

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE

House Bill 761 (Delegate Goldwater)
 Economic Matters

Pharmacy Benefit Management Regulation Act

This bill permits the State to directly regulate a pharmacy benefit manager (PBM). It requires a PBM that intends to operate in the State to obtain a certificate of authority from the State Board of Pharmacy and a license from the Insurance Commissioner.

Fiscal Summary

State Effect: Board of Pharmacy special fund expenditures could increase by \$183,500 in FY 2003. Maryland Insurance Administration (MIA) special fund expenditures could increase by \$299,900 in FY 2003. Board of Pharmacy special fund revenues increase by \$483,000 in FY 2003. MIA special fund revenues increase by \$15,000 in FY 2003. Potential expenditure increase for the State Employee Health Benefits Plan. Future year estimates reflect annualization, inflation, and assume the number of PBMs remains constant. No effect on Medicaid.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
SF Revenue	\$498,000	\$552,000	\$576,000	\$603,000	\$630,000
SF Expenditure	483,400	537,100	561,700	587,800	615,700
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	\$14,600	\$14,900	\$14,300	\$15,200	\$14,300

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Expenditures for local jurisdiction employee health benefits could increase if PBMs or carriers raise their premiums as a result of the bill's requirements.

Small Business Effect: Minimal. Expenditures for small business employee health benefits could increase if PBMs or carriers raise their premiums as a result of the bill's requirements.

Analysis

Bill Summary: The Board of Pharmacy may suspend or revoke a PBM's certificate of authority if the PBM engages in specified activities that may cause harm to enrollees. A PBM must file all contracts with a pharmacy or pharmacist with the Board of Pharmacy, and the board may approve or disapprove the contract based on criteria that reflects the board's responsibility in protecting the public interest. The board must develop formal investigation and compliance procedures for complaints by plan sponsors, pharmacists, or enrollees. The bill authorizes the board to hold hearings to investigate any violations by the PBM.

A PBM must pay a nonrefundable \$500 licensure application fee with the Insurance Commissioner. Licensure fees will be held in a special fund, used to provide for the expenses of the regulation of PBMs. The Insurance Commissioner may issue a license to a PBM if the PBM is solvent, meets minimum capital and surplus requirements, files a financial statement and any reports, certificates, or other documents that the Commissioner deems necessary to secure a full and accurate knowledge of the PBM's affairs and financial condition, and otherwise complies with the law. The Insurance Commissioner may refuse to renew a license or place restrictions on the renewal, if the Commissioner finds that: (1) there is an impairment of required capital and surplus; or (2) the PBM fails to satisfy the bill's requirements.

The expense of administering the bill's provisions, including the costs incurred by the Insurance Commissioner and the Board of Pharmacy, will be assessed annually by the board against all PBMs that operate in the State. The assessment must be in proportion to the business done by each PBM in the State. The board must transfer funds as necessary to the Insurance Commissioner to cover all expenses incurred by the Commissioner for the regulation of PBMs.

If a PBM becomes insolvent, the Insurance Commissioner, after notice and hearing, may levy an assessment on all PBMs licensed to do business in the State. The assessments must be paid quarterly to the Commissioner, who will place the funds into an escrow account. The escrow account must be solely for the benefit of enrollees of the insolvent PBM.

A PBM must provide information to its enrollees, including: (1) a list of all affiliated providers; (2) a description of the service area within which the PBM provides pharmacist services; (3) a description of the PBM's complaint resolution process; (4) notice that the PBM is regulated by the State; and (5) a prominent notice that provides the contact information for the board. A PBM enrollee has the right to privacy and confidentiality in pharmacy services. An enrollee may waive this right in writing.

Current Law: Chapter 323 of 2000 established regulation of HMO downstream risk arrangements. PBMs that conduct utilization review are required to be registered with the MIA as an administrative service provider.

Background: The first PBM, Pharmaceutical Card System (PCS), was created in 1969. From 1969 until the late 1980s, PBMs simply administered prescription claims payments. In the late 1980s, PBMs began providing on-line claims adjudication.

However, since the mid-1990s, PBMs have become involved in utilization review, formulary development, disease management programs, and a number of other practices that many perceive as practicing medicine, practicing pharmacy, or engaging in the business of insurance. They have done this without traditional state regulation imposed on pharmacists, doctors, and insurers in order to protect patients. Some PBM practices of concern are failing to return negotiated discounts to the consumers, failing to make prompt payment for claims, designing formularies based on manufacturer rebates and not clinical effectiveness, restricting consumer access to only participating pharmacies, and requiring mail order prescriptions.

There are approximately 40 PBMs in the U.S., and various studies indicate that up to 90% of HMOs use PBMs to administer their prescription drug benefits. PBMs manage an estimated 71% of the total volume of prescription drugs dispensed through retail pharmacies that are covered by private third-party payors.

State Expenditures:

Board of Pharmacy: Board of Pharmacy special fund expenditures could increase by an estimated \$183,464 in fiscal 2003, which reflects the bill's October 1, 2002 effective date. This estimate reflects the cost of 3.3 new positions (one clinical pharmacist, one office clerk, one office secretary, and one part-time staff attorney) to investigate complaints against PBMs, develop cases for State prosecution, process application forms and PBM contracts with individual pharmacies and pharmacists, and provide legal counsel during hearings and other board proceedings involving PBMs. It also includes a one-time cost of \$40,000 to hire a consultant to help develop the certificate of authority process and PBM oversight. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$107,717
One-time Consultant Fee	40,000
Operating Expenses	<u>35,747</u>
Total FY 2003 Board of Pharmacy Expenditures	\$183,464

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Maryland Insurance Administration: Maryland Insurance Administration (MIA) special fund expenditures could increase by an estimated \$299,949 in fiscal 2003, which reflects the bill's October 1, 2002 effective date. This estimate reflects the cost of seven new positions (one company licensing analyst, two financial analysts, three examiners, and one supervisor) to establish minimum capital and surplus requirements for PBMs, process and renew licensure applications, review and analyze annual statements filed by PBMs, conduct financial examinations of PBMs, and act as a guaranty fund in the event of a PBM insolvency. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$277,742
Equipment	21,000
Operating Expenses	<u>1,207</u>
Total FY 2003 MIA Expenditures	\$299,949

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

State Employee Health Benefits Plan: The State contracts with Advance PCS to administer its prescription drug benefit. To the extent Advance PCS's administrative costs increase and are passed on to the State, expenditures for employee health coverage could increase. Any increase is assumed to be negligible. State plan expenditures assume a fund mix of 60% general funds, 20% federal funds, and 20% special funds; 20% of expenditures are reimbursable through employee contributions.

State Revenues: Board of Pharmacy special fund revenues could increase by an estimated \$483,000 in fiscal 2003 from the annual assessment levied on PBMs. This estimate assumes:

- 30 PBMs will apply for licensure and a certificate of authority in the State;
- the annual assessment closely matches ongoing operating expenses associated with PBM regulation; and
- the average assessment against each PBM is \$16,100 in fiscal 2003 and increases each fiscal year to cover costs associated with regulating the industry.

It is assumed the funds collected from the annual assessments will be used by both the board and MIA to carry out the bill's requirements. The annual assessment against any particular PBM will vary based on the amount of business the PBM conducts in Maryland; however, there are insufficient data at this time to reliably estimate the range of assessments on PBMs based on the amount of business they conduct in the State.

MIA special fund revenues could increase by an estimated \$15,000 in fiscal 2003. This estimate assumes 30 PBMs apply annually for licensure at \$500 per license.

Future year estimates reflect annualization, inflation, and assume the number of PBMs applying for licensure remains constant.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): National Association of Chain Drug Stores; Texas Medical Association; Aventis Pharmaceuticals; Pharmacy Benefit Management Institute, Inc.; Maryland Insurance Administration; Department of Health and Mental Hygiene (Board of Pharmacy, Maryland Health Care Commission, Medicaid); Department of Legislative Services

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