

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 397 (Delegate Goldwater, *et al.*)

Health and Government Operations

Finance

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Task Force to Study Pharmacy Benefits Management

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This bill creates a Task Force to Study Pharmacy Benefits Management.

The bill takes effect June 1, 2004.

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Fiscal Summary

**State Effect:** Any expense reimbursements for the task force members and staffing costs for the Department of Health and Mental Hygiene (DHMH) are assumed to be minimal and absorbable within existing budgeted resources.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** DHMH must staff the task force. A member of the task force may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations.

The task force must study regulation of pharmacy benefits managers (PBMs), including: (1) the entities included under the definition of PBMs; (2) a State registration or certification process; (3) the fiduciary relationship between a PBM and a covered entity; (4) any provisions of the Insurance Article, including provisions regulating private review agents, that could potentially conflict with PBM regulation; (5) the financial and utilization information a PBM should be required to provide to a covered entity and the

proprietary nature of that information; (6) the ability of a PBM to substitute another prescription drug for the one prescribed; (7) whether a PBM should be required to transfer to a covered entity any benefit or payment received by the PBM as a result of a prescription drug substitution; (8) whether a PBM should be required to disclose to a covered entity the business relationship and financial terms and arrangements for remuneration that apply between the PBM and a prescription drug manufacturer, mail order pharmacy, or labeler; (9) whether a PBM should be required to allow into its pharmacy network any retail pharmacy that agrees to match the prices offered by a mail order pharmacy; and (10) the fiscal impact on the State of PBM regulation. The task force must recommend draft legislation as a result of its study.

The task force must report its findings and recommended legislation to the Senate Finance Committee and the House Health and Government Operations Committee by December 1, 2004.

**Current Law:** None applicable.

**Background:**

*PBM Industry:* The first PBM, Pharmaceutical Card System 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. 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 rather than clinical effectiveness, restricting consumer access to only participating pharmacies, and requiring mail order prescriptions.

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**Additional Information**

**Prior Introductions:** A similar bill, HB 761, was introduced in 2002. It received an unfavorable report from the House Economic Matters Committee.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene (Medicaid, Boards and Commissions), Maryland Insurance Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - February 16, 2004  
mh/jr Revised - House Third Reader - March 23, 2004

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