

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1389 (Delegate Jameson)
Health and Government Operations

Workers' Compensation - Reimbursement for Drugs - Fee Schedule and Requirements

This bill requires the Workers' Compensation Commission (WCC) to adopt, in regulation, a pharmaceutical fee schedule.

Fiscal Summary

State Effect: Any increase or decrease in State expenditures (all funds) cannot be reliably estimated at this time but could be significant, as discussed below. Revenues are not affected.

Injured Workers' Insurance Fund (IWIF) Effect: Any increase or decrease in IWIF expenditures cannot be reliably estimated at this time but could be significant, as discussed below. Revenues are not affected.

Local Effect: Any increase or decrease in expenditures for self-insured counties and municipalities cannot be reliably estimated at this time but could be significant, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful. Any increase or decrease in costs for small employers cannot be reliably estimated at this time but could be significant, as discussed below.

Analysis

Bill Summary: The fee schedule adopted by WCC must (1) for brand name prescription drugs, set the reimbursement rate at an amount not to exceed the average wholesale price

established by the original manufacturer plus a dispensing fee; (2) for generic equivalent prescription drugs, set the reimbursement rate at an amount not to exceed the average of all wholesale prices for products that have been approved as therapeutically equivalent plus a dispensing fee; (3) for repackaged drugs, set the reimbursement rate at an amount not to exceed the average wholesale price established by the original manufacturer that is based on the national drug code of the primary underlying active drug used in the repackaging plus a dispensing fee; and (4) for compounded drugs, set the reimbursement rate at an amount not to exceed the average wholesale price of ingredients used to make the compounded drug plus a dispensing fee.

WCC is required to select, and designate in regulation, the nationally recognized pharmaceutical publication that the commission will use to determine the average wholesale price for brand-name and generic-equivalent drugs and – in determining the average wholesale price – must use the most recent issue of the designated publication.

A pharmaceutical bill submitted to an employer (or its insurer) for reimbursement of a repackaged or compounded drug must include the original manufacturer or distributor stock package national drug code for each drug used. If an employer (or its insurer) preauthorized the use of a repackaged or compounded drug that contained a drug that either is not approved for use by the U.S. Food and Drug Administration or does not have an assigned national drug code, the employer (or its insurer) must reimburse the claimant for the drug.

Current Law/Background: WCC is currently authorized to regulate fees and other charges for medical services or treatment (but not for prescription drugs). Each fee or other charge for medical service or treatment is limited to the amount that prevails in the same community for similar treatment of an injured individual with a standard of living that is comparable to that of the covered employee.

Physician dispensing of repackaged pharmaceuticals may increase costs for the workers' compensation system in states where physicians are not bound by state fee schedules and pharmacy cost controls. According to a study by the Workers' Compensation Research Institute released in July 2012, physicians directly dispense 35% of all medications prescribed to injured workers in Maryland, representing 47% of total spending on pharmaceuticals for workers' compensation claims. The report determined that, in Maryland, from 2007 to 2011, prices paid for physician-dispensed prescriptions increased meaningfully while prices paid to pharmacies decreased or changed only slightly. (For example, the average price per pill paid to physicians for Vicodin increased 78%, while the price paid per pill to pharmacies for the same drug fell 8%.)

WCC has previously proposed two sets of regulations that would have established a pharmaceutical fee schedule. (Several states have lowered overall workers'

compensation costs by implementing similar measures.) However, neither set of regulations was approved.

State/IWIF/Local/Small Business Effect: The bill requires WCC to establish pharmaceutical fees not to exceed specified average wholesale prices. However, IWIF advises that, through its pharmacy benefits manager, it currently pays approximately 20% *less than* average wholesale prices for prescription drugs. As the State's workers' compensation insurance third-party administrator, IWIF further advises that approximately 40% of IWIF's medical payments are made on behalf of the State. Thus, if fees established by WCC under the bill exceed the amount currently paid by IWIF, expenditures increase for IWIF and its policyholders as well as for the State. *For illustrative purposes only*, IWIF advises that if fees had been set at the maximum allowable under this bill (essentially the average wholesale price), expenditures for IWIF would have increased by more than \$10.5 million over the five-year period from fiscal 2008 through 2012; the State's share would have been more than \$4.2 million over that same period.

Conversely, if fees are established by WCC at a level below what is currently paid by IWIF, expenditures decrease for IWIF and its policyholders as well as for the State. The amount of the dispensing fee established by WCC under the bill affects IWIF, its policyholders, and the State in a similar manner. (IWIF advises that the dispensing fee it currently pays is \$2.50.)

Small businesses and self-insured counties and municipalities are affected in a similar manner, in that any impact to expenditures for those entities depends on how the fees established by WCC under the bill compare with the fees currently paid by those entities. Small businesses may be more likely to benefit from lower prescription drug costs under the bill, in that their ability to negotiate prescription drug costs is more limited than that of larger employers.

The impact on expenditures depends on the fee schedule adopted in regulations.

Additional Information

Prior Introductions: None.

Cross File: SB 914 (Senator Klausmeier) - Finance.

Information Source(s): Injured Workers' Insurance Fund, Subsequent Injury Fund, National Council on Compensation Insurance, Department of Legislative Services

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