HB 1429

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1429 (Delegate James)
Health and Government Operations

Maryland Medical Assistance Program - Pharmacy Dispensing Fees

This bill requires the Department of Health and Mental Hygiene, within 45 days of implementing specified federal limits on pharmacy reimbursement, and every two years thereafter, to set pharmacy dispensing fees for generic (multiple source) drugs under the Medicaid program.

Fiscal Summary

State Effect: Medicaid expenditures (50% general funds, 50% federal funds) could increase by $1.5 million in FY 2009 to increase Medicaid dispensing fees for generic drugs. Medicaid expenditures could increase by $11.2 million in FY 2010 to provide an additional rate increase and conduct a survey. A second survey is also expected to be conducted in FY 2012. Future years reflect utilization growth. No effect on revenues.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	$0	$0	$0	$0	$0
GF Expenditure	750,000	5,670,500	7,269,800	7,684,000	7,808,600
FF Expenditure	750,000	5,520,500	7,269,800	7,534,000	7,808,600
Net Effect	($1,500,000)	($11,191,000)	($14,539,600)	($15,218,000)	($15,617,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Small business pharmacies could receive higher dispensing fees under the bill.

Analysis

Bill Summary: Dispensing fees must be • fair, transparent, reasonable, and provide a reasonable profit; • adequate to ensure that Medicaid enrollees have comparable access to prescription drugs and pharmacy services as non-Medicaid individuals; • consistent with efficiency, economy, and quality of care; and • in combination with other specified savings, revenue and cost-neutral for the State in the first 12 months in which the fee is implemented.

Initial fees must reflect the findings of the 2006 Cost of Dispensing Survey, adjusted by the annual inflation in the health care cost inflation rate. In setting subsequent fees, DHMH must utilize information derived from • data regarding professional salaries and fees; • surveys of "operational costs;" and • analyses regarding overhead costs, profits, and related information.

For dispensing fees for multiple source drugs, DHMH may create additional incentives to encourage the utilization of lower-cost multiple source prescription drugs and to cover other specified costs associated with dispensing prescription drugs under Medicaid.

Current Law: Medicaid dispensing fees are $4.69 for generic drugs dispensed in institutional facilities and $3.69 for generic drugs dispensed in retail settings.

Background: Historically, federal rules have limited the amount state Medicaid programs may reimburse pharmacies for generic drugs. Using a federal upper limit (FUL) for each affected drug, state Medicaid programs are encouraged to be prudent buyers and pay close to market levels. Until 2007, the FUL was 150% of the published price for the least costly therapeutic equivalent using all available national price compendia. The Deficit Reduction Act of 2005 required that, beginning January 1, 2007, the FUL be based on 250% of the lowest average manufacturer price. This change was estimated to reduce Medicaid expenditures nationally by $8.4 billion over five years. While states would benefit from cost savings, pharmacies would receive significant cuts in Medicaid reimbursement for generic drugs.

The National Association of Chain Drug Stores filed an injunction against the Centers for Medicare and Medicaid Services to stop the FUL changes. The case is pending legal review. Until a ruling is issued, CMS has put the FUL changes on hold.

The 2006 *Joint Chairmen's Report* required DHMH to study and report on the cost to pharmacies of dispensing prescription drugs to Medicaid patients. A review of dispensing fees from other states indicated that Maryland's dispensing fee appears to be consistent with other states. Other state Medicaid retail pharmacy fees vary from a low of $1.75 in New Hampshire to a high of $7.25 in California. DHMH also contracted with

the University of Maryland School of Pharmacy to conduct a cost of dispensing study. This study found that the cost of dispensing a prescription in Maryland ranges from more than $7.00 to as much as $12.00, depending on ownership type, volume of prescriptions, and the percentage of prescriptions paid for by Medicaid. The average dispensing cost per prescription was $11.71, with a median cost of $10.67 for calendar 2005. The cost of dispensing decreases as the volume of prescriptions filled increases, while the cost of dispensing increases with the proportion of Medicaid business. Increased for inflation, the median cost to dispense a prescription is estimated to be $14.08 in calendar 2009.

State Expenditures: Medicaid expenditures (50% general funds, 50% federal funds) could increase by $1.5 million in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. The bill requires that the increase in generic dispensing fees be revenue and cost-neutral to the State, in combination with the savings to the State from the FUL changes, for the first 12 months of implementation. DHMH indicates that, assuming implementation of the FUL changes, Medicaid could save $2.0 million in total funds in fiscal 2009. The estimate assumes that FUL changes will be implemented by October 1, 2008 and reflects the cost to increase generic dispensing fees for nursing home and retail pharmacies by $1.515, the maximum increase possible with $2.0 million in anticipated savings for a full year. To the extent actual savings are greater, dispensing fees could be increased by a greater amount and meet the revenue and cost-neutral intent of the bill. To the extent cost savings are less than anticipated, Medicaid would incur additional costs or would have to provide a lesser dispensing fee increase.

In contrast to the revenue and cost-neutral provision, the bill also requires that DHMH set dispensing fees in an amount that reflects the findings of 2006 Cost of Dispensing Study, increased by inflation. Based on this requirement, Legislative Services assumes that, beginning in October 2009, once the revenue-neutral provision "expired," DHMH could increase dispensing fees to $14.08 (the median cost of dispensing included in the report, increased by inflation). Medicaid expenditures could increase by $11.0 million in fiscal 2010 to increase dispensing fees by this amount with one-quarter of the fiscal year paid at an additional $1.515 and the balance of the year paid at $14.08. Absent the revenue and cost-neutral provision, Medicaid expenditures would increase by $10.2 million in fiscal 2009 and $14.0 million in fiscal 2010 to increase dispensing fees.

As the bill requires DHMH to set dispensing fees every two years, DHMH would also incur an estimated $150,000 in expenses in fiscal 2010 and 2012 to conduct a survey on the cost of dispensing prescriptions in the State to inform any dispensing fee increase for fiscal 2011 and 2013. Legislative Services assumes these expenses would be funded with general funds.

Future years reflect 4% annual utilization growth in the number of generic dispensing fees paid by Medicaid. No additional increase in dispensing fees is assumed beyond

fiscal 2010 as the amount of any potential increase cannot be reliably estimated at this time. To the extent additional increases are provided, Medicaid expenditures could increase by an additional and potentially significant amount beginning in fiscal 2011.

Additional Comments: Although the FUL changes are currently on hold pending legal action, DHMH assumed $2.0 million in total savings attributable to the changes in the fiscal 2009 Medicaid budget allowance. As these savings have not been budgeted, they cannot be used to fund a dispensing fee increase.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): *Analysis of Cost of Prescription Drug Dispensing in Maryland,* University of Maryland School of Pharmacy, December 2006; Department of Health and Mental Hygiene; Department of Legislative Services

Fiscal Note History: First Reader - March 14, 2008
mcp/ljm

Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510