

**Department of Legislative Services**  
Maryland General Assembly  
2003 Session

**FISCAL AND POLICY NOTE**

House Bill 410 (Delegates Goldwater and Bromwell)  
Health and Government Operations

Finance

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**Health Insurance - Private Review Agents - Examination of Pharmacy Benefit Managers**

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This bill requires the Insurance Commissioner to conduct an examination of any pharmacy benefit manager (PBM) registered as a private review agent to determine whether the PBM is acting in compliance with State law governing private review agents. The exam must be conducted at least once every three years and in accordance with conduct of examination provisions. The PBM must pay the expenses incurred in the exam. The Insurance Commissioner must submit a copy of the final report of the examination to the Senate Finance Committee and the House Health and Government Operations Committee within 30 days of the completion of the final report.

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**Fiscal Summary**

**State Effect:** Currently, only one PBM is registered as a private review agent. Therefore, the Maryland Insurance Administration (MIA) could handle examination requirements with existing budgeted resources. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** The Insurance Commissioner has regulatory oversight over private review agents (PRAs). A PRA is a person or entity that performs utilization review for a health insurer, nonprofit health service plan, health maintenance organization (HMO), or other third party that pays for, provides, or administers health care services to individuals in the State.

Chapter 323 of 2000 established regulation of HMO downstream risk arrangements. A PBM that conducts utilization review is required to be registered with 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 online 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.

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### **Additional Information**

**Prior Introductions:** A related bill, HB 761, was introduced in 2002 and would have required State licensure and regulation of PBMs. The bill was reported unfavorably by the House Economic Matters Committee.

**Cross File:** None.

**Information Source(s):** Maryland Insurance Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - February 27, 2003  
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