Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 736 (Delegate Kipke)
Health and Government Operations

Health Insurance - Pharmacy Benefits Managers - Specialty Drugs

This bill requires the State Board of Pharmacy, in consultation with the University of Maryland School of Pharmacy, to specify the prescription drugs that may be considered specialty drugs by a pharmacy benefits manager (PBM). Every six months, the board must publish a list of specialty drugs in the *Maryland Register*. 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 the pharmacy or pharmacist meets specified requirements. A PBM must reimburse a retail pharmacy for a specialty drug on a formulary of the PBM and dispensed by the retail pharmacy at the current preferred brand tier reimbursement rate specified in the contract between the PBM and the retail pharmacy.

Fiscal Summary

State Effect: Potential increase in expenditures for the State Employee and Retiree Health and Welfare Benefits Program (the State plan) beginning in FY 2014 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.

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. In specifying the prescription drugs that may be considered specialty drugs, the board must take into account whether:

- the prescription drug is used to treat a patient with a complex, chronic, or rare medical condition that is progressive, can be debilitating or fatal if left untreated or undertreated, or for which there is no known cure;
- the prescription drug is not generally stocked at community retail pharmacies;
- the prescription drug has special handling, storage, inventory, or distribution requirements; or
- patients receiving the prescription drug require complex education and treatment maintenance.

A PBM must allow any pharmacy or pharmacist in the State to fill a prescription for a specialty drug if the pharmacy or pharmacist (1) has a contract with the PBM; (2) has the specialty drug in inventory or has ready access to it; and (3) is capable of complying with any special handling, administration, inventory management, patient monitoring, or patient support required for the specialty drug.

Current Law: PBMs are businesses that administer and manage prescription drug benefit plans for purchasers. PBMs must register with the Maryland Insurance Administration 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: A report from Pharmaceutical Strategies Group (a benefits consultant) observed that some PBMs change their contracting to deny filling of specialty drugs unless they are filled through their own specialty pharmacy fee schedule. Thus, instead of a rate of average wholesale price (AWP) minus 22% at mail for a drug, the payer has to pay AWP minus 15%. This provides increased revenue for the PBM. Another negative impact observed was PBMs creating extensive specialty drug lists that require those drugs to be filled only by their own specialty 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.

In its 2012 *Drug Trend Report*, Medco (one of the largest PBMs) notes that 2011 spending on specialty drugs accounted for 17.6% of plan costs. By 2014, specialty medications are anticipated to account for more than 25% of total per-member per-year pharmacy spending. Although specialty medication utilization is low at the population level, with only about 1% of members requiring these medications, costs are high, averaging $1,767 per prescription. In 2011, four specialty classes (inflammatory conditions, multiple sclerosis, cancer, and HIV) accounted for nearly 70% of spending for specialty drugs.

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 more than $20,000 per 30-day supply.

Additional Information

Prior Introductions: Similar legislation, SB 782/HB 689 of 2012, was heard by the Senate Finance and House Health and Government Operations committees, respectively. Both bills were later withdrawn.

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: SB 928 (Senator Pugh) - Rules.

Information Source(s): Medco 2012 *Drug Trend Report*, Pharmaceutical Strategies Group, Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Insurance Administration, University System of Maryland, Department of Legislative Services

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