Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 819 (Delegate Krebs)
Health and Government Operations

Pharmacy Benefits Managers - Prohibited Actions

This bill prohibits a pharmacy benefits manager (PBM) from (1) engaging in "spread pricing"; (2) denying a pharmacy the right to participate in a policy or contract with the PBM if the pharmacy meets specified terms and conditions; (3) taking more than 30 days to review an application to participate in a policy or contract with the PBM; or (4) setting different fees for a beneficiary's copay based on whether a pharmacy or pharmacist is affiliated with an independent or chain pharmacy. A PBM may not base reimbursement to a pharmacy or pharmacist for a prescription drug on patient outcomes, scores, or metrics; however, a PBM may provide reimbursement for pharmacy care, including reimbursement incentives, based on such factors. These provisions apply to PBMs that contract with Medicaid managed care organizations (MCOs) and PBMs that contract with carriers. In addition, the bill prohibits a PBM from requiring that a beneficiary use a mail order pharmacy to fill a prescription. **The bill takes effect January 1, 2022, and applies to all policies or contracts issued, delivered, or renewed in the State on or after that date.**

Fiscal Summary

State Effect: Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) in FY 2022 from the $125 rate and form filing fee; contractual assistance is required to review filings in FY 2022 only. Likely no effect on the State Employee and Retiree Health and Welfare Benefits Program or the Medicaid program, as discussed below. Application of existing penalties is not anticipated to materially affect State finances.

Local Effect: Any impact on the cost of prescription drugs or PBM services for local governments under the bill is indeterminate. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: "Spread pricing" means the model of prescription drug pricing in which a PBM charges a purchaser a contracted price for a prescription drug that differs from the amount the PBM directly or indirectly pays the pharmacist or pharmacy for the prescription drug dispensed.

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 may not prohibit a pharmacy or pharmacist from (1) providing a beneficiary with information regarding or discussing with the beneficiary the retail price for a prescription drug or the amount of the cost share for which the beneficiary is responsible or (2) if a more affordable drug is available than one on the purchaser's formulary and the requirements for a therapeutic interchange are met, selling the more affordable alternative to the beneficiary.

With the exception of a specialty drug, a PBM may not require a beneficiary to use a specific pharmacy or entity to fill a prescription if the PBM (or a corporate affiliate) has an ownership interest in the pharmacy or entity or the pharmacy or entity has an ownership interest in the PBM (or a corporate affiliate).

A PBM may not charge a contracted pharmacy a fee related to the readjudication of specified claims. A PBM or a purchaser may not charge a contracted pharmacy, or hold a contracted pharmacy responsible for, a fee or performance-based reimbursement related to the adjudication of a claim or an incentive program. A PBM may not make or allow any reduction in payment for pharmacy services by a PBM or purchaser or directly or indirectly reduce a payment for a pharmacy service under a reconciliation process to an effective rate of reimbursement, including generic effective rates, brand effective rates, direct and indirect remuneration fees, or any other reduction or aggregate reduction of payments.

A PBM may not request a therapeutic interchange except for medical reasons that benefit the beneficiary or if it will result in financial savings and benefits to the purchaser or the beneficiary.

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.

State Expenditures: According to the federal Centers for Medicare and Medicaid Services (CMS), spread pricing occurs when health plans contract with PBMs to manage their prescription drug benefits and PBMs keep a portion of the amount paid to them instead of passing the full payments on to pharmacies. Thus, there is a "spread" between the amount that the health plan pays the PBM and the amount the PBM reimburses the pharmacy. If spread pricing is not appropriately monitored and accounted for, a PBM can profit from charging health plans an excess amount.

In May 2019, CMS issued guidance to states on how to address spread pricing in Medicaid managed care plans. The Maryland Department of Health advises that it took action to prohibit the practice of spread pricing as part of Medicaid MCO calendar 2021 contracts. Under the Code of Maryland Regulations, any option for accessing pharmacy services by mail order may be implemented only at the request of an MCO enrollee, except when for specialty drugs. However, if an MCO enrollee requests to use a retail pharmacy for specialty drugs, the MCO may not limit the enrollee to the use of a mail order pharmacy. Thus, expenditures for Medicaid MCOs are likely not impacted under the bill.

The Department of Budget and Management advises that the PBM contract for the Maryland Rx Program (the State Employee and Retiree Health and Welfare Benefits Program's prescription drug program) does not include spread pricing nor does it mandate use of mail order for prescription drugs. Only specialty drugs may be available via mail order from a specialty pharmacy. Thus, expenditures for the program are likely not impacted under the bill.

Small Business Effect: Small business pharmacies benefit from the prohibition on spread pricing, which likely results in higher reimbursement for pharmacies, as well as from the ability to participate in a policy or contract with a PBM if they meet specified terms and conditions.

Additional Comments: MDH advises that requiring PBMs to engage with any pharmacy that meets the terms of the PBM's policy or contract has the potential to significantly impact the PBM's ability to negotiate with drug manufacturers, which could result in reduced savings. Furthermore, to the extent PBMs cannot meet the 30-day deadline for reviewing new applications from pharmacies and pharmacists, any additional administrative costs are likely passed on in the form of higher costs to MCOs, the Maryland Rx Program, and carriers.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 615 (Senator Ready) - Finance.

Information Source(s): Centers for Medicare and Medicaid Services; Department of Budget and Management; Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

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