

GENERIC EQUIVALENT REBATE

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House Bill 5943 as introduced
Sponsor: Rep. Tyrone A. Carter
Committee: Health Policy
Complete to 7-22-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5943 would amend the Health Care False Claim Act to change two exceptions from being considered a violation of the prohibition against kickbacks and bribes.

Section 4 of the act provides that a person who solicits, offers, pays, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part by a health care corporation or health care insurer, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of health care benefits, is guilty of a felony punishable by imprisonment for up to 4 years, a fine of up to \$50,000, or both.

Section 4a of the act provides that the prohibition in section 4 does not apply to a rebate or discount from a drug manufacturer or from a company that licenses or distributes the drugs of a drug manufacturer to a consumer for the consumer's use of a drug manufactured or licensed or distributed by the drug manufacturer or company. The prohibition also does not apply to a monetary payment from a drug manufacturer to a consumer, the consumer's health professional, or a vendor that has a contract with the drug manufacturer, for a health care service that the prescribing information of a qualified drug requires or recommends for initiating drug therapy.

The bill would amend both of these exceptions.

Under the bill, the prohibition in section 4 would not apply to a rebate, discount, product voucher, or other reduction in a consumer's out-of-pocket expenses, including a copayment or deductible, from a drug manufacturer or a company that licenses or distributes the drugs of a drug manufacturer to the consumer for the consumer's use of a drug manufactured, licensed, or distributed by the drug manufacturer or company, but only if the following are met:

- The rebate, discount, product voucher, or other reduction is not for a drug that has a lower-cost generically equivalent drug product or biosimilar drug product, that a contract, certificate, or policy issued by a health care insurer or health care corporation covering the consumer provides coverage for on a lower cost-sharing tier.
- The rebate, discount, product voucher, or other reduction is made available to all **eligible individuals** regardless of how the drug is paid for when it is provided to the consumer.

Eligible individual would mean an individual who is not otherwise prohibited under state or federal law from receiving or using a rebate, discount, product voucher, or other reduction in the individual's out-of-pocket expenses, including a copayment or deductible.

The bill would also remove the requirement that the other exception in section 4a be for payment for services called for by a “qualified” drug (which is currently defined as a drug indicated to treat multiple sclerosis; this definition would also be removed by the bill).

Under the bill, then, the prohibition in section 4 would not apply to a monetary payment from a drug manufacturer to a consumer, the consumer's health professional, or a vendor that has a contract with the drug manufacturer, for a health care service that the prescribing information of a drug requires or recommends for initiating drug therapy.

MCL 752.1002 and 752.1004a

FISCAL IMPACT:

House Bill 5943 would not have an appreciable fiscal impact on any unit of state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.