

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 368  
Economic Matters

(Delegate Jameson, *et al.*)

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**Workers' Compensation - Prescription Drugs - Choice of Pharmacy**

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This bill prohibits an employer or its insurer that is required by the Workers' Compensation Commission (WCC) to provide a prescription drug under the Workers' Compensation Law from requiring an injured employee to fill the prescription at a pharmacy selected by the employer or its insurer.

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**Fiscal Summary**

**State Effect:** State expenditures are not materially affected. As the administrator for State workers' compensation claims, the Chesapeake Employers' Insurance Company (Chesapeake) pays for almost all prescriptions at about 80% of the average wholesale price (AWP) using its pharmacy benefits manager, regardless of whether they are dispensed by a physician. Revenues are not affected.

**Chesapeake Employers' Insurance Company Effect:** Chesapeake expenditures are not materially affected. Chesapeake pays for almost all prescriptions at about 80% AWP using its pharmacy benefits manager, regardless of whether they are dispensed by a physician. Revenues are not affected.

**Local Effect:** Expenditures for self-insured counties and municipalities increase to the extent that the bill results in any injured employees receiving medication through workers' compensation insurance filling their prescriptions at different pharmacies when they otherwise would have chosen a preferred provider benefits program pharmacy. Revenues are not affected.

**Small Business Effect:** Minimal.

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## Analysis

**Current Law/Background:** If an employee covered under workers' compensation insurance has suffered an accidental personal injury, compensable hernia, or occupational disease, the employee is entitled to make a workers' compensation claim with WCC. After receiving a compensation claim, WCC may investigate the claim and must order a hearing if requested to do so by any party to the claim. WCC is required to make or deny an award within 30 days after the mailing of the notice of the filing of a claim or, if a hearing is held, after the hearing is concluded.

In addition to monetary compensation required by the Workers' Compensation Law, WCC may require the employer or its insurer to pay for specified medical care and treatment. This includes (1) medical, surgical, or other attendance or treatment; (2) hospital and nursing services; (3) medicine; (4) crutches and other apparatus; and (5) artificial arms, feet, hands, and legs and other prosthetic appliances. This medical care and treatment must be provided for an appropriate time period, depending on the nature and type of personal injury, compensable hernia, or occupational disease.

WCC reports that, in Maryland, medical providers, including pharmacies, can be selected by a claimant injured worker. However, sometimes a claimant cannot find a medical provider in his or her area who is willing to provide medical treatment because no provider in the area is willing to accept the rules of the Medical Fee Guide. In these circumstances, it is often suggested that parties should consider contacting the employer or its insurer for suggestions for medical providers in the area. Insurers often have data listing participating medical providers in the various regions of the State, based on their payment records. Employers may also prefer an injured worker to have prescription drugs filled by their "preferred provider" benefits program.

This type of program, which may include a list of covered pharmacies, may save the employer money at no additional cost to its workers. For example, Montgomery County reports that it saves as much as \$500,000 in expenditures per year due to employees using its pharmacy benefits management network. Likewise, Chesapeake reports that, between 2008 and 2013, Chesapeake (and its predecessor, the Injured Workers' Insurance Fund or IWIF) paid \$13.4 million for prescription drugs in connection with workers' compensation claims involving State of Maryland employees; almost all of the prescriptions were filled at about 80% AWP due to use of its preferred provider benefits program. *For illustrative purposes only*, if only half of these prescriptions (\$6.7 million) were purchased at 100% AWP, State expenditures over the six-year period would have increased by almost \$1.7 million due to the 25% increase in costs for those drugs. And, if half were purchased at 130% AWP, State expenditures would have increased by almost \$4.2 million.

**Local/Small Business Effect:** To the extent that the bill results in any injured employees receiving medication through workers' compensation insurance filling their prescriptions at different pharmacies when they otherwise would have chosen a preferred provider benefits program pharmacy, expenditures increase. While Chesapeake and the State are able to use a pharmacy benefits manager to pay for prescriptions at about 80% AWP in almost all cases, Chesapeake advises that other insurers may have to pay between 100% AWP and 130% AWP and substantially more than that in cases involving physician dispensing. The number of employees who would choose other pharmacies cannot be reliably estimated at this time; however, the explicit ability for employees to use any pharmacy increases the likelihood that they would do so.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 482 (Senators Klausmeier and Kelley) - Finance.

**Information Source(s):** Department of Budget and Management; Department of Health and Mental Hygiene; Injured Workers' Insurance Fund/Chesapeake Employers' Insurance Company; Maryland Insurance Administration; Subsequent Injury Fund; Workers' Compensation Commission; Dorchester, Garrett, Howard, and Montgomery counties; Department of Legislative Services

**Fiscal Note History:** First Reader - February 2, 2014  
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