

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 908 (Delegate Kach)
Health and Government Operations

**Pharmacy Benefits Managers - Prescription Drugs - Maximum Allowable Cost
Prices**

This bill requires a pharmacy benefits manager (PBM) to disclose to a purchaser and specify in its contracts with purchasers, pharmacies, or pharmacists, specified information regarding maximum allowable cost (MAC) prices for certain prescription drugs. A PBM must 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.

Fiscal Summary

State Effect: Expenditures for the State Employee and Retiree Health and Welfare Benefits Program (the State plan) increase – by a potentially significant amount – beginning in FY 2014 from a reduction in cost savings on prescription drugs. No effect on revenues.

Local Effect: Potential increase in health care expenditures to the extent that the bill impedes cost savings on prescription drugs.

Small Business Effect: Small business pharmacies may benefit from increased reimbursement under the bill.

Analysis

Bill Summary: A PBM must specify in its contract with a purchaser and in a contract with a pharmacy or pharmacist (1) the MAC prices for prescription drugs that are covered under the contract and reimbursed on the basis of the MAC prices and (2) the methodology used to establish the MAC prices. A PBM must update the MAC prices (1) for purchasers, whenever there is a change and (2) for pharmacies and pharmacists, at least every seven days.

With respect to purchasers, if a PBM uses a MAC price for prescription drugs dispensed at retail but not by mail, the PBM must disclose this practice to a purchaser no later than 21 days after the practice is implemented. A PBM must disclose to a purchaser whether or not the PBM uses the same MAC price for a prescription drug in its charge to the purchaser and its reimbursement of pharmacies and pharmacists in the PBM's network. If the PBM uses a different MAC price, the PBM must disclose the difference in the amount charged to the purchaser and reimbursed to pharmacies and pharmacists in the PBM's network.

A PBM must establish a process for promptly notifying pharmacies and pharmacists in its network of the MAC prices and any updates, eliminating prescription drugs from the MAC price list, and modifying MAC prices in a timely way to remain consistent with pricing changes in the market.

A PBM must establish a procedure that allows a pharmacy or pharmacist to appeal a MAC price for a prescription drug dispensed by the pharmacy or pharmacist. A PBM must respond to an appeal within 15 calendar days of receipt and, if the PBM agrees with the pharmacy or pharmacist, alter the MAC price retroactive to the dispensing date and make the altered MAC price effective for all pharmacies and pharmacists in the PBM's network.

To include a MAC price for a prescription drug in a contract with a pharmacy or pharmacist, a PBM must ensure that the prescription drug (1) has at least three nationally available and therapeutically equivalent multiple sources with a significant cost difference; (2) is listed as therapeutically and pharmaceutically equivalent ("A" rated) in the most recent version of the U.S. Food and Drug Administration's (FDA) *Approved Drug Products with Therapeutic Equivalence Evaluations*; (3) is available for purchase without limitation, from national or regional wholesale distributors, by all pharmacies and pharmacists in the State; and (4) is not obsolete or temporarily unavailable.

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 (multi-source 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 FDA 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 how drugs are added or removed from a MAC list or the methodologies used to determine how reimbursement is calculated.

State Fiscal Effect: State plan expenditures increase by a potentially significant amount beginning in fiscal 2014 due to a reduction in savings on prescription drugs. The State plan utilizes a PBM for the administration of the prescription drug plan. According to the Department of Budget and Management (DBM), the bill's provision limiting the prescription drugs that may be on a MAC list to only those with at least three nationally available and therapeutically equivalent sources with a significant cost difference could increase generic drug costs by between \$1 million and \$5 million annually for the State plan as many drugs for which MAC pricing benefits the State plan have only two equivalent sources or are single-source generics. DBM is also concerned that the bill's requirement that PBMs disclose to a purchaser whether or not the PBM is using the same MAC price for a prescription drug in its reimbursement of all pharmacies and pharmacists in the PBM's network could impact the competitive pricing that helps purchasers (including the State plan) save on prescription drug costs.

State plan expenditures are split 59% general funds, 30% special funds, and 11% federal funds.

Additional Comments: DBM advises that the provision that allows MAC prices to be altered *retroactive* to the dispensing date could negatively impact consumers. For example, if a drug costs \$4.25 under the MAC price list for an enrollee with a \$10 copayment, the individual pays \$4.25. If the MAC price is appealed and changed to \$5.25 retroactive to the date of dispensing, the consumer may be billed for the difference in price.

Additional Information

Prior Introductions: None.

Cross File: None.

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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