TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 1890 - SB 1942

February 27, 2020

SUMMARY OF BILL: Prohibits a pharmacy benefits manager (PBM) and third parties from discriminating against a 340B entity or a pharmacy that participates in a health plan as an entity authorized to participate under 42 U.S.C. § 256b in a manner that prevents or interferes with the patient's choice to receive those drugs from the pharmacy; or a 340B entity regarding reimbursement for pharmacy-dispensed drugs by reimbursing at a rate lower than that paid for the same drug to pharmacies that are not 340B entities, and shall not assess any fee or other adjustment upon the 340B entity, or exclude a 340B pharmacy from the PBM's or third party's pharmacy network, on the basis that the 340B entity participates in the program described in 42 U.S.C. § 256b.

Creates a private cause of action for a pharmacy or 340B entity against a PBM or third party who violates this section.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - $10,620,500/FY20-21 and Subsequent Years

Increase Federal Expenditures - $20,504,500/FY20-21 and Subsequent Years

Other Commerce Impact – The proposed legislation will likely impact the contracts the Division of TennCare and the Division of Benefits Administration have with providers; however, due to multiple unknown factors, an exact fiscal impact cannot be reasonably determined.

Assumptions:

- The proposed legislation will impact the Division of TennCare's (TennCare) managed care organization's (MCO) spend and PBM spend.
- The MCOs total spend on outpatient physician administered drugs for 340B covered entities was approximately $58,240,000 in calendar year 2019.
- The Centers for Medicare and Medicaid Services guidelines recommend a price differential of 28.5 percent between 340B and non-340B providers.
- The increase in expenditures is estimated to be $23,214,545 [($58,240,000 / 1 - 0.285) - $58,240,000] in FY20-21 and subsequent years.
- The PBMs' total spend to 340B entities in the first quarter of calendar year 2019 was $4,961,376, equating to $19,845,504 for calendar year 2019.

- The increase in expenditures is estimated to be $7,910,446 [($19,845,504 / 1-0.285) - $19,845,504] in FY20-21 and subsequent years.
- The total increase in expenditures for TennCare is estimated to be $31,124,991 ($23,214,545 + $7,910,446).
- Medicaid expenditures receive matching funds at a rate of 65.878 percent federal funds to 34.122 percent state funds. Of this amount $10,620,469 ($31,124,991 x 34.122%) will be in state funds and $20,504,522 ($31,124,991 x 65.878%) will be in federal funds.
- The court systems can handle any increase in private cause of action lawsuits utilizing existing resources; therefore, any fiscal impact is estimated to be not significant on state and local governments.
- The proposed legislation will not have an impact on any programs or polices of the Department of Health; therefore, any fiscal impact is estimated to be not significant.

IMPACT TO COMMERCE:

Increase Business Revenue - $31,125,000/FY20-21 and Subsequent Years

Increase Business Expenses –
Less than $31,125,000/FY20-21 and Subsequent Years

Assumptions:

- Pharmacies will experience a recurring increase in business revenue for providing services estimated to be $31,124,991 in FY20-21 and subsequent years.
- For companies to retain solvency, any increased expenditures will be less than the amount of increased revenues collected. Therefore, the recurring increase in business expenditures is estimated to be less than $31,124,991 in FY20-21 and subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

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