

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1006 (Delegate Kipke)
Health and Government Operations

Pharmacy Benefits Managers – Network Adequacy, Credentialing, and Reimbursement

This bill requires a pharmacy benefits manager (PBM) or purchaser to maintain a reasonably adequate and accessible network of contracted pharmacies that provide convenient patient access to pharmacy services. The Insurance Commissioner must establish specified criteria for determining the adequacy of a PBM or purchaser network and may use specified contracts to determine network adequacy. The bill prohibits a PBM or purchaser from requiring a pharmacy or pharmacist, as a condition for participating in the PBM's or purchaser's network, to obtain or maintain specified accreditation, certification, or credentialing. A PBM or purchaser may not directly or indirectly charge a contracted pharmacy, or hold a contracted pharmacy responsible for, a fee or performance-based reimbursement related to the adjudication of a claim or an incentive program that is not specifically enumerated by the PBM or purchaser at the time of claim processing. The bill authorizes a pharmacy or pharmacist to decline to dispense a prescription drug or provide a pharmacy service to a beneficiary if the amount reimbursed by a PBM or purchaser is less than the pharmacy acquisition cost. **The bill takes effect January 1, 2023, and applies to all policies, contracts, and health benefit plans issued, delivered, or renewed on or after that date.**

Fiscal Summary

State Effect: The Maryland Insurance Administration (MIA) can implement the bill with budgeted resources. Likely no impact on the Medicaid program. No impact on the State Employee and Retiree Health and Welfare Benefits Program. Revenues are not affected.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The Commissioner must establish criteria for determining the adequacy of a PBM's or purchaser's network that includes (1) a determination of the purchasers that contract with the PBM and the geographic location in which the purchasers offer coverage for prescription drug benefits; (2) a calculation for determining the reasonable distance from a patient's home to a contracted pharmacy; and (3) a review of compensation programs to ensure that the reimbursement paid to pharmacies and pharmacists for pharmacy services is fair and reasonable. A mail order pharmacy may not be included in a determination of a PBM's or purchaser's network adequacy. The Commissioner may adopt regulations regarding network adequacy.

Current Law: A PBM is a business that administers and manages prescription drug benefit plans. A PBM must register with MIA prior to providing pharmacy benefits management services. The Commissioner is authorized to examine the affairs, transactions, accounts, and records of a registered PBM at the PBM's expense.

At the time of entering into a contract with a pharmacy or a pharmacist, and at least 30 working days before any contract change, a PBM must disclose to the pharmacy or pharmacist (1) the applicable terms, conditions, and reimbursement rates; (2) the process and procedures for verifying pharmacy benefits and beneficiary eligibility; (3) the dispute resolution and audit appeals process; and (4) the process and procedures for verifying the prescription drugs included on the formularies used by the PBM.

For purposes of credentialing a pharmacy or a pharmacist as a condition for participating in a PBM's network for a carrier, the PBM may not require a pharmacy or pharmacist to renew credentialing more frequently than once every three years or charge a pharmacy or pharmacist a fee for the initial credentialing or renewing credentialing.

Each contract form (or amendment to a contract form) between a PBM and a pharmacy may not become effective unless, at least 30 days before the contract form is to become effective, the PBM files an informational filing with the Commissioner that includes a copy of the contract form or amendment. The Commissioner is not required to review the informational filing to evaluate whether a contract form or amendment is in violation of specified requirements at the time the informational filing is made. The Commissioner may review and disapprove a contract form or amendment at any time after the contract form or amendment has been submitted as part of an informational filing.

A PBM or carrier may not directly or indirectly charge a contracted pharmacy, or hold a contracted pharmacy responsible for, a fee or performance-based reimbursement related to the adjudication of a claim or an incentive program.

A PBM or carrier may not make or allow any reduction in payment for pharmacy services by a PBM or carrier or directly or indirectly reduce a payment for a pharmacy service under a reconciliation process to an effective rate of reimbursement, including generic effective rates, brand effective rates, direct and indirect remuneration fees, or any other reduction or aggregate reduction of payments.

Small Business Effect: Small business pharmacies and pharmacists, among other things, may decline to dispense a drug or provide a service at a financial loss and may participate in more PBM networks under the bill.

Additional Comments: The Maryland Department of Health (MDH) advises that provisions of the bill under § 15-1628.3 of the Insurance Article apply to PBMs that contract with Medicaid managed care organizations. In particular, the bill authorizes a pharmacy or pharmacist to decline to dispense a prescription drug or provide a pharmacy service to a beneficiary if the amount reimbursed by the PBM or purchaser is less than the pharmacy acquisition cost. Under federal regulations, as a condition of participating as a Medicaid provider, a pharmacy or pharmacist must accept as payment in full the amount paid by MDH. A provider may only deny services on account of an individual's inability to pay any cost-sharing amount. As Maryland waives copayment amounts if a Medicaid enrollee cannot pay, pharmacies and pharmacists that participate in Medicaid cannot refuse to dispense a prescription.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Budget and Management; Maryland Department of Health; Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

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