Legislative Analysis

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ORALLY ADMINISTERED ANTICANCER MEDICATIONS

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House Bill 4071 as reported from committee
Sponsor: Rep. Samantha Steckloff
Committee: Health Policy
Complete to 5-23-23

SUMMARY:

House Bill 4071 would amend the Insurance Code to prohibit a health insurance policy from applying financial requirements to orally administered anticancer medications that are more restrictive than the financial requirements it applies to intravenously administered or injected anticancer medications. However, this would not apply if the co-pay or coinsurance for orally administered anticancer medications under the policy was $150 or less per 30-day supply.

Under the bill, a health insurance policy delivered, issued for delivery, or renewed in Michigan after December 31, 2023, that provides coverage for prescribed orally administered anticancer medications and intravenously administered or injected anticancer medications would have to ensure either of the following:

- That financial requirements applicable to prescribed orally administered anticancer medications are not more restrictive than those that apply to intravenously administered or injected anticancer medications that are covered by the policy.
- That the co-pay or coinsurance for orally administered anticancer medication does not exceed $150 per 30-day supply. (The Department of Insurance and Financial Services would have to adjust this dollar amount annually, beginning January 1, 2025, by the amount determined by the state treasurer to reflect the cumulative annual change in the prescription drug index of the medical care component of the U.S. Consumer Price Index.)

The bill would provide that an insurer could not achieve compliance with these requirements by increasing ***cost-sharing requirements***, reclassifying benefits with respect to anticancer medications, or imposing more restrictive ***treatment limitations*** on prescribed orally administered anticancer medications or intravenously administered or injected anticancer medications that are covered under the policy. However, the provisions of the bill would not prohibit an insurer from applying ***utilization management techniques***.

Cost-sharing requirement would mean deductibles, copayments, coinsurance, out-of-pocket expenses, aggregate lifetime limits, and annual limits.

Treatment limitation would mean limits on the frequency of treatment, days of coverage, or other similar limits on the scope or duration of treatment. Treatment limitation would *not* include the application of ***utilization management techniques***.

Utilization management techniques would include prior authorization, step therapy [a requirement that certain drugs be tried to treat a medical condition before other drugs are covered], limits on quantity dispensed, and days' supply per fill for any administered anticancer medication.

Proposed MCL 500.3406v

BACKGROUND:

House Bill 4071 is a reintroduction of HB 4354 of the 2021-22 legislative session, as passed by the House of Representatives. Similar bills have been introduced each session beginning with the 2009-10 legislative session.

BRIEF DISCUSSION:

House Bill 4071 would address what some see as unfairness in how health insurers provide coverage for oral anticancer medications and medications that are infused or injected. Anticancer medications that are infused or injected fall under the medical benefits of a health plan, while oral medications fall under the pharmacy benefits. In some health plans, the cost-sharing structure—the amount a beneficiary pays in deductibles, co-pays, co-insurance, and maximum out-of-pocket costs—can differ greatly between medical and pharmacy benefits. For example, many medical policies set a flat co-pay or, after an annual deductible is met, require a small percentage of the cost of an office visit or medical test, with an annual maximum cap on out-of-pocket expenses. On the pharmacy side, however, a plan may require coinsurance as high as 50% per drug with no annual out-of-pocket maximum. In the case of oral anticancer drugs, which can run in the tens of thousands each month, paying 20%, 30%, or 50% of a life-saving treatment per month is unattainable for many. Even if a plan does have a cap on annual drug costs, due to the high cost of anticancer medications, even one month's cost share may be too much for a patient to afford.

The bill would provide parity in how anticancer medications are treated. If a policy offered anticancer medications as a covered benefit, cost-sharing would have to be the same whether the medication was an infused or injected drug or one taken by mouth. The bill would thus refocus cancer treatment on the best therapy for the patient and the type of cancer the patient has, not on which anticancer medication the patient's health insurance covers is the most affordable.

Forty-three states and the District of Columbia offer some sort of cancer-drug parity. According to committee testimony, those states have seen negligible impacts on the cost of premiums while at the same time making oral cancer drugs more accessible. In many cases, oral cancer medications are less costly, and in some cases, an oral cancer drug may be the only treatment for a particular cancer or may be the standard treatment of care, being more effective than a more costly infused or injected drug. In addition, infused or injected chemo drugs can be harsh, with such debilitating side effects that patients may lose their jobs due to absenteeism. Because oral cancer drugs tend to be less toxic, patients often report fewer side effects than with the infused counterparts, meaning cancer patients are able to have a higher quality of life and can continue to work, care for their families, and live productive lives.

Not all believe that the bill is the right path to establish cancer-drug parity. For example, few Michigan residents would benefit under the bill. This is because most people with insurance are covered under large employer-sponsored health plans that are self-funded and therefore regulated under the federal Employee Retirement Income Security Act (ERISA) rather than the state Insurance Code. In addition, Medicaid, Medicare, and Tricare (health insurance for members of the military, retirees, and their dependents) are also not subject to Michigan's insurance laws. Reportedly, 65% of cancer patients are covered by Medicaid. With so few likely to benefit from the bill, opponents say a better approach would be to tackle the underlying structure of drug pricing and the way in which federal law first defined drugs as a

medical benefit or a drug benefit when designing Part D for Medicare enrollees. Moreover, with drug prices across the board increasing annually, restricting how an insurer sets cost-sharing may have the greatest impact on small employers and individuals buying health insurance. Small employers are more likely than large employers to eliminate insurance for their employees, and individuals may find it difficult to maintain quality health insurance if premiums do eventually rise.

FISCAL IMPACT:

House Bill 4071 would not have any noteworthy direct fiscal impact on the Department of Insurance and Financial Services, which would be responsible under the bill for annually adjusting the maximum allowable co-pay or coinsurance for orally administered anticancer medication. This activity would likely be sufficiently supported by existing appropriations.

POSITIONS:

Representatives of the following entities testified in support of the bill (5-11-23):

- Michigan Society of Hematology and Oncology
- American Cancer Society Cancer Action Network

The following entities indicated support for the bill (5-11-23):

- Michigan State Medical Society
- American Lung Association in Michigan
- Michigan Ovarian Cancer Alliance
- Memorial Healthcare
- Michigan Nurses Association
- Takeda Pharmaceuticals
- Leukemia & Lymphoma Society
- American Society of Hematology
- The Pink Fund
- Susan G. Komen
- Association for Clinical Oncology

Representatives of the Michigan Association of Health Plans testified in opposition to the bill. (5-11-23)

The following entities indicated opposition to the bill (5-11-23):

- Michigan Manufacturers Association
- Economic Alliance for Michigan
- Health Alliance Plan
- NFIB Michigan
- Small Business Association of Michigan
- Michigan Chamber of Commerce
- Detroit Regional Chamber
- Grand Rapids Chamber

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