

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1376 (Delegate Morgan, *et al.*)
Health and Government Operations

Pharmacy Benefits - Processing and Adjudication of Claims - Restrictions on Fees

This bill prohibits a pharmacy benefits manager (PBM) or a purchaser from directly or indirectly charging a contracted pharmacy, or holding a contracted pharmacy responsible for, a fee related to a claim that is not (1) specifically enumerated by the PBM or purchaser at the time of claim processing or (2) reported on the initial remittance advice of an adjudicated claim.

Fiscal Summary

State Effect: The Maryland Insurance Administration (MIA) can likely enforce the bill with existing resources. Revenues are likely not affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: A PBM is a business that administers and manages prescription drug benefit plans for purchasers. A PBM must register with MIA 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. A PBM is 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 maximum allowable cost (MAC) list and must provide pharmacies with a process to appeal, investigate, and resolve disputes regarding MAC pricing.

If the Insurance 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: Louisiana passed legislation in 2016 that prohibits a health insurance carrier or PBM from directly or indirectly charging or holding a pharmacist or pharmacy responsible for any fee related to a claim (1) that is not apparent at the time of claim processing; (2) that is not reported on the remittance advice of an adjudicated claim; (3) after the initial claim is adjudicated; or (4) in order to participate in a specified provider network.

Small Business Effect: Small business pharmacies benefit from additional protections under the bill.

Additional Information

Prior Introductions: HB 1162 of 2017 received a hearing in the House Health and Government Operations Committee and was later withdrawn.

Cross File: SB 1077 (Senator Mathias) - Finance.

Information Source(s): Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2018
mag/ljm

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