

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

Senate Bill 782

(Senator Pugh)

Finance

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**Health Insurance - Pharmacy Benefits Managers - Specialty Drugs**

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This bill requires the State Board of Pharmacy to determine and prepare a list of prescription drugs that may be considered specialty drugs by a pharmacy benefits manager (PBM). Every six months, the board must publish the list of specialty drugs in the *Maryland Register*. A PBM may only designate drugs from the list as specialty drugs on a formulary. A PBM is prohibited from requiring a specialty drug to be dispensed by mail order and must instead allow any licensed pharmacy or pharmacist to fill a prescription for a specialty drug if they meet specified requirements.

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**Fiscal Summary**

**State Effect:** Potential increase in expenditures for the State Employee and Retiree Health Insurance Plan (State plan) beginning in FY 2013 to the extent that the bill interferes with cost containment measures. The State Board of Pharmacy can prepare the required list using existing budgeted resources. No impact on State revenues.

**Local Effect:** Potential minimal impact on prescription drug spending for employee health insurance.

**Small Business Effect:** Potential minimal impact on prescription drug spending for employee health insurance. Potential increase in revenues for small business pharmacies that may be able to provide additional specialty prescription drugs under the bill.

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**Analysis**

**Bill Summary:** “Specialty drug” means a prescription drug that requires special handling, special administration, unique inventory management, a high level of patient

monitoring, or more intense patient support than conventional therapies. To dispense a specialty drug, a licensed pharmacy or pharmacist must (1) have a contract with a PBM; (2) have the drug in inventory or have ready access to the drug; and (3) be capable of complying with any special handling, special administration, inventory management, patient monitoring, or patient support requirements for the drug.

**Current Law:** PBMs are businesses that administer and manage prescription drug benefit plans for purchasers. PBMs must register with the Maryland Insurance Administration (MIA) prior to providing pharmacy benefits management services. The Insurance Commissioner is authorized to examine the affairs, transactions, accounts, and records of a registered PBM at the PBM's expense. PBMs are prohibited from shipping, mailing, or delivering prescription drugs or devices to a person in the State through a nonresident pharmacy unless the nonresident pharmacy holds a nonresident pharmacy permit from the State Board of Pharmacy.

A nonprofit health service plan that provides pharmaceutical services must allow a subscriber, member, or beneficiary to fill prescriptions at the pharmacy of the subscriber's, member's, or beneficiary's choice. A health insurance policy or contract may not impose a copayment, deductible, or other condition on an insured that uses the services of a community pharmacy that is not imposed when the insured uses the services of a mail order pharmacy, if the benefits are provided under the same program, policy, or contract.

**Background:** Anecdotal evidence indicates that some PBMs place certain drugs that are otherwise obtainable from a retail pharmacy on a specialty drug formulary and require patients to obtain these drugs through a PBM-designated specialty pharmacy rather than a local retail pharmacy.

Most prescription drug coverage includes a three-tiered copayment arrangement under which enrollees pay a specific dollar amount for each prescription in a given tier of drugs (*i.e.*, generic, preferred brand-name, and nonpreferred brand-name). Recently, some insurance companies have begun offering drug plans with coinsurance under which a member pays a percentage of the drug cost rather than a fixed-dollar copayment. Other carriers have implemented a "fourth tier" for specialty drugs, which generally includes prescription medicines used to treat complex, chronic conditions. Nationally, as many as 10% of commercial health insurance plans have "fourth tiers" for specialty drugs.

Drug trend, as measured by Medco (one of the largest PBMs) is the percent change in plan pharmaceutical spending from year to year. In its 2011 *Drug Trend Report*, Medco notes that 2010 spending on specialty drugs accounted for 16.3% of plan costs but was responsible for 70.1% of drug trend. While trend for nonspecialty medications grew slowly at 1.1%, specialty trend grew at 17.4%. Top contributors to specialty drug trend

were therapies for rheumatoid arthritis and other autoimmune conditions, multiple sclerosis, and cancer.

**State Fiscal Effect:** According to the Department of Budget and Management (DBM), the State plan implemented a specialty drug management program in fiscal 2010. The program seeks to reduce plan costs from waste and failed treatment compliance for drugs used to treat rheumatoid arthritis, multiple sclerosis, blood disorders, cancer, hepatitis C, and osteoporosis. The program limits are intended to help to curtail the expense of having costly medications thrown away when not taken. DBM indicates that the program saves the State approximately \$2.6 million annually. DBM reports that, if the State Board of Pharmacy does not approve such drugs for the specialty drug formulary, savings for the State plan could be reduced for this effort and for future cost containment measures. DBM notes that specialty drugs can cost from \$1,000 to over \$20,000 per 30-day supply.

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### **Additional Information**

**Prior Introductions:** Similar legislation, SB 698/HB 1144 of 2011, would have required a PBM to obtain approval from the State Board of Pharmacy prior to designating a specialty drug on a formulary. SB 698 was heard by the Senate Finance Committee, but no further action was taken on the bill. HB 1144 received an unfavorable report from the House Health and Government Operations Committee.

**Cross File:** HB 689 (Delegate Costa) - Health and Government Operations.

**Information Source(s):** *Medco 2011 Drug Trend Report*, Department of Budget and Management, Maryland Insurance Administration, Secretary of State's Office, Department of Health and Mental Hygiene, Department of Legislative Services

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