HB 1186

Department of Legislative Services

Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 1186 (Delegate R. Baker, *et al.*)
Economic Matters

Fair Market Drug Pricing Act

If Section 1 of Chapters 134 and 135 of 2001 takes effect, this bill expands the Maryland Pharmacy Discount Program (MPDP) to cover individuals whose annual household income is at or below 300% of the federal poverty level (FPL) guidelines. If Section 1 of Chapters 134 and 135 of 2001 does not take effect, the bill permits the Department of Health and Mental Hygiene (DHMH) to negotiate with drug manufacturers to obtain prescription drug discounts or rebates.

The bill takes effect October 1, 2002.

Fiscal Summary

State Effect: If the MPDP is expanded, DHMH expenditures could increase by an estimated $16.5 million (50% general funds, 50% federal funds) in FY 2003. If DHMH implements a program to negotiate supplemental rebates, DHMH nonbudgeted revenues could increase by $9.4 million, and DHMH general fund expenditures could increase by $386,800 in FY 2003. Future year estimates reflect annualization and inflation.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill changes the subsidy DHMH must provide to enrollees whose annual household income is at or below 175% of FPL, from 35% of the drug price paid

by Medicaid to a subsidy that is equal to the aggregate value of any federally mandated manufacturers' rebates plus 15% of the Medicaid price. The bill also increases the processing fee pharmacies are allowed to charge MPDP enrollees from $1 to $2 for each prescription filled.

In addition, DHMH may negotiate discount prices, rebates, or supplemental rebates from drug manufacturers for prescription drugs purchased by any program within the Medicaid program or for any other State programs that pay for or acquire prescription drugs. If DHMH and a drug manufacturer fail to reach an agreement on rebates or discounts, DHMH must review whether to place a manufacturer's drugs on a prior authorization list for the Medicaid program or take similar actions for other State programs' formularies.

DHMH must implement procedures to ensure that: (1) DHMH responds to a prescriber's request by telephone or other telecommunication device within 24 hours of a request for prior authorization; and (2) a 72-hour supply of a prescribed drug will be provided in an emergency situation. DHMH must establish an appeals process for an authorized prescriber to appeal DHMH's prior authorization decision and receive a response within 24 hours.

DHMH must release the names of drug manufacturers that do not enter into rebate agreements and distribute this information to physicians, pharmacists, and other health care providers.

The bill also repeals Section 2 of Chapters 134 and 135 of 2001. This section is a fall-back provision in the event Centers for Medicare and Medicaid Services (CMS) does not approve the State's waiver amendment for the MPDP. In the event of a denial, MPDP enrollment is limited to Medicare enrollees with incomes at or below 250% of FPL, and it must provide a 25% subsidy on the price paid for each prescription drug under the program to each Medicare-eligible enrollee with an annual household income at or below 175% of FPL.

DHMH must report to the General Assembly by January 1, 2004 on the amount of negotiated supplemental rebates and the effect on prescription drug expenditures in the MPDP.

Current Law: Chapters 134 and 135 of 2001 established the MPDP, which covers Medicare enrollees without other public or private prescription drug coverage. The MPDP will not be implemented until DHMH receives a determination from CMS on its waiver amendment application seeking matching federal funds for the program. When implemented, enrollees can purchase medically necessary prescription drugs from any pharmacy that participates in the Medicaid program at a price that is equivalent to the

price reimbursed by Medicaid, including the benefit of any federally mandated manufacturers' rebates.

Section 1 of Chapters 134 and 135 takes effect on the date CMS *approves* the State's waiver amendment, and DHMH must provide a 35% subsidy on the price paid for each prescription drug under the program to each enrollee with an annual household income at or below 175% of FPL guidelines (see **Exhibit 1**).

Section 2 of Chapters 134 and 135 takes effect on the date CMS *denies* the State's waiver amendment. Under Section 2, enrollment is limited to Medicare enrollees with incomes at or below 250% of FPL, and it must provide a 25% subsidy on the price paid for each prescription drug under the program to each Medicare-eligible enrollee with an annual household income at or below 175% of FPL.

Exhibit 1
2002 Federal Poverty Level (FPL) Guidelines*

Number of Family Members	**Annual Income at 175% FPL**	**Annual Income at 300% FPL**
Family of 1	$15,505	$26,580
Family of 2	$20,895	$35,820
Family of 3	$26,285	$45,060
Family of 4	$31,675	$54,300
Family of 5	$37,065	$63,540

**Federal Register,* Vol. 67, No. 31, February 14, 2002, pp. 6931-6933.

Background: DHMH has submitted to CMS an amendment to the State's existing demonstration waiver to obtain matching federal funds for the MPDP. To date, CMS has not issued a determination and the MPDP has not been implemented.

State Fiscal Effect: The bill provides that if Section 1 of Chapters 134 and 135 of 2001 takes effect, then: (1) the MPDP will be expanded to include individuals with incomes at or below 300% of FPL; and (2) DHMH does not have authority to negotiate discount prices, rebates, or supplemental rebates from drug manufacturers for prescription drugs purchased by Medicaid or other State programs that pay for prescription drugs. If Section 1 of Chapters 134 and 135 of 2001 does not take effect, then the MPDP will not be expanded and DHMH will be permitted to negotiate supplemental rebates. Fiscal estimates for both contingencies are provided.

Enactment of Section 1 of Chapters 134 and 135 of 2001: DHMH expenditures could increase by an estimated $16,582,500 (50% general funds, 50% federal funds) in fiscal

2003. This estimate assumes a start-up date of July 1, 2002, and reflects the following facts and assumptions:

- 300,000 individuals earn at or below 300% of FPL;
- half of those eligible will enroll;
- an enrollee's average annual out-of-pocket prescription drug expenditure is $737;
- a 15% prescription drug cost subsidy will apply; and
- DHMH establishes a mechanism to recoup all administrative costs associated with the MPDP expansion.

Future year expenditures reflect 15% prescription drug inflation and assume that enrollment remains constant.

Nullification of Section 1 of Chapters 134 and 135 of 2001: DHMH nonbudgeted revenues could increase by approximately $9,411,600 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate assumes:

- Medicaid prescription drug expenditures are $313,720,000 in fiscal 2003;
- Maryland Pharmacy Assistance Program (MPAP) prescription drug expenditures are $78,430,000 in fiscal 2003;
- new rebates average 4% of Medicaid and MPAP drug expenditures (or $15,686,000); and
- DHMH must refund half of rebates received under the Medicaid program, or $6,274,400, to the federal government.

Under federal law, DHMH must pay 50% of rebate revenues received in the Medicaid program back to the federal government. Future year revenue estimates reflect 15% annual prescription drug cost inflation.

DHMH general fund expenditures could increase by an estimated $386,819 in fiscal 2003, which reflects the bill's October 1, 2002 effective date. It includes the cost of contracting to negotiate higher rebates, and hiring one pharmacist, one administrative clerk, and one supervisor to staff a pharmaceutical and therapeutics (P&T) committee

necessary to carry out the bill's requirements. It includes salaries, fringe benefits, one-time start-up costs, and ongoing expenses.

Salaries and Fringe Benefits	$118,149
Contract to Negotiate Rebates	250,000
Operating Expenses	18,670
Total FY 2003 DHMH Administrative Expenditures	**$386,819**

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.

Small Business Effect: There are approximately 1,300 pharmacies in Maryland, 230 of which are small businesses. Under the MPDP, small business pharmacies that participate in Medicaid may be required to sell prescription drugs to MPDP enrollees at a loss. The bill's requirements would require these pharmacies to sell prescription drugs at the Medicaid payment rate, less any rebates. In general, Medicaid's payments to pharmacies are about 90% of the pharmacies' usual and customary charges. If pharmacies incur substantial losses, they may discontinue participation in the Medicaid program.

In order to lessen any adverse impact on pharmacies, this bill increases a processing fee that participating pharmacies may charge to enrollees from $1 to $2 per prescription. Approximately 102,500 Medicare beneficiaries and 150,000 individuals whose incomes are 300% of FPL or less are expected to participate in the MPDP. If each enrollee fills an average of 12 prescriptions annually, Maryland pharmacies could recoup as much as $3 million in fiscal 2003.

Additional Information

Prior Introductions: HB 6 (Chapters 134 and 135) was passed in 2001, creating the Maryland Pharmacy Discount Program as well as several other prescription drug coverage options.

Cross File: SB 550 (Senator Van Hollen, *et al.*) - Finance.

Information Source(s): Department of Health and Mental Hygiene (Medicaid), Department of Legislative Services

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