

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1008 (Delegate Kipke)
Health and Government Operations

Pharmacy Benefits Managers and Purchasers - Beneficiary Choice of Pharmacy

This bill repeals the current prohibition on a pharmacy benefits manager (PBM) that provides services on behalf of a carrier from requiring a beneficiary to use a specified pharmacy or entity to fill a prescription. Instead, the bill establishes new prohibitions on a PBM or purchaser regarding beneficiary choice of pharmacy, as specified. All pharmacists or pharmacies in the geographical coverage area of a PBM or purchaser network must be eligible to participate under identical reimbursement terms. A PBM or purchaser must inform its beneficiaries of the names and locations of pharmacies and pharmacists participating in the network as a “contracted provider.” A contracted provider may announce their participation to customers through a means acceptable to the contracted provider and a PBM or purchaser. If a PBM or a purchaser restricts pharmacy participation in a geographical coverage area, the PBM or purchaser must provide specified notice and opportunity to all pharmacies and pharmacists within the geographical coverage area. The Insurance Commissioner may disapprove a participating contract that does not comply with the bill. A beneficiary, pharmacy, or pharmacist injured by a violation of the bill may maintain a cause of action to enjoin the continuance of the violation. The bill does not apply to a staff model health maintenance organization.

Fiscal Summary

State Effect: Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fee; any additional workload can be absorbed with existing budgeted resources. No impact on the State Employee and Retiree Health and Welfare Benefits Program or the Medicaid program.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Contracted provider” means a pharmacy or pharmacist that participates in the network of a PBM or purchaser through a participating pharmacy contract.

Prohibitions Relating to Beneficiary Choice of Pharmacy

A PBM or purchaser may not:

- prohibit a beneficiary from selecting, or limiting a beneficiary’s ability to select, a pharmacy or pharmacist of the beneficiary’s choice if the pharmacy or pharmacist has agreed to participate as a contracted provider;
- deny a pharmacy or pharmacist the right to participate as a contract provider if the pharmacy or pharmacist agrees to the terms and requirements for participating for the geographical area, as specified;
- impose on a beneficiary any copayment, fee, or condition that is not equally imposed on all beneficiaries in the same benefit category, class, or copayment level if the beneficiary is receiving pharmacy services from a contract provider;
- impose a monetary advantage or penalty that would affect a beneficiary’s choice of contracted providers, as specified;
- reduce allowable reimbursement for pharmacy services to a beneficiary because the beneficiary selects one contract provider over another;
- require a beneficiary, as a condition of payment or reimbursement, to purchase pharmacy services exclusively through a mail order pharmacy; or
- impose on a beneficiary a copayment, amount of reimbursement, limitation on the number of days of a drug supply, or any other payment or condition relating to the purchase of a pharmacy service from a pharmacy that is more costly or more restrictive than would be imposed if the same pharmacy service were purchased from a mail order pharmacy or any other pharmacy willing to provide the same services or products for the same cost and copayment as any mail order service.

Requirements on Pharmacy Benefits Managers and Purchasers

If a PBM or a purchaser restricts pharmacy participation of contracted providers in a geographical coverage area, the PBM or purchaser must notify, in writing, all pharmacies and pharmacists within the geographical coverage area and offer the opportunity to participate in the network at least 60 days before the effective date of the restrictions.

The PBM or purchaser must, through reasonable means, on a timely basis, and at regular intervals, inform its beneficiaries of the names and locations of pharmacies and pharmacists that are participating in the network as contracted providers. Contracted providers may

announce their participation to their customers through a means acceptable to the contracted provider and PBM or purchaser.

Applicability

Unless the entity contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services, the bill does not apply to an entity that (1) has its own facility; (2) employs or contracts with physicians, pharmacists, nurses, and other health care personnel; and (3) dispenses prescription drugs from its own pharmacy to its employees and dependents enrolled in its health benefit plan.

Current Law: A PBM is a business that administers and manages prescription drug benefit plans. A PBM must register with MIA prior to providing pharmacy benefits management services.

A PBM that provides pharmacy benefits management services on behalf of a carrier may not require that a beneficiary 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 vice versa. A PBM may require a beneficiary to use a specific pharmacy or entity for a specialty drug.

Small Business Effect: Small business pharmacies likely benefit from the requirement that all pharmacists or pharmacies in the geographical coverage area of a PBM or purchaser network be eligible to participate under identical reimbursement terms and may be able to participate in more networks under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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