

## **Outline: *An Act to ensure prescription drug cost transparency and affordability*** **(H. 1133/S. 706)**

### **Short outline – the legislation:**

- Provides transparency around the underlying costs to produce prescription drugs and around pharmacy benefit manager (PBM) rebates;
- Authorizes the Health Policy Commission (HPC) to set upper payment limits for unreasonably/excessively high-priced drugs;
- Requires PBMs to be licensed by the Division of Insurance;
- Requires pharmacists to inform consumers if purchasing a drug at the retail price would be cheaper than using health insurance;
- Provides tools to strengthen MassHealth’s ability to negotiate lower drug prices; and
- Supports a permanent authorization and funding source for “academic detailing” to ensure doctors get accurate information to counter biased drug manufacturer marketing

### **Detailed outline**

#### **Prescription drug price transparency:**

- The Center for Health Information and Analysis (CHIA) conducts an annual study of the impact of pharmaceutical manufacturing company pricing factors and methodologies and the PBM business model on drug costs.
  - Requires drug manufacturers to report to CHIA pricing information, such as research and development costs, annual changes in wholesale acquisition costs, marketing and advertising costs, and the disparities between drug costs in MA vs. in other countries.
  - Requires PBMs to submit data to CHIA on factors such as rebates and fees received from manufacturers and the amounts retained.
- Mandates that drug manufacturers and PBMs testify at the HPC annual Cost Trends Hearing, including on factors of underlying prescription drug costs and price increases.
- Adds prescription drug costs and price trends to existing AGO monitoring of health care market, including authority to require info from pharmaceutical manufacturers and PBMs.
- Requires drug manufacturers to provide advance notice to CHIA of pipeline drugs and other new drugs hitting the market.
- Requires drug manufacturers to provide advanced notice to CHIA if a drug that has a list price of over \$40 for the course of treatment is going to increase in price by over 10%, including any increases in the past 2 years. The company must also provide the factors it considered in deciding to raise the price.
- CHIA can refer a drug to the HPC for further review if drug meets certain criteria:
  - Drug cost or cost increase is unreasonable or excessive:
    - Could lead an entity to exceed the health care cost growth benchmark
    - Could create significant affordability challenges for the state or consumers
  - Drug costs meet certain cost or cost increase criteria (defined in legislation for brand name drugs and generics)

Authorizes the state to set maximum prices for unreasonably high-priced drugs:

- HPC conducts an affordability review for drugs referred from CHIA, which includes conducting a public hearing.
- Following this analysis, the HPC would be allowed to establish an upper payment limit (UPL) for certain excessively priced prescription drugs, which would apply throughout the state health care system – from distributors to doctors, pharmacies, hospitals, insurers, and consumers.

Restraints the abuses of pharmacy benefit managers (PBMs):

- Requires state licensure and oversight by the Division of Insurance.
- Requires PBMs to operate with a fiduciary duty to their health plan clients.
- Builds on the federal law prohibition of “gag clauses” to affirmatively require pharmacists to inform consumers if purchasing a prescription at the retail price without insurance would be cheaper than the cost-sharing amount when using insurance.

Provides tools to strengthen MassHealth’s ability to negotiate for lower drug prices:

- Authorizes MassHealth to negotiate supplemental rebates with drug manufacturers. If direct negotiations are unsuccessful, MassHealth can establish a target value for a given high-cost drug through a public process and will seek a supplemental rebate from the manufacturer consistent with that value.
- If steps above are unsuccessful and a drug costs at least \$25K person/year or \$10M in the aggregate annually, MassHealth may refer high-cost drug manufacturers to the HPC.
- HPC would be authorized to require manufacturers to submit disclosures and testify at public hearings to justify their prices.
- If the HPC deems the manufacturer’s price for a particular drug to be unreasonable or excessive, it may refer the matter to the Attorney General’s Office for potential violations of the consumer protection laws.
- MassHealth also proposes implementing requirements to limit and make more transparent PBM margins and “spread pricing” within its ACOs and MCOs.

Educates doctors on drug effectiveness and costs:

- Supports a permanent authorization for the HPC to develop and implement an academic detailing program to make sure doctors get accurate information to counter biased drug manufacturer marketing.