SB 568

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 568 (Senator Hershey)
Finance

State Employee and Retiree Health and Welfare Benefits Program - Prescription Drugs and Devices - Copayment or Coinsurance Requirements

This bill requires the Secretary of Budget and Management to ensure the State Employee and Retiree Health and Welfare Benefits Program (State Plan) complies with a provision of the Insurance Article prohibiting health insurance carriers that provide prescription drug benefits through a pharmacy benefit manager (PBM) from imposing a copayment or coinsurance requirement for a covered prescription drug or device that exceeds the retail price of the drug or device.

Fiscal Summary

State Effect: The Department of Budget and Management advises that the State Plan's contracts with health insurance carriers for both the medical and prescription drug plans already reflect this prohibition; thus, there is no impact on the State Plan.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Secretary of Budget and Management must adopt regulations for the administration of the State Plan, ensure that the State Plan complies with all federal and State laws governing employee benefit plans, and annually recommend to the Governor the State share of the costs of the State Plan.

Under § 15-842 of the Insurance Article, insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) that provide coverage for prescription drugs and devices through a PBM may not impose a copayment or coinsurance requirement for a covered prescription drug or device that exceeds the retail price of the prescription drug or device. This provision applies to carriers, but not expressly to PBMs or pharmacies, nor to self-insured plans, including the State Plan.

The Maryland Insurance Commissioner is required to disapprove any form filed that includes provisions that are inequitable or lack substantial benefit to the subscriber or member. The Maryland Insurance Administration (MIA) requires carriers to write their contracts to state that individuals do not have to pay more than the actual cost of the prescription drug or device.

PBMs are businesses that administer and manage prescription drug benefit plans for purchasers. PBMs must register with MIA prior to providing pharmacy benefit 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: National news reports have noted that, in some cases, consumers may pay more for a prescription drug by using their health insurance (and paying the associated copayment or coinsurance) than they would purchasing the prescription with cash. This occurs under a method known as "clawback," when a pharmacy collects a copayment or coinsurance from the consumer (as required by the consumer's PBM) and remits it to the PBM. The PBM then pays the pharmacy for the drug, potentially at a cost significantly less than the copayment or coinsurance remitted, and retains the difference.

The State Plan's prescription drug plan is administered by a PBM (Express Scripts). For the current plan year, active employees and retirees pay a copayment of $10 for each generic drug, $25 for each preferred brand name drug, and $40 for each nonpreferred brand name drug at retail network pharmacies (copayments are doubled for 46- to 90-day supplies). Express Scripts indicates that "patients should always pay the lowest price possible, whether that is their plan's copayment, or their pharmacy's cost for the medication… [which] means no clawbacks."

A class action lawsuit filed in October 2016 against United HealthCare in the United States District Court of Minnesota charges that PBMs, acting as agents and/or in concert with health insurance companies, routinely charge insureds substantially higher prices for prescription drugs than are allowed under the health insurance policies. The lawsuit alleges that, under the confidentiality provisions of PBM-pharmacy agreements, pharmacies cannot tell patient insureds that they are being overcharged, much less sell drugs to them at a lower price separate and apart from the insurance policies.

Additional Information

Prior Introductions: None.

Cross File: HB 450 (Delegate Bromwell, *et al.*) - Appropriations.

Information Source(s): Express Scripts; National Community Pharmacists Association; Department of Budget and Management; Maryland Insurance Administration; Department of Legislative Services

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