

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

House Bill 1351 (Delegate Barve, et al.)
Economic Matters

Commercial Law - Trade Regulation - Fairness in Drug Pricing Practices

This bill requires manufacturers of drugs to sell drugs to all purchasers on the same terms and conditions (including price reductions), regardless of the class of trade of the purchaser. Units of State or local government are prohibited from purchasing any drugs from a manufacturer that engages in price discrimination forbidden by this bill, including transactions which go through wholesalers. Any manufacturer who violates provisions of this bill will have all its drugs declared ineligible under the Medical Assistance Program.

The Attorney General must bring an action in the circuit court of any county in which a violation occurred to restrain violations of this bill. The courts may assess a civil penalty of between \$1,000 and \$50,000 for each violation, to be paid to the general fund of the State. A purchaser injured by a violation of this bill may bring a civil action for damages or an injunction or both against any manufacturer who has violated provisions of this bill.

Fiscal Summary

State Effect: Revenues could increase by an indeterminate amount as a result of the bill's monetary penalty provisions. General fund expenditures could increase by an indeterminate but significant amount, assuming that the State receives greater discounts under current drug pricing arrangements than it would receive under pricing arrangements resulting from the bill.

Local Effect: Expenditures could increase by an indeterminate amount. Revenues would not be affected.

Fiscal Analysis

State Revenues: General fund revenues could increase under the bill's monetary penalty provision for those cases heard in the circuit courts, depending upon the number of fines imposed.

State Expenditures: General fund expenditures could increase by an indeterminate but significant amount, assuming that the State currently receives more extensive pharmaceutical discounts than other purchasers. If purchasers who do not currently receive price discounts are able to receive discounts under the bill's pricing requirements, State expenditures could increase. This assumes that manufacturers, if required to extend discounts to a greater number of purchasers, will reduce discounts to purchasers currently receiving the most favorable prices. If purchasers who do not currently receive price discounts are not able to receive discounts under the bill's requirements, however, State expenditures would not be affected. The following discussion describes current State pharmaceuticals procurement arrangements.

Mental Hygiene Administration/Developmental Disabilities Administration

The Department of General Services (DGS) has a central contract with a wholesaler for purchase of pharmaceuticals for State psychiatric hospitals and State residential centers (developmental disability facilities). In addition, the State contracts directly with manufacturers for many of the more commonly used drugs. The State receives discounts for these drugs from manufacturers based on volume and its status as a governmental entity. The State purchases \$2.6 million in pharmaceuticals annually for its psychiatric hospitals and State residential centers.

Expenditures could increase by up to an estimated \$390,000 in fiscal 1997 as a result of the bill's requirements, assuming that (1) the State receives current discounts in the neighborhood of 15%; and (2) the bill results in decreased discounts from manufacturers. The \$390,000 estimate is a worst-case scenario which assumes that State discounts would fall to zero.

The Mental Hygiene Administration purchases Clozaril, a drug that has been used to successfully treat schizophrenia, separately from the DGS contracts. Since the fiscal 1995 cost was \$1 million and the State received a 20% discount from the manufacturer, expenditures could increase by up to an estimated \$200,000 if the bill's requirements result in loss of the discount. The \$200,000 estimate is a worst-case scenario which assumes that State discounts would fall to zero.

Department of Public Safety and Correctional Services, Division of Correction

The inmate medical contract is with a private vendor selected through a competitive bidding process. The vendor does not just buy pharmaceuticals for inmates, but provides pharmacy services to State correctional facilities. The annual cost of the contract is \$37.8 million and is based on a capitated rate for each inmate. Due to the capitation, it is not possible to readily determine whether drug rebates or discounts are applicable and whether the bill's requirements would result in increased or decreased expenditures for the inmate medical contract. The department plans to analyze whether it would benefit from purchasing its pharmaceuticals directly from the manufacturer.

Medicaid/State Employee Health Benefit Plan

The Medicaid program and the State employee health benefit plan participate in drug rebate programs. Drug manufacturers have agreed to provide rebates on most prescription drug purchases. The Medicaid program currently is receiving 15% to 25% in drug rebates. The health maintenance organizations (HMOs), preferred provider organizations, and point-of-service plans contracting with the State employee health benefit plan currently receive a 10% discount. Rebate collections in fiscal 1993 totaled \$18.3 million for the Medicaid program and \$869,000 for the State employee health benefit plan.

Expenditures could increase by up to an estimated \$19.2 million as a result of the bill's requirements, assuming that the bill results in decreased rebates from manufacturers. The \$19.2 million estimate is a worst-case scenario which assumes that State rebates would fall to zero. It is not clear, however, what impact the bill would have on reducing Medicaid rebates, since federal law requires manufacturers to offer rebates on their prescription drugs to State Medicaid agencies as a condition for participation in the Medicaid program. To the extent that Medicaid expenditures increase, however, there is a possibility that they must be supported entirely with general funds, since Congress is considering legislation that may cap the amount of funds that states receive under Medicaid.

Local Expenditures: Expenditures for drugs by local health departments, local employee health benefit plans, and local detention facilities could increase by an indeterminate amount, depending on the extent of discounts currently in effect.

Information Source(s): Department of Health and Mental Hygiene (Medical Care Programs Administration, Developmental Disabilities Administration, Mental Hygiene Administration); Department of Public Safety and Correctional Services; Department of Budget and Fiscal Planning; Insurance Administration; *Legislative Auditor's report of the State of Maryland Medical Assistance and Employee/Retiree Prescription Drug Programs*, Department of Fiscal Services (January 3, 1995); *Medicaid Prescription Drug Program*, National State Auditors Association, Joint Performance Audit (June 1995).

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