



Senate

General Assembly

File No. 375

February Session, 2012

Substitute Senate Bill No. 392

Senate, April 11, 2012

The Committee on Human Services reported through SEN. MUSTO of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PHARMACY REIMBURSEMENT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-280 of the 2012 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2012*):

4 (a) The state shall reimburse for all legend drugs provided under
5 medical assistance programs administered by the Department of Social
6 Services at the lower of (1) the rate established by the Centers for
7 Medicare and Medicaid Services as the federal acquisition cost, (2) the
8 average wholesale price minus sixteen per cent for chain pharmacies
9 and minus fourteen per cent for independent pharmacies, or (3) an
10 equivalent percentage as established under the Medicaid state plan.
11 The state shall pay a professional fee of two dollars to licensed chain
12 pharmacies and four dollars to licensed independent pharmacies for
13 each prescription dispensed to a recipient of benefits under a medical
14 assistance program administered by the Department of Social Services
15 in accordance with federal regulations. On and after September 4, 1991,

16 payment for legend and nonlegend drugs provided to Medicaid
 17 recipients shall be based upon the actual package size dispensed.
 18 Effective October 1, 1991, reimbursement for over-the-counter drugs
 19 for such recipients shall be limited to those over-the-counter drugs and
 20 products published in the Connecticut Formulary, or the cross
 21 reference list, issued by the commissioner. The cost of all over-the-
 22 counter drugs and products provided to residents of nursing facilities,
 23 chronic disease hospitals, and intermediate care facilities for the
 24 mentally retarded shall be included in the facilities' per diem rate.
 25 Notwithstanding the provisions of this subsection, no dispensing fee
 26 shall be issued for a prescription drug dispensed to a ConnPACE or
 27 Medicaid recipient who is a Medicare Part D beneficiary when the
 28 prescription drug is a Medicare Part D drug, as defined in Public Law
 29 108-173, the Medicare Prescription Drug, Improvement, and
 30 Modernization Act of 2003.

31 (b) The Department of Social Services may provide an enhanced
 32 dispensing fee to a pharmacy enrolled in the federal Office of
 33 Pharmacy Affairs Section 340B drug discount program established
 34 pursuant to 42 USC 256b or a pharmacy under contract to provide
 35 services under said program.

36 (c) For purposes of this section, "chain pharmacy" means a
 37 community pharmacy that is publicly traded, "independent pharmacy"
 38 means a community pharmacy that is privately owned and has twenty
 39 or fewer stores in the state, "community pharmacy" has the same
 40 meaning as in section 20-631a and "legend drug" has the same meaning
 41 as in section 20-571.

| | | |
|---|--------------|---------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | July 1, 2012 | 17b-280 |

Statement of Legislative Commissioners:

In section 1(a) additional references to "minus" and "licensed" were added for clarity and consistency and in section 1(c) the definitions were reworded for proper form.

HS *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 13 \$ | FY 14 \$ |
|------------------------|-------------|---------------|---------------|
| Social Services, Dept. | GF - Cost | \$4.7 million | \$4.7 million |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill will cost the Department of Social Services (DSS) approximately \$4.7 million in FY 13 and FY 14¹. The increased cost to the DSS is due to the following: 1) \$3.4 million as a result of increasing the dispensing fee for independent pharmacies² from \$2 to \$4 for prescriptions dispensed to Medicaid recipients and 2) \$1.3 million as a result of decreasing the discount rate for independent pharmacies from average wholesale price (AWP) minus 16% to AWP minus 14% for brand name (legend) prescriptions dispensed to Medicaid recipients.

To the extent the reimbursement differential between chain pharmacies and independent pharmacies is allowed under federal law the cost described above would accrue to the state.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and the ability of DSS to

¹ Based on most recent pharmacy claims data from DSS.

² Independent pharmacies are defined in the bill as being privately owned and having 20 or less stores in the state. The definition of independent pharmacy used to provide claims data may be different than the definition in the bill. The DSS does not collect information on total store ownership. Estimates reflect the best available data for chain versus independent pharmacy claims.

implement the requirements of the bill.

OLR Bill Analysis**sSB 392*****AN ACT CONCERNING PHARMACY REIMBURSEMENT.*****SUMMARY:**

This bill increases, in two ways, the amount DSS reimburses independent pharmacists for dispensing brand-name drugs to individuals enrolled in its medical assistance programs that offer a drug benefit (e.g., Medicaid). First, it reduces the discount it takes off the average wholesale price (AWP) from 16% to 14%. Second, it increases, from \$2 to \$4, the dispensing fee it pays for each prescription these pharmacies fill. Chain pharmacies continue to be paid AWP-16% plus \$2 for drugs they dispense to DSS beneficiaries (see BACKGROUND).

A chain pharmacy is defined as a publicly traded community pharmacy. An independent pharmacy is a privately owned community pharmacy that has 20 or fewer stores in Connecticut.

EFFECTIVE DATE: July 1, 2012

BACKGROUND***Constitutionality of Two-Tiered Reimbursement System and Other States' Two-Tiered Systems***

At least two federal cases on this issue have been decided, although neither would have a direct bearing here. Arkansas pays independent and chain pharmacies different rates for filling Medicaid prescriptions. An Arkansas federal court in 2000 held that the state's two-tiered payment system violated both federal Medicaid law and the U.S. Constitution's equal protection clause. In 2007, a U.S. Circuit court (5th Circuit) dismissed a challenge to Louisiana's two-tiered payment system because the issue had already been decided. In the state's earlier case, the court determined that the federal Medicaid statute did

not give the plaintiff the right to sue (*Wal-Mart Stores, Inc. v. Knickrehm*, 101 F. Supp 2nd 749 (E.D. Ark. 2000) and *Walgreen Co. v. Louisiana Dept. of Health and Hospitals*, 220 Fed. Appx. 309 (5th Cir. 2007).

Michigan also has a two-tiered reimbursement system for chain and independent pharmacies.

COMMITTEE ACTION

Human Services Committee

Joint Favorable

Yea 16 Nay 0 (03/22/2012)