MASSACHUSETTS HOUSE LEADERSHIP RELEASES PRESCRIPTION DRUG ACCESS, PHARMACY BENEFIT MANAGER OVERSIGHT BILL

BOSTON – Monday, July 22, 2024 – In an effort to increase access and affordability of prescription drugs for Massachusetts residents, Massachusetts House leadership today released major legislation entitled An *Act promoting access and affordability of prescription drugs*, which protects patients and independent pharmacists by regulating the pharmacy benefit manager (PBM) industry; banning many of the industry's worst business practices; increasing transparency into PBMs and drug manufacturers through the Health Policy Commission (HPC) and the Center for Health Information and Analysis (CHIA); and reducing or eliminating copays for certain chronic conditions. The bill will be up for consideration by the Massachusetts House of Representatives this Wednesday, July 24.

"Many folks in Massachusetts face cost barriers in access to the medications they are prescribed, especially for many of our most vulnerable residents who live with chronic disease. This bill aims to reduce the out-of-pocket cost of certain lifesaving drugs and ban certain business practices that are commonly used by PBMs to increase their own profits at the expense of patients," said **House Speaker Ronald J. Mariano (D-Quincy).** "Critically, this legislation also builds on the four major health care bills that the House has already passed this session, all of which are focused on increasing access to quality, affordable health care for folks across the Commonwealth. I'm grateful to Chairman John Lawn for his tireless work on this issue. I look forward to continued conversations with the membership, and to voting on this vital legislation later this week."

"Under the visionary leadership of Speaker Mariano, the House has worked to ensure that all Massachusetts residents have access to high quality affordable health care," said **Representative John Lawn (D-Watertown), House Chairman of the Joint Committee on Health Care Financing.** "This legislation continues that legacy by shining a light on pharmacy benefit managers, whose deceptive business practices increase drug prices, decrease transparency, and harm consumers and independent pharmacies."

The legislation released today represents the House's continued commitment to bettering the Commonwealth's health care system, and to ensuring that every single Massachusetts resident has access to quality, affordable, health care.

Regulation & Auditing of the PBM Industry

Following a Federal Trade Commission (FTC) report issued earlier this month which details the undue influence of PBMs on the prescription drug market, the House bill licenses PBMs operating in the Commonwealth, subjects them to the Massachusetts Division of Insurance (DOI) and health insurer audits, and curbs some of their most abusive practices.

As the FTC report details, the PBM industry has experienced significant horizontal consolidation and vertical integration, with five of the top six PBMs vertically integrated with insurers, pharmacies, and provider services.

Due to decades of mergers and acquisitions, the three largest PBMs now manage nearly 80 percent of all prescriptions filled in the United States, while six PBMs manage more than 90 percent of total U.S. prescription claims. A mostly unregulated industry, PBMs wield enormous power and influence over patients' access to drugs and the prices they pay, negotiating the terms and conditions for access to prescription drugs for hundreds of millions of Americans.

The House legislation requires PBMs to be licensed with DOI every three years. PBMs will also be required to pay an application fee of $25,000. It also mandates that DOI audit PBMs once every three years and provides for periodic audits by health insurers who contract with PBMs.

Consumer & Pharmacy Protections from PBM Abusive Practices

Spread pricing is a practice by which a PBM pays a pharmacy a lower price for a dispensed drug than the price a health insurer agrees to pay for the drug. This allows PBMs to use their significant market power to increase their own profits, rather than pass along savings to consumers.

To ensure protection of consumers and pharmacies, the bill prohibits PBM spread pricing, as well as point of sale fees and retroactive fees, and imposes a 10 percent surcharge on PBMs that engage in these banned practices.

PBMs also use their market power to negotiate significant discounts, called "rebates," from pharmaceutical manufacturing companies on the list price of prescription drugs. These savings are generally shared by PBMs and health insurers. Rebates retained by PBMs are another source of profits for PBMs, while health insurers claim their share of rebates is used to reduce premiums.

The House bill requires PBMs and health insurers to forward at least 80 percent of rebates received by carriers or PBMs to consumers at the point of sale.

Further, the House legislation:

- Requires pharmacies to charge consumers the lesser of their applicable cost-sharing amount or the pharmacy retail price, so that consumers no longer unknowingly pay more for their prescription drugs when using their health insurance benefits than they would if they paid the pharmacy retail price.

- Ensures that patients that get assistance paying for their prescription drugs are not penalized by their health insurers by requiring health insurers and PBMs to include any cost-sharing amounts paid by an enrollee or another third party on behalf of an enrollee when calculating an enrollee's total cost-sharing contributions.

- Imposes a duty of good faith and fair dealing on PBMs when dealing with all parties with which they interact in the performance of PBM services.

- Requires PBMs to provide an adequate and accessible network for prescription drugs.

- Establishes that PBMs must maintain a Maximum Allowable Cost (MAC) list for generic prescription drugs and must reimburse an independent pharmacy for drugs at the same amount that the PBM reimburses PBM affiliates for providing the same pharmacist services.

- Makes permanent the ability of consumers to use drug manufacturer coupons to pay for prescription drugs.

Transparency into PBM & PMC Business Practices

Currently, there is limited transparency into PBMs' operations and revenue. This bill increases transparency into the business practices of PBMs and pharmaceutical manufacturing companies

by requiring PBMs and certain pharmaceutical manufacturing companies to submit data to CHIA for the HPC's annual cost trends report, and mandatory participation in the HPC's annual benchmark hearing process.

It also assesses PBMs and pharmaceutical manufacturing companies for the expenses of HPC and CHIA in a similar manner as current health care providers, while increasing the penalty for noncompliance with CHIA data reporting requirements from $1,000 per week to $25,000 per week. This applies to all entities required to report, which would now include PBMs and pharmaceutical manufacturing companies.

The bill also establishes an Office of Pharmaceutical Policy and Analysis within the HPC to better advise the Legislature and state agencies on matters related to pharmaceutical drug policy and tasks the new office with studying cost and access issues with groundbreaking cell and gene therapies that are due to be released by 2035.

Co-payment Caps on Medications for Certain Chronic Illnesses

This legislation reduces or eliminates the price on medications for diabetes, asthma, and the most prevalent heart condition among a health plan's enrollees.

To ensure that everyone, especially at-risk populations, are getting equitable access to the medication they need, the bill requires insurance carriers to identify one generic drug and one brand name drug used to treat diabetes, asthma, and the most prevalent heart condition among its enrollees.

Identified generic drugs are covered without any cost sharing and the co-pay for identified brand name drugs are capped at $25 per 30-day supply. It also provides for annual reporting by insurance carriers to DOI on the list of drugs with no or limited cost sharing.

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