate in the gold benefit plan and combine
20 its purchasing power with the purchasing power of this state.

21 (3) An underinsured or uninsured individual may participate in
22 the gold benefit plan.

23 (4) If the administrator determines that approval by the
24 centers for medicare and medicaid services is required before an
25 agency or department under subsection (1) may participate in the
26 gold benefit plan, then those programs are exempt from
27 participation in the gold benefit plan until such approval has been

1 granted. If the administrator determines that an agency or
2 department under subsection (1) is otherwise unable to participate
3 in the gold benefit plan, then that program is exempt from
4 participation in the gold benefit plan until the administrator
5 determines that the barrier to participation no longer exists.

6 Sec. 15. (1) An agency or department that participates in the
7 gold benefit plan under section 13(1) shall provide information
8 required by the department and the administrator to identify
9 participants of that agency or department in the gold benefit plan.

10 (2) An individual or entity described in section 13(2) or (3)
11 may apply to participate in the gold benefit plan. Participants
12 shall apply on an application provided by the department and shall
13 provide information required by the department and the
14 administrator.

15 (3) The department may charge each participant a nominal fee
16 to participate in the gold benefit plan. The department shall issue
17 a prescription drug identification card to each participant of the
18 gold benefit plan.

19 (4) The department shall provide a mechanism to calculate and
20 transmit the plan prices for prescription drugs to a participating
21 pharmacy. The participating pharmacy shall charge the participant
22 the plan price for a prescription drug.

23 (5) A participating pharmacy may charge a participant the
24 professional dispensing fee set by the department.

25 (6) Prescription drug identification cards issued under this
26 section shall contain the information necessary for proper claims
27 adjudication or transmission of plan price data.

1 Sec. 17. (1) The Michigan prescription cooperative and gold
2 benefit plan committee is created in the department of community
3 health. The committee shall consist of the administrator and 10
4 members appointed by the governor as follows:

5 (a) Three prescribers whose practice includes patients who are
6 participants of the gold benefit plan. A prescriber appointed under
7 this subdivision may include, but is not limited to, a prescriber
8 with expertise in mental health, a prescriber who specializes in
9 pediatrics, and a prescriber with experience in long-term care.

10 (b) Two prescribers who have earned a research doctorate from
11 a 4-year doctorate-granting university in the United States and who
12 have expertise in evidence-based prescribing or pharmacoeconomics.

13 (c) Three pharmacists from participating pharmacies. A
14 pharmacist appointed under this subdivision may include, but is not
15 limited to, a pharmacist with expertise in mental health drugs, a
16 pharmacist who specializes in pediatrics, and a pharmacist with
17 experience in long-term care.

18 (d) Two pharmacists who have earned a doctorate in pharmacy
19 from a 4-year doctorate-granting university in the United States
20 and who have expertise in evidence-based prescribing or
21 pharmacoeconomics.

22 (2) A member of the committee shall not be employed by a
23 prescription drug manufacturer or have any interest directly or
24 indirectly in the business of a prescription drug manufacturer to
25 avoid a conflict of interest. No more than 2 members appointed to
26 the committee shall be employed by the department of community
27 health. Members of the committee shall disclose any financial

1 relationship with a medical supply vendor, health care provider
2 organization, or any other commercial interest that may give rise
3 to a conflict of interest. The committee shall require that a
4 member of the committee with a direct or indirect interest in any
5 matter before the committee disclose the member's interest to the
6 committee and recuse himself or herself before the committee takes
7 any action on the matter.

8 (3) Members of the committee shall serve a term of 2 years.
9 Except as otherwise provided in this subsection, members serving on
10 the committee shall serve until a successor is appointed and
11 qualified. The governor shall designate 1 member of the committee
12 to serve as the chairperson of the committee. This member shall
13 serve as chairperson at the pleasure of the governor. An individual
14 appointed to serve as a prescriber or pharmacist member of the
15 committee may serve only while maintaining his or her professional
16 license in good standing. An individual prescriber's or
17 pharmacist's failure to maintain his or her professional license in
18 good standing immediately terminates that individual's membership
19 on the committee. For purposes of this subsection, a prescriber or
20 pharmacist is not maintaining a professional license in good
21 standing if the department imposes a sanction under article 15 of
22 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, on
23 the prescriber or pharmacist committee member. A vacancy on the
24 committee shall be filled in the same manner as the original
25 appointment. An individual appointed to fill a vacancy created
26 other than by expiration of a term shall be appointed for the
27 unexpired term of the member whom he or she is to succeed in the

1 same manner as the original appointment. A member may be
2 reappointed for additional terms.

3 (4) Members of the committee shall serve without compensation,
4 but shall be reimbursed for necessary travel and other expenses
5 pursuant to the standard travel regulations of the department.

6 (5) The committee shall develop and recommend to the
7 department and the administrator a preferred drug list that
8 identifies preferred choices of prescription drugs within
9 therapeutic classes for particular diseases and conditions,
10 including generic alternatives, for use in the gold benefit plan.
11 The committee shall conduct public hearings and use independent
12 evidence-based reviews on the effectiveness of prescription drugs
13 within drug classes to develop the preferred drug list. Subject to
14 this subsection, the committee shall establish procedures to
15 evaluate independent evidence-based reviews of prescription drugs
16 to assist in the development of the preferred drug list under this
17 subsection. The committee shall only utilize an independent
18 evidence-based review of a prescription drug if the review is based
19 upon the evidence of safety, efficacy, and effectiveness available
20 at the time of the review and includes a rigorous assessment of the
21 scientific evidence. In developing a preferred drug list under this
22 subsection, the committee shall identify the most clinically
23 effective prescription drug or drugs from among the drugs in the
24 reviewed drug class, including generic alternatives, or determine
25 that there is sufficient evidence of similar safety, efficacy, and
26 effectiveness for the prescription drugs in a drug class to allow
27 therapeutic interchange of the drugs within that drug class. The

1 committee shall base its development and recommendation of a
2 preferred drug list under this subsection only upon available
3 evidence and not on cost considerations.

4 (6) The department of community health, in consultation with
5 the committee, may promulgate rules governing the organization,
6 operation, and procedures of the committee. The department of
7 community health shall review its policies and procedures and
8 consider means to increase and facilitate public comment.

9 (7) A majority of the members of the committee serving
10 constitute a quorum for the transaction of business. The committee
11 shall approve a final action of the committee by a majority vote of
12 the members. A member of the committee must be present at a meeting
13 of the committee in order to vote. A member shall not delegate his
14 or her responsibilities to another individual.

15 (8) The committee shall meet at the call of the chairperson
16 and as otherwise provided in the rules promulgated under this
17 section. The committee may meet at any location within this state.
18 A meeting of the committee is subject to the open meetings act,
19 1976 PA 267, MCL 15.261 to 15.275. The committee shall post a
20 notice of the meeting on the department of community health's
21 website and the gold benefit plan's website, if any, 14 days before
22 each meeting date. By January 31 of each year, the committee shall
23 make available the committee's regular meeting schedule and meeting
24 locations for that year on the department of community health's
25 website and the gold benefit plan's website, if any. The committee
26 may make inquiries, conduct studies and investigations, hold
27 hearings, and receive comments from the public.

1 Sec. 19. (1) The Michigan bulk prescription drug purchasing
2 cooperative and gold benefit plan fund is created within the state
3 treasury.

4 (2) The state treasurer may receive money or other assets from
5 any source for deposit into the fund. The state treasurer shall
6 direct the investment of the fund. The state treasurer shall credit
7 to the fund interest and earnings from fund investments.

8 (3) Money in the fund at the close of the fiscal year shall
9 remain in the fund and shall not lapse to the general fund.

10 (4) The department shall be the administrator of the fund for
11 auditing purposes.

12 (5) The department shall expend money from the fund, upon
13 appropriation, only for 1 or more of the following purposes:

14 (a) To purchase prescription drugs.

15 (b) To reimburse pharmacies for prescription drugs.

16 (c) To reimburse the department for the costs of administering
17 the gold benefit plan, including contracted services costs,
18 computer costs, professional dispensing fees paid to participating
19 pharmacies, and other reasonable gold benefit plan costs.

20 (d) To reimburse the department of community health for the
21 costs of administering the committee and reimbursing members of the
22 committee as provided in section 17.

23 Sec. 21. The department may promulgate rules pursuant to the
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
25 24.328, that are necessary to implement this act, including, but
26 not limited to, rules regarding the operation and application of
27 the gold benefit plan and procedures for issuing prescription drug

1 identification cards for the plan.