

HB 4113 -3 STAFF MEASURE SUMMARY

House Committee On Behavioral Health and Health Care

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Meeting Dates: 2/7, 2/12

WHAT THE MEASURE DOES:

The measure requires an insurer offering a health plans that provides pharmacy benefits to include all amounts paid by the enrollee, or paid on behalf of the enrollee by another person to the cost of a covered prescription drug when calculating the enrollee's contribution to an out-of-pocket maximum in specified circumstances. It defines "health plan" and "generic equivalent" for purposes of the measure.

ISSUES DISCUSSED:

- Cost-shifting that occurs with copay assistance programs
- Current uncertainty at federal level

EFFECT OF AMENDMENT:

-3 Clarifies application to plans offered by the Public Employees' Benefit Board (PEBB) and Oregon Educators Benefit Board (OEBB) Clarifies application of measure to high deductible health plans.

BACKGROUND:

Prescription drug manufacturers sometime offset the price of high cost medications by offering copay assistance programs. Historically, amounts paid towards the cost of drugs (regardless of source) would count towards the patient's deductible. However, copayment assistance programs also have the potential to encourage people to use high-cost medications when cheaper, generic versions may be available. Therefore, health insurers have begun implement "copay accumulator programs" that do not count amounts paid using copayment assistance programs towards the insureds deductible. In 2021, the Health and Human Services (HHS) Department adopted rules authorizing the use of copay accumulators. In 2022, patient advocacy groups filed suit seeking to invalidate those rules. In September 2023, a federal district court struck down the copay accumulator rules, noting that neither HHS nor the Centers for Medicare and Medicaid Services (CMS) had adopted a definition of "cost sharing" that could support the exclusion of copayment assistance from deductible calculations. While the federal government initially appealed that ruling, the appeal was dropped in January 2024.