

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 952

(Senator Astle)

Finance

Pharmacy Benefits Managers - Pharmacy Contracts - Payments

This bill requires a pharmacy benefits manager (PBM) to include specified information in its contract with a pharmacy, a pharmacy services administration organization, or a group purchasing organization. A PBM must also provide specified information to a contracted pharmacy and update this information at a specified interval. A PBM must establish an appeals process for contracted pharmacies to appeal a “maximum allowable cost” (MAC). A PBM is prohibited from requiring a pharmacy to dispense a prescription for a contractual reimbursement amount that is below the pharmacy’s acquisition cost.

The bill takes effect on July 1, 2014, and applies to all contracts between a PBM and a pharmacy, a pharmacy services administration organization, or a group purchasing organization entered into or renewed on or after that date.

Fiscal Summary

State Effect: Prescription drug expenditures for the State Employee and Retiree Health and Welfare Benefits Program (State plan) increase by an unknown amount beginning in FY 2015. Any additional enforcement of the bill can be handled by the Maryland Insurance Administration with existing resources. No effect on revenues.

Local Effect: No effect on revenues. Prescription drug expenditures for local jurisdictions likely increase under the bill.

Small Business Effect: Potential meaningful. Small business pharmacies, pharmacy services administration organizations, or group purchasing organizations may benefit from the bill. Conversely, small employers may incur higher expenditures for prescription drug coverage.

Analysis

Bill Summary: “Maximum allowable cost” means the maximum amount that a PBM or a purchaser will reimburse a contracted pharmacy for the cost of a multisource generic drug, a medical product, or a device. “Maximum allowable cost list” means a list of multisource generic drugs, medical products, and devices for which a maximum allowable cost has been established by a PBM or a purchaser.

In each contract with a pharmacy, a pharmacy services administration organization, or a group purchasing organization, a PBM must include:

- the methodology used by the PBM to calculate the drug product reimbursement paid for each drug, medical product, and device that is a covered pharmacy benefit administered by the PBM; and
- for every drug, medical product, and device for which the PBM establishes a MAC to determine the drug product reimbursement (1) information identifying the source used to obtain the price data and (2) the methodology used to calculate the MAC.

A PBM must make available to a contracted pharmacy (1) the PBM’s MAC list and (2) the MAC for each drug, medical product, and device on the list. At least every seven days, a PBM must review and adjust the list and the MAC of each drug, medical product, and device on the list to reflect the current manufacturer price. A PBM must make weekly updates of the MAC list and MAC for each drug, device, or medical product available to a contracted pharmacy.

A PBM must allow a contracted pharmacy to resubmit a claim at the MAC in effect on the date of the original claim submission if the claim was originally submitted at a MAC that changed on or before the original claim submission date.

A PBM must provide a process for a contracted pharmacy to appeal a MAC within 60 days after the date of the original claim submission. A PBM must investigate and make a decision on an appeal within seven business days. If a PBM denies an appeal, the PBM must provide the reason for the denial and identify the national drug code product available to pharmacies in the State that may be purchased at a price at or below the MAC. If, as a result of an appeal, a PBM determines that the MAC has been applied incorrectly, the PBM must adjust the MAC retroactive to the date of the original claim and notify the contracted pharmacy that all payment claims submitted after the effective date of the MAC adjustment may be resubmitted (at no additional cost) for payment at the adjusted MAC.

Current Law: PBMs are businesses that administer and manage prescription drug benefit plans for purchasers. PBMs must register with the Maryland Insurance Administration prior to providing pharmacy benefits management services. The Insurance Commissioner is authorized to examine the affairs, transactions, accounts, and records of a registered PBM at the PBM's expense. PBMs are prohibited from shipping, mailing, or delivering prescription drugs or devices to a person in the State through a nonresident pharmacy unless the nonresident pharmacy holds a nonresident pharmacy permit from the State Board of Pharmacy.

Background: "MAC" generally refers to a PBM-generated list of prescription drugs that includes the upper limit or maximum amount that a PBM will pay for generic drugs and brand-name drugs that have generic versions available (multisource brands). Each PBM establishes its own MAC list based on varying criteria such as availability of the drug in the marketplace, whether the drug is obtainable from more than one manufacturer, how the product is rated by the U.S. Food and Drug Administration in relation to the innovator drug, and price differences between the brand and generic products.

According to the National Community Pharmacists' Association, there is a lack of clarity and transparency in how MAC lists are used. Pharmacies are not informed about how drugs are added or removed from a MAC list or the methodologies used to determine how reimbursement is calculated.

State Expenditures: According to the Department of Budget and Management (DBM), the bill's prohibition against requiring a pharmacy to dispense a prescription for a contractual reimbursement amount that is below the pharmacy's acquisition cost increases prescription drug expenditures for the State plan. DBM notes that the current system used by PBMs incentivizes pharmacies to buy inexpensively and competitively. Conversely, the bill could eliminate any incentive to keep acquisition costs low because a pharmacy would be guaranteed reimbursement at cost. Furthermore, this provision could create a "varied landscape of pharmacy reimbursement levels" where different pharmacies would request reimbursement at whatever price they bought a medication. The exact impact on the State plan cannot be reliably estimated at this time.

Additional Comments: Related legislation, HB 908 of 2013, would have required a PBM to disclose to a purchaser and specify in its contracts with purchasers, pharmacies, or pharmacists, specified information regarding MAC prices for certain prescription drugs and would have required PBMs to establish a process for notifying pharmacies and pharmacists of changes regarding MAC prices, establish a procedure that allows pharmacies and pharmacists to appeal a MAC price, and ensure that prescription drugs meet certain criteria in order to include a MAC price for a prescription drug in a contract with a pharmacy or pharmacist. HB 908 was heard by the House Health and Government Operations Committee, but was withdrawn.

Additional Information

Prior Introductions: None.

Cross File: HB 793 (Delegate Kach, *et al.*) - Health and Government Operations.

Information Source(s): National Community Pharmacists' Association, Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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