

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1270 (Delegate Guzzone, *et al.*)
Health and Government Operations

Health Benefit Plans - Prescription Drugs - Rebates and Calculation of Cost
Sharing Requirements

This bill requires a carrier, and a pharmacy benefits manager (PBM) that provides services on behalf of a carrier, to base the calculation of an enrollee’s contribution toward cost sharing for a prescription drug on the list price of the drug reduced by at least 85% of the reasonable estimated total amount of rebates to be received by the carrier or PBM. The contribution must be calculated at the point of sale. A carrier (or an agent or third party) may not make public information about the actual rebates it receives, as specified. In addition to any other enforcement action, the Insurance Commissioner may impose a civil penalty of up to \$10,000 for each violation of these requirements. The bill also alters the definitions of “pharmacy benefits manager” and “pharmacy benefits management services.” **The bill takes effect January 1, 2025, and applies to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after that date.**

Fiscal Summary

State Effect: Special fund revenues increase for the Maryland Insurance Administration (MIA) beginning in FY 2025, likely by a minimal amount, from additional PBM registrations, as discussed below. Additional minimal increase in MIA special fund revenues in FY 2025 only from the \$125 rate and form filing fee. Any additional MIA workload is assumed to be absorbable. Any civil penalty revenues are anticipated to be minimal. No impact on the State Employee and Retiree Health and Welfare Benefits Program.

Local Effect: To the extent the bill’s requirements increase the cost of health insurance, expenditures for local governments that purchase fully insured medical plans may increase. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

For purposes of the bill's cost sharing provisions, "carrier" means an entity subject to the jurisdiction of the Commissioner that contracts, or offers to contract, provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan in the State.

For § 15-1601 of the Insurance Article (including alterations to the definitions of "pharmacy benefits manager" and "pharmacy benefits management services" under the bill), "carrier" means, except as otherwise provided, the State Employee and Retiree Health and Welfare Benefits Program, an insurer, a nonprofit health service plan, or a health maintenance organization that provides prescription drug coverage or benefits in the State and enters into an agreement with a PBM for the provision of pharmacy benefits management services.

"Cost sharing" means any copayment, coinsurance, deductible, or other similar charge required of an enrollee for a health care service covered by a health benefit plan, including a prescription drug, and paid by, or on behalf of, the enrollee.

"Health benefit plan" means a policy, contract, certification, or agreement offered or issued by an administrator or a carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. A health benefit plan does not include a local government health plan or the State Employee and Retiree Health and Welfare Benefits Program.

"Health care service" means an item or service provided to an individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

"Rebate" means a negotiated price concession provided to a carrier or PBM by a manufacturer, a dispensing pharmacy, or another party to the dispensing or administration of a prescription drug. "Rebate" includes (1) a price protection rebate that may accrue directly or indirectly to the carrier (or other party on behalf of the carrier), if the wholesale acquisition cost of a drug increases above a specified threshold; (2) a performance-based price concession that may accrue directly or indirectly to the carrier (or other party on behalf of the carrier, including a PBM) during the coverage year; and (3) any other negotiated price concessions, fees, or other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the carrier (or other party on behalf of

the carrier, including a PBM) and reduce the carrier's reimbursement for a prescription drug.

Cost Sharing Requirements – Carriers

When calculating an enrollee's contribution to an applicable cost sharing requirement for a prescription drug, a carrier must base the enrollee's contribution on the drug's list price reduced by at least 85% of the reasonable estimated total amount of rebates received (or expected to be received) by the carrier for the dispensing or administration of the drug. A carrier may reduce a prescription drug's list price by more than 85% of the reasonable estimated total amount of rebates received (or expected to be received) for the dispensing or administration of the drug.

A carrier may not publish or otherwise make public information on the actual amount of rebates a carrier receives (1) on a prescription drug or therapeutic class of prescription drugs; (2) from a manufacturer; or (3) under a contract with a specific pharmacy. Such information is proprietary information and not subject to disclosure under the Public Information Act (PIA). A carrier must require an agent or a third party that performs health care-related or administrative services on behalf of the carrier to comply with this nondisclosure requirement.

Pharmacy Benefits Managers and Pharmacy Benefits Management Services

The bill expands the definition of "pharmacy benefits manager" to mean (1) a person that, in accordance with a written agreement with a purchaser, either directly or indirectly, provides one or more pharmacy benefits management services or (2) an agent or other proxy or representative, contractor, intermediary, affiliate, subsidiary, or related entity of a person that facilitates, provides, directs, or oversees the provision of pharmacy benefits management services.

The bill alters the definition of "pharmacy benefits management services" to include the negotiation of the price of prescription drugs, including the negotiating and contracting for direct and indirect rebates, discounts, or other price concessions (rather than the procurement of prescription drugs at a negotiated rate for dispensation within the State to beneficiaries). The definition is also expanded to include (1) drug utilization review or adjudication of appeals or grievances related to a prescription drug benefit provided with regard to the administration of prescription drug coverage; (2) the performance of administrative, managerial, clinical, pricing, financial, reimbursement, data administration or reporting, or billing services; and (3) other services defined by the Commissioner in regulation.

Cost Sharing Requirements – Pharmacy Benefits Managers

When calculating an enrollee's contribution to an applicable cost sharing requirement for a prescription drug, a PBM that provides pharmacy benefit management services on behalf of a carrier must base the enrollee's contribution on the drug's list price reduced by at least 85% of the reasonable estimated total amount of rebates received (or expected to be received) by the carrier or PBM for the dispensing or administration of the drug. A carrier or PBM may reduce a prescription drug's list price by more than 85% of the reasonable estimated total amount of rebates received (or expected to be received) for the dispensing or administration of the drug.

A carrier may not publish or otherwise make public information on the actual amount of rebates a carrier receives (1) on a prescription drug or therapeutic class of prescription drugs; (2) from a manufacturer; or (3) under a contract with a specific pharmacy. Such information is proprietary information and not subject to disclosure under the PIA.

Current Law:

Pharmacy Benefits Managers

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. An applicant for registration must (1) file an application on the form that MIA provides and (2) pay a registration fee set by the Commissioner. The current registration fee is \$5,000.

A PBM that provides pharmacy benefits management services on behalf of a carrier may not require that a beneficiary use a specific pharmacy or entity to fill a prescription if the PBM (or a corporate affiliate) has an ownership interest in the pharmacy or entity or vice versa. A PBM may require a beneficiary to use a specific pharmacy or entity for a specialty drug.

A PBM that provides pharmacy benefits management services on behalf of a carrier may not reimburse a pharmacy or pharmacist for a pharmaceutical product or pharmacist service in an amount less than the PBM reimburses itself or an affiliate for providing the same product or service. This prohibition does not apply to reimbursement for specialty drugs, mail order drugs, or to a chain pharmacy with more than 15 stores or a pharmacist who is an employee of the chain pharmacy.

State Revenues: According to MIA, at the end of calendar 2022, there were 56 PBMs in Maryland. Each PBM must pay an initial registration fee and a renewal fee every two years thereafter. The initial and renewal fee is \$5,000.

Under the bill, special fund revenues for MIA increase by an indeterminate but likely minimal amount beginning in fiscal 2025 due to additional entities having to register as PBMs. The Department of Legislative Services advises that the magnitude of the revenue increase cannot be estimated at this time, as it is contingent on the number of new entities that are required to register as PBMs. *For illustrative purposes only*, if 10 additional entities apply to register with MIA as PBMs, special fund revenues increase by \$50,000 in fiscal 2025, and by \$50,000 in fiscal 2027 (and every two years thereafter).

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

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rh/jc

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