

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 793 (Delegate Kach, *et al.*)
Health and Government Operations

Finance

Pharmacy Benefits Managers - Pharmacy Contracts - Maximum Allowable Cost
Pricing

This bill requires a pharmacy benefits manager (PBM) to include the sources used to determine “maximum allowable cost” (MAC) pricing in each contract with a “contracted pharmacy.” A PBM must update pricing information at least every seven days and provide a means for contracted pharmacies to promptly review pricing updates. A PBM must maintain a procedure to eliminate products from any MAC list. Before placing a prescription drug on a MAC list, a PBM must ensure that the drug meets specified criteria. Each contract between a PBM and a contracted pharmacy must include a process to appeal, investigate, and resolve disputes regarding MAC pricing.

The bill takes effect on January 1, 2015.

Fiscal Summary

State Effect: Prescription drug expenditures for the State Employee and Retiree Health and Welfare Benefits Program (State plan) increase by an unknown amount beginning in FY 2015. Any additional enforcement of the bill can be handled by the Maryland Insurance Administration with existing resources. No effect on revenues.

Local Effect: No effect on revenues. Prescription drug expenditures for local jurisdictions may increase under the bill.

Small Business Effect: Potential meaningful. Small business contracted pharmacies may benefit from the bill. Conversely, small employers may incur higher expenditures for prescription drug coverage.

Analysis

Bill Summary: “Maximum allowable cost” means the maximum amount that a PBM or a purchaser will reimburse a contracted pharmacy for the cost of a multisource generic drug, a medical product, or a device. “Maximum allowable cost list” means a list of multisource generic drugs, medical products, and devices for which a maximum allowable cost has been established by a PBM or a purchaser.

“Contracted pharmacy” means a pharmacy that participates in the network of a PBM through a contract with the PBM or a pharmacy services administration organization or a group purchasing organization.

A process to appeal, investigate, and resolve disputes regarding MAC pricing must reflect the following. An appeal must be (1) filed no later than 21 days after the date of the initial claim and (2) investigated and resolved within 21 days after the date the appeal is filed. A contracted pharmacy must be provided with a telephone number at which the pharmacy may speak to an individual responsible for processing appeals. A PBM must provide a reason for any appeal denial and the national drug code of any drug that may be purchased by the contracted pharmacy at a price at or below the benchmark price determined by the PBM. If an appeal is upheld, a PBM must make the change in the MAC no later than one business day after the date of determination on the appeal and permit the appealing contracting pharmacy to reverse and rebill the claim and any subsequent similar claims.

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.

Background: “MAC” generally refers to a PBM-generated list of prescription drugs that includes the upper limit or maximum amount that a PBM will pay for generic drugs and brand-name drugs that have generic versions available (multisource brands). Each PBM establishes its own MAC list based on varying criteria such as availability of the drug in the marketplace, whether the drug is obtainable from more than one manufacturer, how the product is rated by the U.S. Food and Drug Administration in relation to the innovator drug, and price differences between the brand and generic products.

According to the National Community Pharmacists’ Association, there is a lack of clarity and transparency in how MAC lists are used. Pharmacies are not informed about how

drugs are added or removed from a MAC list or the methodologies used to determine how reimbursement is calculated.

State Expenditures: According to the Department of Budget and Management, to the extent contracted pharmacies appeal MAC pricing and such appeals are upheld, expenditures for the State plan increase. The exact impact on the State plan cannot be reliably estimated at this time.

Additional Comments: Similar legislation, HB 908 of 2013, would have required a PBM to disclose to a purchaser and specify in its contracts with purchasers, pharmacies, or pharmacists, specified information regarding MAC prices for certain prescription drugs and would have required PBMs to establish a process for notifying pharmacies and pharmacists of changes regarding MAC prices, establish a procedure that allows pharmacies and pharmacists to appeal a MAC price, and ensure that prescription drugs meet certain criteria in order to include a MAC price for a prescription drug in a contract with a pharmacy or pharmacist. HB 908 was heard by the House Health and Government Operations Committee but was withdrawn.

Additional Information

Prior Introductions: None.

Cross File: SB 952 (Senator Astle) - Finance.

Information Source(s): National Community Pharmacists' Association, Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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