SB 722

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 722 (Senator Klausmeier, *et al.*)
Finance Health and Government Operations

Pharmacy Benefits Managers - Registration

This bill requires a pharmacy benefits manager to register with the Maryland Insurance Commissioner before providing pharmacy benefits management services in the State to a "purchaser."

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues beginning in FY 2009 due to the bill's civil penalty provision. Minimal increase in special fund revenues and expenditures for the Maryland Insurance Administration beginning in FY 2009 to register PBMs. Minimal increase in special fund revenues and expenditures for the Board of Pharmacy beginning in FY 2009 to issue permits to nonresident pharmacies.

Local Effect: None.

Small Business Effect: Minimal to none.

Analysis

Bill Summary: Purchaser means the State Employee and Retiree Health and Welfare Benefits Program, an insurer, a nonprofit health service plan, or an HMO that provides prescription drug coverage or benefits and enters into an agreement with a PBM.

Registration: An applicant for registration as a PBM must submit an application and pay a registration fee, and the Insurance Commissioner must register each applicant that meets specified requirements. The registration is effective for two years any may be renewed for an additional two years under specified circumstances. A purchaser may not enter into an agreement with an unregistered PBM.

The bill specifies prohibited acts, such as violating the bill's provisions and any applicable regulations. Subject to hearing provisions, the Insurance Commissioner may deny, suspend, revoke, or refuse to renew a registration under specified circumstances. If the Insurance Commissioner determines that a PBM has violated any provision of the bill or any applicable regulation, the Insurance Commissioner may issue an order that requires the PBM to • cease and desist; • take specific affirmative corrective action; or • make restitution of money, property, or other assets. An order of the Insurance Commissioner may be served on registered and unregistered PBMs in a specified manner. The Insurance Commissioner is also authorized to file a petition in the circuit court to enforce an order under the bill. If the Commissioner prevails, reasonable attorney's fees and costs of the action may be recovered on behalf of the State.

When considered advisable, the Insurance Commissioner may examine the affairs, transactions, accounts, and records of a registered PBM at the expense of the PBM. A PBM must maintain adequate books and records in a specified manner.

A PBM that is operating in the State on the effective date of the bill may continue to operate as a PBM if the PBM registers with the Insurance Commissioner by July 1, 2009 and complies with all other applicable provisions of the bill.

Nonresident Pharmacies: A PBM may not ship, mail, or deliver drugs or devices to a person in the State through a nonresident pharmacy unless the nonresident pharmacy holds a pharmacy permit from the Board of Pharmacy.

Penalties: The Insurance Commissioner may assess a civil penalty of up to $10,000 against any person that violates the registration requirements.

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 Revenues: General fund revenues could increase minimally beginning in fiscal 2009 under the bill's monetary civil penalty provision.

MIA special fund revenues could increase beginning in fiscal 2009 from PBM registration fees. As the numbers of PBMs that will register in Maryland and the registration fee have not been determined, the amount of this increase cannot be reliably estimated at this time.

Board of Pharmacy special fund revenues could increase beginning in fiscal 2009 to issue pharmacy permits to nonresident pharmacies that ship, mail, or deliver prescription drugs or devices to individuals in Maryland. The board estimates that no less than 10 permits would be issued in fiscal 2009 at a fee of $300, with an annual renewal fee of $250 per permit.

State Expenditures: MIA special fund expenditures could increase beginning in fiscal 2009 to handle the administrative costs associated with registering PBMs. The amount of this increase cannot be reliably estimated at this time but is expected to be minimal.

Board of Pharmacy special fund expenditures could increase beginning in fiscal 2009 to cover the additional administration costs associated with issuing pharmacy permits. The board indicates that no additional personnel would be required to handle these duties at this time.

Additional Information

Prior Introductions: Similar 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: HB 419 (Delegate Elliott, *et al.*) – Health and Government Operations.

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

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