

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 580 (Delegate Oaks, *et al.*)

Health and Government Operations

Finance

Pharmacy Benefits Managers - Pharmacy and Therapeutics Committees

This bill establishes requirements for a pharmacy and therapeutics committee of a pharmacy benefits manager. A PBM is prohibited from requiring a pharmacy to participate on its P&T committee.

The bill authorizes the Insurance Commissioner to adopt regulations to implement the bill.

Fiscal Summary

State Effect: Potential minimal increase in special fund expenditures for the Maryland Insurance Administration beginning in FY 2009 to ensure compliance with the bill. No effect on revenues.

Local Effect: None.

Small Business Effect: Minimal to none.

Analysis

Bill Summary: The bill does not apply to any service provided by a nonprofit HMO that operates as a group model provided that the service is provided solely to members and furnished through the internal pharmacy operations of the nonprofit HMO. The bill does not apply to Medicaid managed care organizations.

A P&T committee established by a PBM must include clinical specialists that represent the needs of a purchaser's beneficiaries and at least one practicing pharmacist and one practicing physician who are independent of any developer or manufacturer of prescription drugs.

Members of a P&T committee must sign a conflict of interest statement updated at least annually. A majority of members must be practicing physicians or pharmacists.

A PBM must ensure that a P&T committee has • policies and procedures to address conflicts of interest; • processes to evaluate medical and scientific evidence concerning the safety and efficacy of prescription drugs and when recommending utilization review requirements, dose restrictions, and step therapy requirements; and • a process to enable the P&T committee to consider the need to recommend a formulary change to a purchaser at least annually.

The Insurance Commissioner may consider a P&T committee of a PBM as having met these requirements if the PBM has obtained accreditation from an accrediting organization approved by the Commissioner.

On request of a purchaser for which the P&T committee makes recommendations, a PBM must disclose information about the composition of its P&T committee to the purchaser.

Current Law: Chapter 323 of 2000 provides for the regulation of HMO downstream risk arrangements. PBMs that conduct utilization review are required to be registered with MIA as a private review agent.

Background: PBMs are businesses that administer and manage prescription drug benefit plans for a variety of organizations. More than 100 PBMs operate in the U.S., but the industry is dominated by three – CVS Caremark; Express Scripts; and Medco. Approximately 95% of all patients with prescription drug coverage receive benefits through a PBM. PBMs manage an estimated 70% of prescription drugs dispensed through retail pharmacies that are covered by private third-party payors.

PBMs earn most of their revenues in three ways: • receiving a fee for administrative tasks; • negotiating discounts and rebates from drug manufacturers by including a company's drugs on a preferred drug list and obtaining a greater market share for the company's drug; and • operating mail-order prescription drug companies.

Regulation of PBMs in Other States: Concerns have been raised by consumer organizations and several states regarding the business practices of PBMs. Specifically,

demands for greater transparency in financial relationships between PBMs and drug manufacturers have prompted states to propose regulation of PBM activities.

Since 2003, 36 states and the District of Columbia have introduced legislation to regulate PBMs including transparency and financial disclosure requirements and licensure and certification requirements. Kansas requires registration of PBMs with the state insurance department. North Dakota requires licensure and financial disclosure. Maine, South Dakota, Vermont, and the District of Columbia require disclosure of financial relationships. California passed legislation requiring registration of PBMs and financial disclosure in 2005, but the bill was vetoed by the Governor.

State Expenditures: MIA special fund expenditures could increase beginning in fiscal 2009 to ensure that PBMs are in compliance with the bill's requirements and, to the extent that complaints about PBMs increase, for the Consumer Complaints and Investigation, Life and Health Unit to investigate. The amount of any increase cannot be reliably estimated at this time but is expected to be minimal.

Additional Information

Prior Introductions: A majority of the bill's provisions, in addition to other regulatory requirements relating to PBMs, were included in SB 677/HB 734 of 2007. No action was taken on either bill by the Senate Finance or House Health and Government Operations committees.

Cross File: SB 720 (Senators Klausmeier and Della) – Finance.

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

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