Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 756 (Delegate Kipke)
Health and Government Operations

Maryland Medical Assistance Program and Managed Care Organizations That Use Pharmacy Benefits Managers - Reimbursement Requirements

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This emergency bill requires Medicaid to establish minimum reimbursement levels for drugs with a generic equivalent at least equal to the National Average Drug Acquisition Cost (NADAC) of the generic drug plus the fee-for-service (FFS) professional dispensing fee. If a prescriber directs a specific brand name drug, reimbursement must be based on the NADAC of the brand name product plus the FFS professional dispensing fee. A pharmacy benefits manager (PBM) that contracts with a pharmacy on behalf of a Medicaid managed care organization (MCO) must reimburse the pharmacy in an amount that is at least equal to NADAC plus the FFS professional dispensing fee.

Fiscal Summary

State Effect: Medicaid expenditures increase by $23.6 million (61% federal funds, 39% general funds) beginning in FY 2020 to increase pharmacy reimbursement, as discussed below. Federal fund revenues increase accordingly. Future years reflect annualization and inflation. **This bill increases the cost of an entitlement program beginning in FY 2020.**

($ in millions)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
FF Revenue	$14.4	$57.6	$58.8	$60.0	$61.2
GF Expenditure	$9.2	$36.8	$37.6	$38.3	$39.1
FF Expenditure	$14.4	$57.6	$58.8	$60.0	$61.2
Net Effect	($9.2)	($36.8)	($37.6)	($38.3)	($39.1)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: Medicaid must establish maximum reimbursement levels for the drug products for which there is a generic equivalent based on the cost of the generic product. If the prescriber directs a brand name drug, the reimbursement level must be based on the cost of the brand name product.

Chapter 534 of 2019 required Medicaid to contract with an independent auditor for an audit of PBMs that contract with Medicaid MCOs and provide the results to the General Assembly. The Act also required the Maryland Department of Health (MDH), in consultation with the Maryland Insurance Administration (MIA), to develop recommendations for an appeals process for decisions made in accordance with contracts between a PBM and an MCO and report the recommendations to the General Assembly. MDH was also authorized to apply for a federal waiver, subject to the limitations of the State budget, to provide professional dispensing fees or other measures for pharmacies to ensure access to pharmacy services.

Background:

Audit Results and Maryland Department of Health Actions

The audit required under Chapter 534 determined that there is a spread pricing model (*i.e.*, an arrangement in which there is a difference in reimbursement between an MCO, PBM, and pharmacy) and that all nine MCOs used that model in calendar 2018. That year, MCOs paid PBMs $690 million (including remuneration for services provided, including overhead, fees, and profit) and PBMs paid pharmacies $618 million, a difference of $72 million (the spread). The audit was unable to determine what portion of the $72 million is profit for the PBMs. The average spread pricing per claim was $6.96 for all PBM-related claims, representing 10.4% of the total MCO payments to PBMs.

MDH analyzed the audit findings and required the MCOs to eliminate spread pricing in calendar 2021, and instead implement a pass-through reimbursement model (requiring PBMs to charge an MCO the exact amount the PBM pays for prescriptions and dispensing fees). MCOs will be responsible for renegotiating their administration fees with PBMs. Those fees will be provided to the department, which will in turn request that the Medicaid actuaries determine an appropriate administration fee going forward.

Recommendations for Appeals Process

MDH also consulted with MIA on a recommended appeals process. MDH inserted language into calendar 2020 MCO contracts that requires MCOs to manage or delegate to the PBM any drug pricing appeals. Final decisions could be appealed to MDH and then to the Office of Administrative Hearings. MCO would be responsible for notifying MDH and pharmacies of the appeals process. A similar process is in place for MCO dispute resolution procedures for enrollees and providers.

Pharmacy Coverage Under Medicaid

Outpatient pharmacy coverage is an optional benefit under Medicaid. Reimbursement for prescription drugs varies between FFS Medicaid (which covers about 15% of Medicaid enrollees) and HealthChoice (under which Medicaid MCOs cover about 85% of Medicaid enrollees).

In FFS, Medicaid reimburses pharmacies based on a two-part formula consisting of the ingredient cost of the drug and the professional dispensing fee. Effective April 2017, Maryland adopted the NADAC methodology to calculate the ingredient cost of the drug. This methodology estimates the national average drug invoice price paid by independent and retail chain pharmacies. For any drug not included in NADAC, the State uses its own State actual acquisition cost (SAAC) as a secondary benchmark. Thus, for FFS pharmacy expenditures, Medicaid reimburses pharmacies as follows:

- the ingredient cost of the drug based on NADAC or a provider's usual and customary charges, whichever is lower; if there is no NADAC, the lowest of the wholesale acquisition cost, the federal upper limit, SAAC, or a provider's usual and customary charges; and

- a professional dispensing fee of $10.49 for brand name and generic drugs or $11.49 for drugs dispensed to nursing home patients.

In HealthChoice, all nine Medicaid MCOs use a PBM. PBM reimbursement amounts are proprietary and confidential. However, narrative in the 2018 *Joint Chairmen's Report* requested that MDH report on various aspects of pharmacy reimbursement. MDH's response summarized MCO PBM costs for a sample of drugs according to a low, high, and average rate across all MCOs.

The report noted that the FFS average ingredient cost per unit was lower than the MCO average ingredient cost per unit for 37 of the drugs analyzed. However, the professional dispensing fees paid by MCOs were much lower than those paid under FFS. Of the drugs sampled, only three had higher MCO dispensing fees than the FFS rate, and the average dispensing fee paid by MCOs across the sample was only $2.63.

State Expenditures: Based on MDH's analysis, Medicaid expenditures increase by an estimated $23.6 million (61% federal funds, 39% general funds) in fiscal 2020, which assumes April 1, 2020 implementation of the emergency bill. This estimate reflects the additional cost for PBMs used by all nine Medicaid MCOs to reimburse for prescription drugs according to the bill's requirements.

On an annual basis, MCOs' estimated total ingredient costs are estimated to *decline* by $12.86 million due to use of NADAC for all generic drugs. However, MCO expenditures for dispensing fees are estimated to *increase* by $107.33 million to pay the current FFS professional dispensing fee of $10.49. This results in a net *annual* increase in Medicaid expenditures of $94.47 million in fiscal 2021.

Future years reflect a 2% annual inflation in the cost of prescription drugs and the federal match remaining at 61%.

Small Business Effect: Small business pharmacies benefit from increased professional dispensing fees for Medicaid MCO enrollees.

Additional Information

Prior Introductions: As introduced, HB 589 of 2019 was substantially similar. The bill was amended and enacted as Chapter 534 of 2019.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

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