

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 709 (Delegate Krebs)
 Health and Government Operations

Pharmacy Benefits Managers - Drug Reimbursement - Reporting Requirements

This bill requires each pharmacy benefits manager (PBM), beginning January 1, 2022, to file quarterly reports with the Maryland Insurance Commissioner. Each report must include all drugs on the National Average Drug Acquisition Cost (NADAC) list that were reimbursed by the PBM during the preceding three-month period at an amount less than the NADAC plus a specified dispensing fee. The report must include specified information for each drug listed in the report and be made available to the public by the Insurance Commissioner. The reporting requirement applies to PBMs that contract with Medicaid managed care organizations (MCO) and PBMs that contract with insurance carriers. The bill may not be construed to preempt or conflict with any federal law or regulation.

Fiscal Summary

State Effect: Special fund expenditures for the Maryland Insurance Administration (MIA) increase by \$63,200 in FY 2022 for staff. Future years reflect annualization and elimination of one-time costs. Any impact on the cost of prescription drugs or PBM services under the bill is indeterminate. Application of existing penalties is not anticipated to affect State finances.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	63,200	74,100	76,300	78,900	81,600
Net Effect	(\$63,200)	(\$74,100)	(\$76,300)	(\$78,900)	(\$81,600)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: Minimal.

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.

If the Insurance Commissioner determines a PBM has violated any provision of Title 15, Subtitle 16 of the Insurance Article or a related regulation, the Commissioner may issue an order that requires the PBM to (1) cease and desist; (2) take specific affirmative action to correct the violation; (3) make restitution of money, property, or other assets; or (4) pay a fine. In addition to any other enforcement action taken, the Commissioner may impose a civil penalty of up to \$10,000 for each violation.

Medicaid Pharmacy Reimbursement

Outpatient pharmacy coverage is an optional benefit under Medicaid. Reimbursement for prescription drugs varies between fee-for-service (FFS) Medicaid (which covers about 15% of Medicaid enrollees) and HealthChoice (under which Medicaid MCOs cover about 85% of Medicaid enrollees).

In FFS, Medicaid reimburses pharmacies based on a two-part formula consisting of the ingredient cost of the drug and the professional dispensing fee. Effective April 2017, Maryland adopted the NADAC methodology to calculate the ingredient cost of the drug. This methodology estimates the national average drug invoice price paid by independent and retail chain pharmacies. For any drug not included in NADAC, the State uses its own State actual acquisition cost (SAAC) as a secondary benchmark. Thus, for FFS pharmacy expenditures, Medicaid reimburses pharmacies as follows:

- the ingredient cost of the drug based on NADAC or a provider's usual and customary charges, whichever is lower; if there is no NADAC, the lowest of the wholesale acquisition cost, the federal upper limit, SAAC, or a provider's usual and customary charges; and
- a professional dispensing fee of \$10.49 for brand name and generic drugs or \$11.49 for drugs dispensed to nursing home patients.

In HealthChoice, all nine Medicaid MCOs use a PBM. PBM reimbursement amounts are proprietary and confidential. However, narrative in the 2018 *Joint Chairmen's Report* requested that MDH report on various aspects of pharmacy reimbursement. MDH's [response](#) summarized MCO PBM costs for a sample of drugs according to a low, high, and average rate across all MCOs.

The report noted that the FFS average ingredient cost per unit was lower than the MCO average ingredient cost per unit for 37 of the drugs analyzed. However, the professional dispensing fees paid by MCOs were much lower than those paid under FFS Medicaid. Of the drugs sampled, only 3 had higher MCO dispensing fees than the FFS rate, and the average dispensing fee paid by MCOs across the sample was only \$2.63.

State Expenditures: MIA special fund expenditures increase by \$63,199 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one PBM analyst to receive, review, and make available to the public quarterly reports from PBMs. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$55,743
Other Operating Expenses	<u>7,456</u>
Total FY 2022 State Expenditures	\$63,199

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Additional Comments: MDH advises that the information PBMs are required to release publicly under the bill is considered proprietary. Mandating public disclosure of pricing information will also result in its disclosure to competitors. Such disclosure has the potential to disrupt the competitive nature of the pharmacy marketplace, driving higher costs in the long run.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 614 (Senator Ready) - Finance.

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

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