



DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

February 29, 2024

The Honorable Joseline A. Peña-Melnyk
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis, MD 21401-1991

RE: House Bill 880 – Pharmacy Benefits Administration – Maryland Medical Assistance Program and Pharmacy Benefits Managers - Letter of Opposition

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (Department) respectfully submits this letter of opposition for House Bill (HB) 880 – Pharmacy Benefits Administration – Maryland Medical Assistance Program and Pharmacy Benefits Managers. HB 880 requires the Maryland Medical Assistance Program (Medicaid) and Managed Care Organizations (MCOs) that use a Pharmacy Benefits Manager (PBM) to follow certain guidelines. This legislation applies to all pharmacies except (1) those that are owned by, or under the same corporate affiliation, as a PBM, or (2) mail order pharmacies.

HB 880 will require Medicaid to set the minimum reimbursement rate for drug products with a generic equivalent to be equal to the National Average Drug Acquisition Cost (NADAC) of the generic product plus the Department's Fee-for-Service (FFS) professional dispensing fee. This bill also creates a reimbursement requirement for brand name drug products. If a prescriber requires a specific brand name drug, the reimbursement level must be based on the NADAC amount of the product plus the FFS dispensing fee.

If enacted, HB 880 will reverse the General Assembly's prior policy direction¹ to have MCOs administer the Medicaid pharmacy benefit to ensure access to prescription drugs for Marylanders and to manage skyrocketing drug costs. Following regulatory changes in 2016 under the Affordable Care Act, Maryland Medicaid's FFS began reimbursing for drugs using actual acquisition costs (AAC). Maryland FFS's pharmacy reimbursement utilizes NADAC as a benchmark for determining AAC. Through this approach, the Medicaid reimbursement rate is the NADAC rate or the provider's Usual and Customary charges, whichever is lower. If enacted, the Department estimates that HB 880 will cost \$79.9 million in total funds (\$39.9 million federal funds, \$39.9 million State general funds) in fiscal year 2025 alone.² These funds are unbudgeted

¹ HB 1290 (2015); report available at:

<https://mmcp.health.maryland.gov/Documents/JCRs/MCOPharmacynetworksJCRfinal12-15.pdf>

² <https://health.maryland.gov/mmcp/Documents/JCRs/2023/MCOPharmacyclaimsJCRfinal10-23.pdf>

and the five-year cost of this bill will be approximately \$415.7 million (\$217.8 million federal funds, \$217.8 million state general funds).³

The Department further notes that there have not been substantial reductions to Medicaid's pharmacy network. According to a report provided by the Board of Pharmacy, in calendar year (CY) 2021, 20 pharmacies opened and enrolled in Maryland Medicaid. In contrast, nine pharmacies closed during this time. In CY 2022, 20 pharmacies opened and enrolled in Medicaid and six closed.⁴ Medicaid notes that none of these closures were in rural areas. Maryland Medicaid has seen growth in pharmacy enrollment outweigh any closures. Additionally, the federal government has established access standards. The HealthChoice program has met these requirements.

Finally, the Department notes that dispensing fees paid for by MCOs align with those paid by commercial payers. Historically, commercial dispensing fees are less than \$1 per pharmacy claim.⁵ In CY 2021, the average commercial dispensing fee was less than \$2 per claim.⁶ In CY 2021, the average dispensing fee paid for by MCOs was \$0.67 and \$0.59 in CY 2022.

Additionally, HB 880 exempts pharmacies owned, or under the same corporate affiliation, as a PBM and mail order pharmacies from the bill's requirements, which may invite litigation.

If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs at sarah.case-herron@maryland.gov or (410) 260-3190.

Sincerely,



Laura Herrera Scott, M.D., M.P.H.
Secretary

³ Based on an effective date of April 1, 2024, as this bill is an emergency measure, the impact for the remaining three months of State Fiscal Year 2024 would be \$19.6 million. FY25: \$79.9 million; FY26 will be \$81.5 million; FY27 \$83.1 million; FY28 \$84.8 million; FY29 \$86.6 million.

⁴ This data does not include pharmacies that were pre-existing and either opened or closed during CY 2021 and CY 2022 due to new ownership or the issuance of a new Board of Pharmacy license.

⁵<http://www.insidepatientcare.com/issues/2016/march-2016-vol-4-no-3/404-cms-introduces-professional-dispensing-fees-for-pharmacies>

⁶<https://www.pcmantet.org/mandating-pharmacy-reimbursement-increase-spending/#:~:text=The%20average%20dispensing%20fee%20in,the%20state's%20Medicaid%20FFS%20rate>