

**Department of Legislative Services**  
Maryland General Assembly  
2016 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1242 (Delegates Kipke and Bromwell)  
Health and Government Operations

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**Pharmacy Benefits Managers - Reimbursement and Pharmacy Choice**

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This bill prohibits a pharmacy benefits manager (PBM) from reimbursing a pharmacy or pharmacist in an amount less than the amount that the PBM reimburses itself or an affiliate for the same product or service. A pharmacy or pharmacist may decline to provide a product or service to a patient or PBM if, as a result of maximum allowable cost (MAC), the pharmacy or pharmacist would be paid less than the acquisition cost.

A PBM or health benefit plan may not impose different conditions when an individual or covered entity uses one pharmacy in a provider network over another if the chosen pharmacy accepts the pricing, terms, or conditions of the provider network. A PBM or health benefit plan may not change an individual's pharmacy without first obtaining the express written consent of the individual. If a health benefit plan provides for the reimbursement of a service within the lawful scope of a pharmacist or pharmacy, any person covered under the health benefit plan is entitled to reimbursement for the service regardless of whether it is performed by a pharmacist or pharmacy or another health care practitioner or health care facility.

The Insurance Commissioner must enforce the bill. The Commissioner may render a binding decision in any dispute that arises under the bill or impose penalties for a violation of the bill.

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**Fiscal Summary**

**State Effect:** The Maryland Insurance Administration can enforce the bill using existing budgeted resources. No impact on the State Employee and Retiree Health and Welfare Benefits Program. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** Meaningful for small business pharmacies that contract with PBMs.

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## Analysis

**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.

Before entering into a contract with a purchaser, a PBM must disclose certain information. A PBM must offer to provide a purchaser with any rebate-sharing contracts the PBM has with drug manufacturers. A PBM must also provide certain disclosures prior to entering into a contract with a pharmacy or pharmacist. A PBM must take certain actions prior to placing a drug on a MAC list and must provide pharmacies with a process to appeal, investigate, and resolve disputes regarding MAC pricing.

If the Commissioner determines that a PBM has violated any provision of Title 15, Subtitle 16 of the Insurance Article, the Commissioner may issue an order that requires the PBM to (1) cease and desist; (2) take specific affirmative action to correct the violation; or (3) make restitution of money, property, or other assets to a person that has suffered financial injury from the violation. In addition to any other enforcement action taken, the Commissioner may impose a civil penalty of up to \$10,000 for each violation.

**Background:** According to the National Community Pharmacists Association (NCPA), it is increasingly common under PBM contracts for community pharmacists to have to dispense some drugs at a financial loss, often due to imposition of MAC, which acts as a cap on pharmacy reimbursement. NCPA also advises that some patients are limited from accessing their pharmacy of choice or are financially penalized for having prescriptions filled at a community pharmacy rather than a "preferred pharmacy," and that community pharmacies are rarely offered an opportunity to match or beat the price in order to remain "in the network" with the same access to those patients.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**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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