Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 215 (Senator Klausmeier)
Finance

Workers' Compensation - Payment for Physician-Dispensed Prescriptions - Limitations

This bill specifies that, under the Workers' Compensation Law, an employer, or its insurer, may not be required to pay for a prescription that is *dispensed* by a physician to a covered employee who has suffered an accidental personal injury, compensable hernia, or occupational disease unless the prescription was (1) dispensed within 30 days after the covered employee's initial appointment with the physician or any other physician in the physician's practice for a consultation, an evaluation, or an office visit related to the injury, hernia, or occupational disease and (2) limited to no more than a 30-day supply of the medication.

Fiscal Summary

State Effect: State expenditures are not materially affected. As the administrator for State workers' compensation claims, the Chesapeake Employers' Insurance Company (Chesapeake) pays for almost all prescriptions at about 80% of the average wholesale price (AWP) using its pharmacy benefits manager, regardless of whether they are dispensed by a physician. Revenues are not affected.

Chesapeake Employers' Insurance Company Effect: Chesapeake expenditures are not materially affected. Chesapeake pays for almost all prescriptions at about 80% AWP using its pharmacy benefits manager, regardless of whether they are dispensed by a physician. Revenues are not affected.

Local Effect: Self-insured counties' and municipalities' expenditures decrease due to savings realized for prescriptions covered under workers' compensation insurance. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: In addition to prescribing authority, a licensed physician may personally prepare and *dispense* prescription drugs or devices if he or she holds a written dispensing permit from the State Board of Physicians and meets other specified criteria. Chapter 184 of 2013 repealed an exception that had allowed certain physicians to dispense without such a permit at a medical facility or clinic that specializes in the treatment of medical cases reimbursable through workers' compensation insurance.

A physician who dispenses prescription drugs or devices must comply with prescription drug labeling requirements, record the dispensing on a patient's chart, allow the Division of Drug Control to enter and inspect the practitioner's office at all reasonable hours, provide the patient with a written prescription, and maintain prescription files in a specified manner. Chapter 267 of 2012 additionally requires a dentist, physician, or podiatrist who holds a dispensing permit to complete 10 continuing education credits (phased in over a five-year period) as a condition of permit renewal.

According to the State Board of Physicians, 1,509 physicians hold dispensing permits in Maryland. Chesapeake advises that physician dispensing in workers' compensation cases has expanded significantly in the past few years. Chesapeake reports that, in 2008, the Injured Workers' Insurance Fund (IWIF, its predecessor) was presented with a total of 8,067 prescriptions dispensed by physicians, and in 2012, IWIF was presented with 14,678 prescriptions dispensed by physicians. It is unclear whether the recent requirement for certain physicians who had been exempted from holding a dispensing permit will reverse or stall this trend.

A physician who holds a dispensing permit may dispense prescription drugs or devices to a claimant in a workers' compensation case for any period of time and for an unlimited amount of refills.

Physician dispensing of repackaged pharmaceuticals may increase costs for the workers' compensation system in states where physicians are not bound by state fee schedules and prescription drug cost controls. According to a study by the Workers' Compensation Research Institute (WCRI) released in September 2013, physicians directly dispensed 40% of all medications prescribed to injured workers in Maryland in 2011/2012, representing 55% of total spending on pharmaceuticals for workers' compensation claims in those years. Although the report did not include data on Chesapeake, it determined that, for other insurers in Maryland, from 2008 through 2012, prices paid for physician-dispensed prescriptions increased meaningfully, while prices paid to

pharmacies decreased or changed only slightly. (For example, the average price per pill paid to physicians for Vicodin increased 47% to $1.46 per pill, while the price paid per pill to pharmacies for the same drug fell 5% to $0.37 per pill.)

According to WCRI, some states limit physician dispensing of prescription drugs. For example, in New Jersey physicians may dispense prescription drugs up to a seven-day supply except in rural areas. Louisiana, Florida, and Arkansas limit physician dispensing of CDS. Some states, including Massachusetts, New York, Texas, Minnesota, Utah, and Wyoming, generally prohibit physician dispensing of prescription drugs. Other states allow physician dispensing of prescription drugs with reimbursement to physicians based on a fee schedule or other cost controls. Maryland, like a few other states, allows reimbursement for physician dispensing of prescription drugs at the "usual and customary" rate.

The Workers' Compensation Commission has previously proposed two sets of regulations that would have established a pharmaceutical fee schedule. (Several states have lowered overall workers' compensation costs by implementing similar measures.) However, neither set of regulations was adopted.

Local/Small Business Effect: Expenditures decrease for all self-insured or privately insured local governments and small business employers due to savings realized for prescriptions covered under workers' compensation insurance. To the extent that physician-dispensed prescription drugs are more expensive than pharmacy-dispensed prescription drugs and the bill reduces dispensing by physicians, the bill results in cost savings, which may be significant, for the workers' compensation market. While Chesapeake and the State are able to use a pharmacy benefits manager to pay for prescriptions at about 80% AWP in almost all cases, Chesapeake advises that other insurers may have to pay between 100% AWP and 130% AWP and substantially more than that in cases involving physician dispensing.

Small businesses, in particular, may benefit more meaningfully from the bill than larger employers because larger employers are currently better able to negotiate for cheaper prescription costs. Thus, any reduction in prescription drug costs has a greater impact on small businesses that are currently paying more than larger employers.

Additional Information

Prior Introductions: HB 174 and SB 247 of 2013, bills with similar provisions, received a hearing in the House Economic Matters Committee and the Senate Finance Committee, respectively, but no further action was taken on either bill.

Cross File: HB 280 (Delegate Jameson) - Health and Government Operations and Economic Matters.

Information Source(s): Department of Budget and Management, Department of Health and Mental Hygiene, Injured Workers' Insurance Fund/Chesapeake Employers' Insurance Company, Maryland Insurance Administration, Subsequent Injury Fund, Workers' Compensation Commission, Harford and Montgomery counties, National Council on Compensation Insurance, Workers' Compensation Research Institute, Department of Legislative Services

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Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510