

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 726

(Delegate Kipke, *et al.*)

Health and Government Operations

Finance

Pharmacy Benefits Managers - Definition of Purchaser and Alteration of
Application of Law

This bill alters the definition of “purchaser” to include an insurer, nonprofit health service plan, or health maintenance organization (HMO), with one exception, for purposes of State law governing pharmacy benefits managers (PBMs). The bill generally applies provisions of law governing PBMs to all entities providing prescription drug coverage or benefits in the State, including programs subject to the federal Employee Retirement Income Security Act of 1974 (ERISA). **The bill takes effect January 1, 2025.**

Fiscal Summary

State Effect: The Maryland Insurance Administration can handle any additional workload under the bill, including increased complaint volume, using existing resources. Potential minimal increase in general fund expenditures for the Maryland Department of Health (MDH), as discussed below. No impact on the State Employee and Retiree Health and Welfare Benefits Program. Revenues are not affected.

Local Effect: To the extent that the bill increases the cost of PBM contracts, health care expenditures for local governments may increase. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law: Chapter 358 of 2021 defined “carrier” and altered the definition of “purchaser,” including repealing the exclusion of plans subject to ERISA, for purposes of State law governing PBMs. The Act (1) applied specified provisions governing

PBMs to self-funded ERISA plans; (2) altered the applicability of certain PBM requirements to apply to a carrier (rather than a purchaser); (3) specified that certain provisions apply only to a PBM that provides pharmacy benefits management services on behalf of a carrier; and (4) altered requirements regarding review and approval of certain contract forms and filings by the Insurance Commissioner.

Under current law, “purchaser” means a person that offers a plan or program in the State, including the State Employee and Retiree Health and Welfare Benefits Program, that (1) provides prescription drug coverage or benefits in the State and (2) enters into an agreement with a PBM for the provision of pharmacy benefits management services.

Under the bill, “purchaser” is expanded to include all carriers, with the exception of a nonprofit HMO that operates as a group model, provides services solely to members or patients, and furnishes services through internal pharmacy operations.

Under Chapter 358, certain provisions of law governing PBMs apply only to PBMs that provide pharmacy benefits management services on behalf of a carrier. The bill makes the following provisions of the Insurance Article apply to all PBMs:

- information on and sales of prescription drugs (§ 15-1611);
- choice of pharmacy by a beneficiary (§ 15-1611.1);
- reimbursement for a pharmaceutical product or pharmacist service (§ 15-1612);
- requirements before entering into a contract (§ 15-1623);
- rebate sharing contract requirements (§ 15-1624);
- audits by PBMs (§ 15-1629); and
- internal review process requirements (§ 15-1630).

State Expenditures: MDH advises that the bill may impact negotiated rates for certain medications purchased by the Prevention and Health Promotion Administration’s Children’s Medical Services Program. The program helps low-income, uninsured and underinsured Marylanders aged birth to 21 get specialty care for a chronic illness or disability by paying for needed services, including medications. Any overall impact on program expenditures is anticipated to be minimal.

Small Business Effect: Small business pharmacies benefit from having State law protections in additional areas of the self-funded market and increased uniformity in the regulatory framework for PBMs.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 357 and SB 898 of 2023 and HB 1014 and SB 690 of 2022.

Designated Cross File: SB 626 (Senator Ready, *et al.*) - Finance.

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

Fiscal Note History: First Reader - February 27, 2024
rh/jc Third Reader - March 22, 2024
Revised - Amendment(s) - March 22, 2024

Analysis by: Ralph W. Kettell

Direct Inquiries to:
(410) 946-5510
(301) 970-5510