



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4351 (Substitute H-3 as passed by the House)
House Bill 4352 (as passed by the House)
Sponsor: Representative Karen Whitsett (H.B. 4351)
Representative Sue Allor (H.B. 4352)
House Committee: Health Policy
Senate Committee: Health Policy and Human Services

Date Completed: 1-20-22

CONTENT

House Bill 4351 (H-3) would amend the Third Party Administrator Act to do the following:

- **Modify the definitions of "carrier" and "third party administrator".**
- **Prohibit a carrier or pharmacy benefit manager from reimbursing a 340B entity for pharmacy-dispensed drugs or provider-administered drugs at a rate lower than that paid for the same drug to pharmacies that were not 340B entities, or engaging in any other discriminatory practices against 340B entities**
- **Prohibit a carrier or pharmacy benefit manager from requiring a patient to pay a copay that was higher than the selling cost of the drug dispensed to the patient.**
- **Prohibit a carrier or pharmacy benefit manager from excluding or discriminating against a pharmacy solely based on the carrier not having a vested financial interest in the pharmacy**

House Bill 4352 would amend Article 15 (Occupations) of the Public Health Code to do the following:

- **Modify a provision requiring a pharmacist to provide certain drug pricing information and prohibit a pharmacy or pharmacist from entering into a contract that prohibited disclosing the information.**
- **Prohibit a pharmacy or pharmacist from entering into certain contracts with a pharmacy benefit manager.**

House Bill 4352 is tie-barred to House Bill 4351.

House Bill 4351 (H-3)**Definitions**

The Third Party Administrator Act defines a "carrier" as any of the following:

- An insurer.
- A medical care corporation.
- A hospital service corporation.
- A health care corporation.

- A health maintenance organization.
- A dental care corporation.

Under the bill, the term instead would mean an insurer, including a health maintenance organization, or a dental care corporation.

The bill would define "pharmacy" as that term as defined in Section 17707 of the Public Health Code: a facility or part of a facility that is licensed under Part 177 (Pharmacy Practice and Drug Control) to dispense prescription drugs or prepare prescription drugs for delivery or distribution. Under that section, the term does not include the office of a dispensing prescriber or an automated device. For the purpose of a duty placed on a pharmacy under Part 177, "pharmacy" means the person to which the pharmacy license is issued, unless otherwise specifically provided.

"Pharmacy benefit manager" would mean a person that contracts with a pharmacy on behalf of an employer, multiple employer welfare arrangement, public employee benefit plan, State agency, insurer, managed care organization, or other third party payer to provide pharmacy health benefits services or administration, including reimbursement. The term would include a carrier that administered the carrier's pharmacy benefit plan.

The Act defines "third party administrator" or "TPA" as a person that processes claims under a service contract and that also may provide one or more other administrative services under a service contract, other than under a worker's compensation self-insurance program.

The term does not include a carrier or an employer sponsoring a plan. The bill would delete reference to a carrier. Also, under the bill, "third party administrator" would include a pharmacy benefit manager and carrier.

Prohibited Conduct

Under the bill, a carrier or pharmacy benefit manager that reimbursed a 340B entity for drugs that were subject to an agreement under 42 USC 256b (which governs limitations on prices of drugs purchased by covered entities) could not reimburse the 340B entity for pharmacy-dispensed drugs or provider-administered drugs at a rate lower than that paid for the same drug to pharmacies that were not 340B entities or engage in any other discriminatory practices against 340B entities, including adjustment, network exclusions, or interference with patient choice of pharmacy or provider. As used in this provision, "340B entity" would mean a covered entity and any pharmacy with which the covered entity has entered into a contract for the delivery of pharmacy-related services by the pharmacy. "Covered entity" would mean that term as defined under Federal law.

A carrier or pharmacy benefit manager could not require a patient to pay a copay that was higher than the selling cost of the drug dispensed to the patient.

A carrier or pharmacy benefit manager could not exclude or discriminate against a pharmacy solely based on the carrier not having a vested financial interest in the pharmacy. As used in this provision, "having a vested financial interest" would mean having ownership, having co-ownership, being a shareholder, or having another connection from which financial gain or loss could be realized.

Drug Pricing Disclosure

A contract between a carrier or a pharmacy benefit manager and a pharmacy could not prohibit the pharmacy from disclosing the current selling price of a drug in accordance with

Section 17757 of the Public Health Code. This provision would apply to a contract executed, extended, or renewed on or after the bill's effective.

Sanctions

Section 50 of the Act allows the Director of the Department of Insurance and Financial Services to impose, after notice and hearing, various sanctions for a third-party administrator or a manager who violates the Act, including monetary penalty, suspension or revocation of a certificate of authority or license, or restitution or refund to aggrieved parties.

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Drug Pricing Disclosure

Section 17757 of the Public Health Code requires a pharmacist engaged in the business of selling drugs at retail, after receiving a request made in person or by telephone, to provide the current selling price of a drug, or comparative current selling prices of generic and brand name drugs, dispensed by that pharmacy.

Instead, under the bill, when a pharmacist engaged in the business of selling drugs received a prescription, the pharmacist could provide, or when he or she received a request made in person or by telephone he or she would have to provide, the current selling price of a drug dispensed by that pharmacy or comparative current selling prices of generic and brand name drugs or biosimilar drug products dispensed by the that pharmacy when the pharmacist received a prescription.

A pharmacy or pharmacist could not enter into a contract that prohibited the disclosure of the price information described in Section 17757.

Prohibited Conduct

The bill would add Section 17757b to the Code to prohibit a pharmacy or pharmacist engaged in the business of selling drugs from entering into a contract with a pharmacy benefit manager that violated Section 26 of the Third Party Administrator Act, which House Bill 4351 (H-3) would add, or that prevented or interfered with in any manner a patient's choice to receive an eligible prescription drug from a 340B entity or a pharmacy when dispensing a 340B drug.

The bill would define "340B drug" as a covered drug as that term is defined under Federal law; "340B entity" means a covered entity as that term is defined under Federal law.

"Pharmacy benefit manager" would that term as defined in the Third Party Administrator Act.

Penalties

Under Section 16299 of the Code, except as otherwise provided, a person who violates or aids or abets another in violating Article 15, except for those matters described in Sections 16294 and 16296, is guilty of a misdemeanor punishable as follows:

- For a first offense, up to 90 days' imprisonment or a maximum fine of \$100, or both.
- For a second or subsequent offense, up to six months' imprisonment or a fine of up to \$200 but not more than \$500, or both.

MCL 500.902 et al. (H.B. 4351)
333.17757 et al. (H.B. 4352)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

House Bill 4351 (H-3)

The bill would have an indeterminate fiscal impact on the State and no significant fiscal impact on local units of government. The Department of Insurance and Financial Services could receive revenue if the Director imposed fines as a result of a violation. However, the number of third-party administrators who would be penalized as a result of the bill cannot be estimated. The cost of hearings likely would be covered by existing appropriations.

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The bill would have an indeterminate fiscal impact on the State and on local units of government. If convicted, an individual who violated the bill would be guilty of a misdemeanor. More misdemeanor convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$5,800 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries. However, it is unknown how many people would be prosecuted under bill's provisions.

Fiscal Analyst: Joe Carrasco
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.