

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 724

(Senators Klausmeier and Della)

Finance

Health and Government Operations

Pharmacy Benefits Managers - Disclosures

This bill establishes what a pharmacy benefits manager must disclose to a “purchaser” both before and after entering into a contract for pharmacy benefits management services.

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.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Disclosure Requirements and Parameters: Before entering into a contract with a purchaser, a PBM must inform a purchaser that the PBM may • solicit and receive manufacturer payments; • pass through or retain the manufacturer payments; • sell aggregate utilization information; and • share aggregate utilization information. A PBM must offer to provide the purchaser a report containing specified information about net revenues and manufacturer payments.

If a purchaser has a rebate sharing contract, a PBM must offer to provide the purchaser a report for each fiscal quarter and each fiscal year that contains specified information

regarding net revenues, prescription drug expenditures, manufacturer payments, and rebates. A PBM must provide the specified information contained in the report if requested by the purchaser.

A PBM may require a purchaser to sign a nondisclosure agreement before providing specified information.

The bill does not apply to a PBM when providing pharmacy benefits management services to a purchaser that is affiliated with the PBM through common ownership within an insurance holding company, nor diminish the authority of the Office of the Attorney General or the Insurance Commissioner to obtain information relating to a PBM and use the information in any proceeding.

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. The amount of any increase cannot be reliably estimated at this time but is expected to be minimal.

Additional Information

Prior Introductions: Identical 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 120 (Delegate Bromwell, *et al.*) – Health and Government Operations.

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

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