HB 1004

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1004 (Delegate Kach)
Health and Government Operations

Medical Assistance Program - Generic Drug Reimbursement Program

This bill requires the Department of Health and Mental Hygiene (DHMH) to establish a generic drug supplement rebate program. The program must require manufacturers of a generic drug in a therapeutic classification with at least two generic drug products to submit a rebate for the generic drug to DHMH as a condition of participation in Medicaid. DHMH must adopt regulations to implement the program.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Medicaid expenditures could increase by as much as $1.0 million (50% federal funds, 50% general funds) beginning in FY 2013 to contract with a vendor to establish and maintain a generic drug supplement rebate program. The exact amount of expenditures cannot be reliably estimated and will depend on the scope of the contract. Any potential savings under the program are anticipated to be minimal.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Medicaid is required to establish maximum reimbursement levels for prescription drugs with generic equivalents based on the cost of the generic product. If a prescriber directs a specific brand name drug, the reimbursement level must be based on the cost of the brand name product.

Background: To ensure Medicaid coverage of outpatient prescription drug products nationally, pharmaceutical manufacturers must sign a rebate agreement with the federal Centers for Medicare and Medicaid Services (CMS). The rebate agreements apply to generic and brand name drugs, whether dispensed by a pharmacy or administered by a physician. About 550 pharmaceutical companies, including all large manufacturers, have rebate agreements with CMS. If a manufacturer has a rebate agreement, its drugs are covered nationwide in Medicaid, with certain exceptions. The rebate agreement specifies calculation of rebate amounts, reporting of Best Price and Average Manufacturer Price (AMP) for each drug, payment of rebates to state Medicaid agencies, dispute resolution, and confidentiality of Best Price and AMP data. Under the federal Patient Protection and Affordable Care Act (ACA), effective January 1, 2010, the minimum rebate for generic drugs was increased from 11% to 13% of AMP; however, the additional 2% in rebates are retained only by the federal government and not by states. ACA also extended pharmaceutical rebates to Medicaid managed care organizations effective March 23, 2010.

State Medicaid agencies may negotiate *supplemental* rebate agreements with drug manufacturers. States may use preferred drug lists or join together in multistate drug purchasing pools. Under supplemental rebate agreements, pharmaceutical manufacturers agree to pay a state a rebate higher than the minimum required under the CMS rebate agreement. Total rebates (federal minimum plus state-negotiated supplemental) average about 40%. Pharmaceutical manufacturers unwilling to offer supplemental rebates may have their drug placed on a nonpreferred list, which may require prior authorization and/or include a higher beneficiary copayment. DHMH currently operates a supplemental rebate program for brand-name drugs in the Medicaid program.

State Expenditures: According to DHMH, the department currently uses State Maximum Allowable Cost (SMAC) pricing on generic drugs for the Medicaid program, which has allowed the department to achieve considerable savings in prescription drug costs in recent years. Under the bill, DHMH would be required to set SMAC pricing in relation to the price of the specific preferred generic drug instead of setting it in relation to the price of all available drugs in the market, which could reduce current savings.

According to DHMH, the administrative cost to implement a generic drug supplement rebate program is estimated to be $1.0 million annually, which reflects the cost of the current vendor contract with ProviderSynergies for the brand-name supplemental rebate program. However, the savings under a generic drug supplement rebate program are anticipated to be far lower, given the already lower cost of generic drugs and the amount of pricing competition in the market due to the large number of generic drug manufacturers.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): "Medicaid Drug Rebate: Briefing for Medicaid Health Plans of America," Sellers Dorsey, May 2010; Department of Health and Mental Hygiene; Department of Legislative Services

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