

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1150

(Delegate Pendergrass, *et al.*)

Health and Government Operations and
Appropriations

Finance

State Health and Welfare Benefits Program - Maryland Competitive Pharmacy
Benefits Manager Marketplace Act

This bill requires the Department of Budget and Management (DBM) to use a “reverse auction” to select a pharmacy benefits manager (PBM) for the Maryland Rx Program under the State Employee and Retiree Health and Welfare Benefits Program. At least three months before a PBM reverse auction is scheduled to be completed, DBM must procure a technology platform (as well as any associated professional services) to evaluate the qualifications of prospective PBMs, automatically adjudicate prescription drug claims, and collect data on pharmacy reimbursement. DBM may perform annual market checks of PBM services during the term of a PBM contract to ensure continuing competitiveness of prescription drug pricing over the life of the contract. A market check must include an evaluation of the effect of alternative drug-pricing metrics. **The bill takes effect June 1, 2020.**

Fiscal Summary

State Effect: Likely no effect in FY 2020. The bill has an indeterminate net impact on State expenditures beginning as early as FY 2021, as discussed below. Revenues are not affected.

Local Effect: To the extent local plans participate in the reverse auction process, local expenditures for prescription drug costs may decrease. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Reverse auction” means an automated bidding process conducted online that starts with an opening price and allows qualified bidders to counteroffer a lower price for multiple rounds of bidding. “Market check” means a technology-driven evaluation of prescription drug pricing based on benchmarks derived from PBMs’ reverse auction processes conducted in the United States over the immediately preceding 12 months.

Expression of the Intent of the General Assembly

The bill expresses legislative intent to optimize prescription drug savings by the State through (1) adoption of a reverse auction process for the selection of a PBM for the State Employee and Retiree Health and Welfare Benefits Program; (2) electronic review and validation of PBM claims invoices as the foundation for reconciling pharmacy bills; (3) market checks of the incumbent PBM’s prescription drug pricing; and (4) limiting independent pharmacies from unsustainable reimbursement practices while preventing a reduction in employee benefits.

Technology Platform

DBM must consult with the Department of Information Technology and the Department of General Services (DGS) in conducting procurement for the technology platform. DBM may not award a contract for the technology platform to a PBM, a subsidiary or affiliate of a PBM, or a vendor that is managed by or that receives remuneration from a PBM for specified services.

DBM may require the PBM selected to pay the cost of the technology platform (and associated professional services) by assessing a per-prescription fee paid by the PBM directly to the technology platform vendor.

A responsive offeror to provide the technology platform may not subcontract any part of the reverse auction or any required electronic claims review.

DBM must make regular, periodic payment of invoices within the time periods specified in a contract based on the automated adjudication of invoiced claims using the technology platform to validate that claims payments comply with the terms of the contract.

Reverse Auction

In consultation with the selected vendor, and with consideration of recommendations that may be offered by the Maryland Prescription Drug Affordability Board, DBM must specify the terms of a participant bidding agreement that all bidders must accept as a prerequisite

for participation in the reverse auction. Those terms may not be modified except by affirmative approval by DBM.

The following health plans in the State may use the reverse auction process individually or collectively as a joint purchasing group with the State Employee and Retiree Health and Welfare Benefits Program: other State-funded health plans; a self-funded county, municipal, or other local government employee health plan; a public school employee health plan; and a health plan of a public institution of higher education.

A health plan that participates in a reverse auction purchasing group retains full autonomy over determination of the entity's prescription drug formulary and pharmacy benefit designs, but must agree, before participating in the reverse auction, to accept the prescription drug pricing plan that is selected through the reverse auction process.

A PBM that submits a bid or enters into a contract with DBM or another specified health plan must provide DBM and the health plan(s) access to complete pharmacy claims data necessary to conduct the reverse auction and carry out administrative and management duties.

If DBM and DGS determine that the implementation of reverse auctions is not administratively feasible for benefit year 2021 (calendar 2021), DBM may delay implementation to benefit year 2022 (calendar 2022). The Board of Public Works may approve a request from DBM for an exemption from specific State finance and procurement requirements.

Protests and Contract Claims

A prospective bidder or offeror, a bidder, or an offeror may submit a protest and a selected PBM may submit a contract claim for an underpaid claim as provided under Title 15, Subtitle 2 of the State Finance and Procurement Article.

Current Law/Background:

State Employee and Retiree Health and Welfare Benefits Program

The program offers medical, prescription, and dental plans to active and satellite employees and State retirees, as well as flexible spending accounts, term life insurance, and accidental death and dismemberment plans. In fiscal 2019, the program provided prescription coverage to 116,306 employees and retirees. Total projected fiscal 2020 expenditures for the program are just under \$1.6 billion.

Pharmacy Benefits Managers

A PBM is a business that administers and manages prescription drug benefit plans for purchasers. A PBM 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.

State Procurement Law

Section 13-111 of the State Finance and Procurement Article authorizes a procurement contract to be based on auction bids for supplies, but not for services. For an auction bid, after obtaining any approval required by law, the procurement officer must award the procurement contract to the responsible bidder who submits the responsive bid that is the lowest evaluated bid price.

Reverse Auctions

Reverse auctions have been used in public procurement for almost two decades with varying degrees of success. For most buyers using reverse auctions, the main goal is to get the lowest possible price for a good or service in order to drive down procurement costs and achieve savings.

The state of New Jersey recently utilized a reverse auction to award the PBM contract for its public-sector employee health insurance plan. Over the three-year term of the contract, the state is estimated to save more than \$1.0 billion.

State Expenditures: DBM expenditures increase by an indeterminate amount as early as fiscal 2021 to procure the required technology platform (and any associated professional services). To the extent DBM elects to require the PBM selected to pay these costs as permitted under the bill, such costs may be averted. To the extent a reverse auction reduces PBM contract and prescription drug costs relative to the current contract, DBM expenditures for prescription drug coverage for the State Employee and Retiree Health and Welfare Benefits Program are reduced beginning as early as fiscal 2021. Thus, the net impact of the bill on DBM expenditures is indeterminate.

DBM advises that the current contract is set to expire December 31, 2020. Additionally, DBM has two option periods to extend the existing contract, the first of which would run from January 1, 2021, through December 31, 2022. Therefore, the bill's requirements are not likely to be implemented until the next time the current contract is set to expire (pending any extension options).

Additional Comments: DBM notes that it is unclear what discretion the department would have in choosing a PBM outside of the cost projections provided by the reverse auction. DBM may lose the flexibility to choose a PBM based not only on cost, but also on other qualitative criteria such as member services, DBM support, and availability of drug management programs. DBM advises that, through extensive negotiations, the current contract administered by CVS Health has resulted in a net reduction in costs of 12.7%. The current PBM contract, which was competitively bid two years ago, was projected to save more than \$1.0 billion over the life of the contract.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): *Managed Care*; National Association of State Procurement Officials; Department of Information Technology; Maryland Association of Counties; Maryland Municipal League; University System of Maryland; Department of Budget and Management; Department of Legislative Services

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