L.D. 1783

Date: 3/28/22 (Filing No. S-479)

HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

130TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 621, L.D. 1783, "An Act To Require Health Insurance Carriers and Pharmacy Benefits Managers To Appropriately Account for Cost-sharing Amounts Paid on Behalf of Insureds"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'**Sec. 1. 24-A MRSA §4349, sub-§6** is enacted to read:

6. Cost-sharing amounts paid on behalf of covered person. The requirements of this subsection apply to the calculation of a covered person's contribution to any applicable cost-sharing or other out-of-pocket expense under a covered prescription drug benefit.

A. When calculating a covered person's contribution to any applicable cost-sharing or other out-of-pocket expense under a covered prescription drug benefit, a carrier or pharmacy benefits manager shall give credit for any waiver or discount of, or payment made by a 3rd party for, the amount of, or any portion of the amount of, the applicable cost-sharing or other out-of-pocket expense for the covered prescription drug that is either:

(1) Without a generic equivalent; or

(2) With a generic equivalent when the covered person has obtained access to the covered prescription drug through prior authorization, a step therapy override exception or other exception or appeal process.

B. A 3rd party that pays as financial assistance any amount, or portion of the amount, of any applicable cost-sharing or other out-of-pocket expense on behalf of a covered person for a covered prescription drug:

(1) Shall notify the covered person prior to or within 7 days of the acceptance of the financial assistance of the total amount of assistance available and the duration for which it is available; and

(2) May not condition the assistance on enrollment in a specific health plan or type of health plan, except as permitted under federal law.

C. If under federal law, with respect to a high-deductible health plan offered for use with a health savings account in accordance with the federal Internal Revenue Code, the application of paragraph A would result in ineligibility for a health savings account, this subsection applies only with respect to the deductible of such a plan after the covered person has satisfied the minimum deductible under the federal Internal Revenue Code, Section 223, except for items or services that are determined to be preventive care pursuant to the federal Internal Revenue Code, Section 223(c)(2)(C), in which case the requirements of paragraph A apply regardless of whether the minimum deductible under the federal Internal Revenue Code, Section 223 has been satisfied.

Sec. 2. Application. The requirements of this Act apply to prescription drug benefits provided pursuant to a contract or policy of insurance by a carrier or a pharmacy benefits manager on behalf of a carrier on or after January 1, 2023.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment replaces the bill with language that reflects model legislation adopted by the National Council of Insurance Legislators. Like the bill, the amendment requires health insurance carriers and their pharmacy benefits managers to include cost-sharing amounts paid on behalf of an insured when calculating the insured's contribution to any out-of-pocket maximum, deductible or copayment when a drug does not have a generic equivalent or was obtained through prior authorization, a step therapy override exception or an exception or appeal process.

The amendment adds a requirement that a person who pays any amount on behalf of a covered person for a covered prescription drug must notify the covered person prior to or within 7 days of the acceptance of the financial assistance of the total amount of assistance available and the duration for which it is available and prohibits the conditioning of the assistance on enrollment in a specific health plan or type of health plan. The amendment also adds language providing an exception when application of the requirements to a person who has a health savings account would result in ineligibility for that health savings account under federal law except for items or services that are determined to be preventive care.

As in the bill, the requirements apply to prescription drug benefits provided pursuant to a contract or policy of insurance by a carrier or a pharmacy benefits manager on behalf of a carrier on or after January 1, 2023.

FISCAL NOTE REQUIRED

(See attached)

Approved: 03/24/22 mac

130th MAINE LEGISLATURE

LD 1783 **LR 2363(02)**

An Act To Require Health Insurance Carriers and Pharmacy Benefits Managers To Appropriately Account for Cost-sharing Amounts Paid on Behalf of Insureds

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-479)
Committee: Health Coverage, Insurance and Financial Services
Fiscal Note Required: Yes

Fiscal Note

Potential future biennium cost increase - General Fund

Fiscal Detail and Notes

Requiring the inclusion of certain cost sharing amounts made on behalf of participants in a covered prescription drug benefit be included in the calculation of plan out-of-pocket maximums, deductibles and copayments could result in an increase in costs to the State Employee Health Plan beginning in the plan year starting July 1, 2023. The amount and timing of the additional costs will depend on the volume of such payments (e.g., manufacturer coupons) currently being paid on behalf of participants and the type and use of payments that could be available in the future.