Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 437 (Senator Conway, *et al.*)
Finance Rules and Executive Nominations

Maryland Health Insurance Coverage Protection Commission - Review of Drug Transparency and Notification Laws and Initiatives

This bill requires the Maryland Health Insurance Coverage Protection Commission (established by Chapter 17 of 2017) to review prescription drug transparency and notification laws and initiatives adopted and implemented in other states, as well as information on prescription drug pricing reported by entities under such laws and initiatives. The purpose of the review is to assess proposals for the adoption and implementation of prescription drug price transparency and notification laws or initiatives in Maryland. The commission may consider studies and receive input from experts to perform its review. The commission must include any findings and recommendations in its annual report submitted to the Governor and the General Assembly.

The bill takes effect June 1, 2017, contingent on enactment of Senate Bill 571/House Bill 909 of 2017. Senate Bill 571 was enacted as Chapter 17 of 2017 on April 6, 2017.

Fiscal Summary

State Effect: The commission can conduct the required review and report its findings and recommendations using existing resources, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapter 17 of 2017 (Senate Bill 571) establishes the Maryland Health Insurance Coverage Protection Commission to (1) monitor potential and actual federal changes to the federal Patient Protection and Affordable Care Act (ACA), Medicaid, the Maryland Children's Health Program (MCHP), Medicare, and the Maryland All-Payer Model; (2) assess the impact of such changes; and (3) provide recommendations for State and local action to protect access to affordable health coverage. By December 31 each year, the commission must submit a report on its findings and recommendations. The Department of Legislative Services (DLS), the Department of Health and Mental Hygiene (DHMH), and the Maryland Insurance Administration (MIA) jointly must staff the commission. Chapter 17 takes effect June 1, 2017, and terminates June 30, 2020.

The 19-member commission consists of (1) three members of the Senate; (2) three members of the House of Delegates; (3) the Secretary of Health and Mental Hygiene (or designee); (4) the Maryland Insurance Commissioner (or designee); (5) the Attorney General (or designee); (6) one representative of the Maryland Hospital Association; (7) one representative of a managed care organization; (8) one consumer of health care services; (9) one representative of a health insurance carrier; (10) one representative who is an employer; (11) one representative of the nursing home industry; (12) one representative of MedChi; (13) one representative of behavioral health care providers; and (14) two members of the public.

Background: Concerns about the high cost of prescription drugs have prompted calls for action to lower prescription drug costs. At the federal level, the EpiPen controversy has prompted calls for approval of more generic versions of common drugs, and the U.S. Food and Drug Administration is under pressure to reduce a backlog of more than 4,000 generic drug applications. There are proposals to limit secondary patents for trivial changes of a patented molecule and to lower the exclusivity period for biologic drugs, as well as calls for more aggressive policing of anticompetitive business practices.

Vermont is the only state to enact drug transparency legislation to date. Under Vermont's Act 65, enacted in June 2016, the state must identify up to 15 prescription drugs on which the state spends significant health care dollars and where wholesale acquisition costs have increased by 50% or more over the past five years or by 15% or more over the past 12 months. Vermont's Attorney General must require the manufacturers to provide justification for all factors that have contributed to a price increase and the role of each factor in contributing to the increase. Manufacturers who do not comply are subject to a civil penalty of up to $10,000. The information provided is submitted as a report to the state legislature and posted online. The information cannot be released in a manner that allows identification of an individual drug or manufacturer. Vermont released the first drug pricing report in December 2016, which noted that, of 87,248 national drug codes

evaluated, 9.4% saw more than a 50% increase in the last five years and 4.6% saw more than a 15% increase in the last year.

In December 2016, 20 states' attorneys general (including Maryland's) filed a civil complaint against six pharmaceutical companies alleging price fixing schemes to artificially inflate prices on generic drugs. Federal prosecutors have made similar claims against several former pharmaceutical executives.

State Expenditures: DLS, DHMH, and MIA, as the designated staff to the commission, can conduct the required review and include any findings and recommendations in the commission's annual report using existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: HB 666 (Delegate Bromwell, *et al.*) - Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Maryland Insurance Administration; *The New York Times*; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2017
mm/ljm Third Reader - April 7, 2017
Revised - Amendment(s) - April 7, 2017

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