SB 726

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 726 (Senator Klausmeier, *et al.*)
Finance

Pharmacy Benefits Managers - Choice of Pharmacy

This bill requires that each health insurance policy or contract issued or delivered in the State that provides benefits for pharmaceutical products and each pharmacy benefits manager that provides services under such policies or contracts must allow an insured or certificate holder a choice of pharmacy or pharmacist within any network established by the policy, contract, or PBM.

The bill authorizes the Maryland Insurance Commissioner to assess specified penalties for violations of the bill and requires the Insurance Commissioner to adopt regulations to implement the bill on or before April 1, 2009.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues beginning in FY 2009 due to the bill's monetary civil penalty provision. Minimal increase in special fund revenues and expenditures for the Board of Pharmacy beginning in FY 2009 to issue permits to nonresident PBMs. 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: Minimal to none.

Analysis

Bill Summary: The bill does not apply to Medicaid managed care organizations.

Choice of Pharmacy: A PBM must allow a beneficiary to obtain covered pharmacy services from the pharmacy provider of choice within the PBM's network. If a retail or institutional pharmacy meets the same terms and conditions as a mail-order pharmacy, a PBM must allow a retail or institutional pharmacy to fill orders and may not require a beneficiary to use a mail-order service. A PBM is prohibited from ● using any financial disincentives, penalties, or other means to influence, coerce, or steer beneficiaries away from retail or institutional pharmacies; or ● limiting the quantity of drugs that a beneficiary can obtain at any one time unless the limitation is applied uniformly to all providers in the PBM's network.

Nonresident Pharmacy: A PBM located within or outside the State that is regulated under the Insurance Article is considered a nonresident pharmacy if it ships, mails, or delivers drugs or devices to a person in the State pursuant to a prescription. Thus, such PBMs must comply with existing law requiring nonresident pharmacies must obtain a pharmacy permit from the Board of Pharmacy. Each PBM employee or contractor must be licensed to practice pharmacy if the employee or contractor practices pharmacy for or on behalf of the nonresident pharmacy.

Penalties: The Insurance Commissioner may asses a civil penalty of up to $10,000 against a person who violates a provision of the bill. In addition to or instead of this civil penalty, the Insurance Commissioner may require a PBM to make restitution to any person who has suffered financial injury because of a violation of the bill.

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.

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

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 MIA's Market Conduct 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: 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 243 (Delegate Benson, *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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