

# SENATE BILL REPORT

## SB 5445

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As of February 2, 2023

**Title:** An act relating to cost-sharing fairness.

**Brief Description:** Concerning cost-sharing fairness.

**Sponsors:** Senators Rivers, Cleveland, Hasegawa, Keiser, Kuderer and Lovelett.

**Brief History:**

**Committee Activity:** Health & Long Term Care: 2/03/23.

**Brief Summary of Bill**

- Requires health carriers to calculate an enrollee's coinsurance or deductible obligation for a prescription drug based on the price of the drug minus all rebates received for that drug.
- Requires that a pharmacy benefit manager may only derive income for pharmacy benefit management services provided to a health carrier through a fixed management fee.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Staff:** Greg Attanasio (786-7410)

**Background:** Cost-sharing refers to the portion of costs for healthcare services an enrollee of a health plan is responsible for paying out-of-pocket before the plan covers the remainder of the cost. Cost-sharing can be in the form of a deductible, copayment, coinsurance, or similar obligations. Cost-sharing obligations for prescription drug coverage varies among health plans, with some plans providing coverage before the deductible, some requiring the enrollee to meet a plan deductible before providing coverage, and some requiring the enrollee to meet a specific prescription drug deductible.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Prescription drug rebates are generally paid by a pharmaceutical manufacturer to a pharmacy benefit manager (PBM) or health carrier and reduce the net cost of covering the drug. Rebate contract terms are trade secrets and vary among brands, manufacturers, and health carriers.

**Summary of Bill:** Coinsurance or Deductible Calculation. For health plans, including plans offered to public employees, issued or renewed after January 1, 2025, an enrollee's coinsurance or deductible payment for each prescription drug covered by the health plan must be calculated at the point of sale based on a price that is reduced by an amount equal to 100 percent of all rebates received, or to be received, in connection with the dispensing or administration of the drug. This amount must be provided by the carrier or its subcontractor as a good faith estimate of the enrollee's cost sharing obligation.

In addition to the point-of-sale amount owed, the carrier must provide the enrollee with an end-of-calendar-year reconciliation for any cost sharing reductions owed to the enrollee that were not captured in the good faith estimate.

Nothing shall preclude a carrier or subcontractor from decreasing an enrollee's coinsurance or deductible payment by an amount greater than that required by this act.

No pharmacy or pharmacist may be subject to any liability, penalty, or disciplinary action from a carrier or the Office of the Insurance Commissioner (OIC) for failure to comply, if the pharmacy or pharmacist has not received sufficient information from the carrier or subcontractor to comply. A carrier or subcontractor may not impose any form of monetary penalty on, or withhold any payments to a pharmacy that engaged in good faith efforts to comply.

Upon request, a carrier must disclose to the OIC sufficient information to show compliance, including but not limited to, wholesale acquisition cost and actual amounts of rebates. The OIC may take appropriate enforcement action against a carrier and its subcontractor by imposing a civil penalty not to exceed \$1,000 per violation.

A carrier or its agents may not publish or otherwise reveal information regarding the amount of rebates or price protection rebates it receives on a product, manufacturer, or pharmacy-specific basis. Such information is a trade secret, is not a public record, and shall not be disclosed directly or indirectly.

Pharmacy Benefit Manager Income. No PBM may derive income from pharmacy benefit management services provided to a carrier in this state except for income derived from a pharmacy benefit management fee that is set forth in the contract. The fee may not be directly or indirectly based or contingent on:

- the acquisition cost or any other price metric of a drug;
- the amount of savings, rebates, or other fees charged, realized, or collected by or generated based on the activity of the PBM; or

- the amount of premiums, deductibles, or other cost sharing or fees charged, realized, or collected by the PBM from patients or other persons on behalf of a patient.

Annually, by December 31st, each PBM must certify to OIC that it has complied with the fee requirements throughout the prior calendar year. A PBM contract with a carrier entered into on or after the effective date of this act shall specify all forms of revenue, including pharmacy benefit management fees, to be paid by the carrier to the PBM. OIC may enforce provisions related to management fees by imposing a civil penalty not to exceed \$1,000 per violation.

**Appropriation:** None.

**Fiscal Note:** Requested on January 18, 2023.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.