OPLA Bill Analysis
Joint Standing Committee on Health Coverage, Insurance and Financial Services
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January 25, 2022

LD 1783, An Act To Require Health Insurance Carriers and Pharmacy Benefits Managers To Appropriately Account for Cost-sharing Amounts Paid on Behalf of Insureds

SUMMARY:

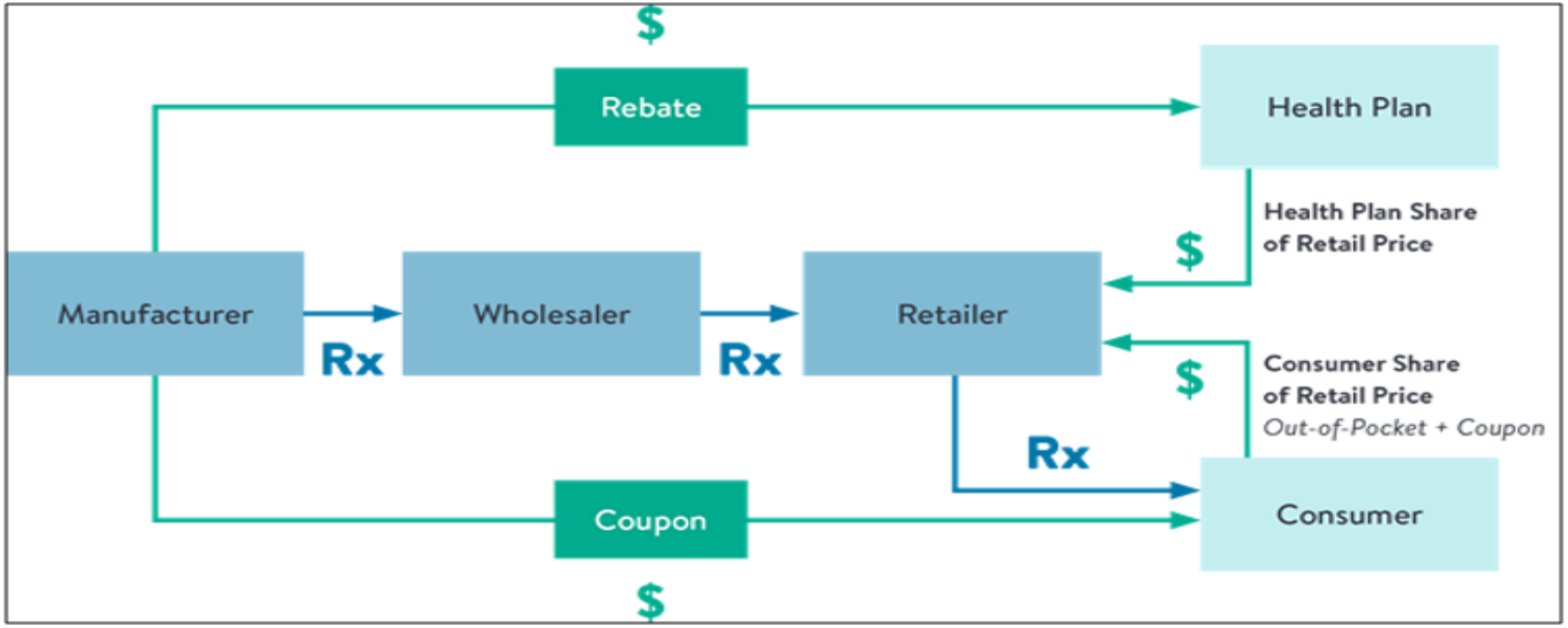
This bill requires health insurance carriers and their pharmacy benefits managers to include cost-sharing amounts paid on behalf of an insured when calculating the insured's contribution to any out-of-pocket maximum, deductible or copayment when a drug does not have an alternative equivalent or was obtained through prior authorization, a step therapy override exception or an exception or appeal process.

The bill's 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.

CURRENT LAW:

The current requirements in law regulating health plans that provide prescription drug benefits and their pharmacy benefits managers are found in Title 24-A, chapter 56-C here.

Simplified Flow of Prescription Drugs (Rx) And Payments ($)
In Prescription Drug Supply Chain



Source: Altarum report, The Impact of Prescription Drug Rebates on Health Plans and Consumers, Charles Roehrig, PhD, April 2018, https://altarum.org/sites/default/files/uploaded-publication-files/Altarum-Prescription-Drug-Rebate-Report_April-2018.pdf

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TESTIMONY: Written testimony can be found at this link

ISSUES FOR CONSIDERATION:

1. Consider financial impact on patients of these programs when, in their view, they are required to fulfill deductible and meet out-of-pocket maximum a "second time" after financial assistance from coupons or other mechanism is no longer available? Testimony from patient advocates indicated this will increase out-of-pocket costs and mean patients will take longer to meet their annual deductibles.
2. Consider whether use of copay accumulator programs negates the benefit of financial assistance programs or use of coupons to consumers?
3. Consider extent to which use of coupons increase overall costs of prescription drugs? Could bill subvert actuarial value of health plans?
4. Consider impact on overall premium costs because out-of-pocket costs will now have to be shifted back to policyholder in case of employer plans? Consider whether small employers with fully insured plans will be more interested in moving to self-insured plans?
5. In testimony, Health Purchaser Alliance suggested that the Committee consider the bill along with any recommendations or strategies included in the report of the Maine Prescription Drug Affordability Board, which is required to be submitted to the Legislature no later than January 30.

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ISSUES FOR CONSIDERATION:

6. Maine Association of Health Plans submitted additional comment following the public hearing. The comments suggested that the committee consider amending the bill to:

- Ban the use of coupons as is done in at least 2 states (CA and MA) and in the federal Medicare and Medicaid programs; or
- If move forward with bill's framework, add exceptions to the ban on using these programs if there is a covered interchangeable bio-similar, or if there is a covered drug in the same therapeutic class that may be preferred under the plan's formulary; and
- Require that a third party that pays any amount on behalf of an enrollee for a covered prescription drug: 1). must offer the assistance for the full plan year; 2) must notify the enrollee prior to an open enrollment period if the financial assistance will be discontinued in a subsequent plan year; and 3) may not condition the assistance on enrollment in a health plan or type of health plan, to the extent permitted under federal law
- Add reporting requirements to the Maine Health Data Organization or Prescription Drug Affordability Board.

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ISSUES FOR CONSIDERATION (cont'd):

7. Consider impact on health savings accounts and high-deductible health plans associated with health savings accounts? Testimony from Maine Bankers Association and Maine Chamber of Commerce raised concerns that bill as drafted would conflict with federal Internal Revenue Services regulations and would disqualify a health insurance plan from being a high deductible health plan and prohibit therefore, make the consumer ineligible to contribute to their Health Savings Account. If bill moves forward, they suggested an amendment providing an exception for plans offered for use with a health savings account. Under current law, similar language has been added to provisions related to requirements that prohibit cost-sharing for certain primary care and behavioral health visits in a plan year. See language currently in 24-A MRSA 4320-A, subsection 3 :

> *This subsection does not apply to a plan offered for use with a health savings account unless the federal Internal Revenue Service determines that the benefits required by this section are permissible benefits in a high deductible health plan as defined in the federal Internal Revenue Code, Section 223(c)(2).*

8. Maine's insurance laws apply only to health insurance companies authorized to transact health insurance under the Maine Insurance Code; state laws do not apply to self-insured employer health benefit plans, to coverage provided under federal programs like MaineCare and Medicare and to coverage provided to federal employees. Self-insured plans are exempt from state regulation by the federal Employee Retirement Income Security Act (ERISA). ERISA preempts any state laws relating to employee benefit plans, including health insurance plans.

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OTHER STATE LAWS: According to the National Conference of State Legislatures, 12 states have enacted legislation related to copay accumulator programs. Examples of these other state laws include: Kentucky, Louisiana, Connecticut, Arkansas

FISCAL INFORMATION:

Not yet determined