SB 895

Department of Legislative Services

Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 895 (Senators Ready and Klausmeier)
Finance

Pharmacy Benefits Administration - Maryland Medical Assistance Program and Pharmacy Benefits Managers

This emergency bill requires Medicaid to establish minimum reimbursement levels for drug products with a generic equivalent that are at least equal to the National Average Drug Acquisition Cost (NADAC) of the generic product plus the fee-for-service (FFS) professional dispensing fee. If a prescriber directs a specific brand name drug, reimbursement must be based on the NADAC of the brand name product plus the FFS professional dispensing fee. These requirements do not apply to (1) a pharmacy owned by, or under the same corporate affiliation as, a pharmacy benefits manager (PBM) or (2) a mail order pharmacy. A PBM that contracts with a pharmacy on behalf of a Medicaid managed care organization (MCO) must reimburse the pharmacy in an amount that is at least equal to the NADAC plus the FFS professional dispensing fee. The bill also modifies the definition of "purchaser" to specify that it includes an insurer, nonprofit health service plan, or health maintenance organization (HMO), with the exception of a nonprofit HMO that operates as a group model, provides services solely to members and patients, and furnishes services through internal pharmacy operations.

Fiscal Summary

State Effect: Medicaid expenditures increase by $22.1 million (56% federal funds, 44% general funds) in FY 2023 to increase pharmacy reimbursement, as discussed below. Federal fund revenues increase accordingly. Future years reflect annualization and inflation. **This bill increases the cost of an entitlement program beginning in FY 2023.**

($ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
FF Revenue	$12.4	$46.0	$46.0	$46.9	$47.8
GF Expenditure	$9.7	$44.2	$46.0	$46.9	$47.8
FF Expenditure	$12.4	$46.0	$46.0	$46.9	$47.8
Net Effect	($9.7)	($44.2)	($46.0)	($46.9)	($47.8)

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law:

Medicaid Reimbursement for Prescription Drugs

Medicaid must establish maximum reimbursement levels for the drug products for which there is a generic equivalent based on the cost of the generic product. If the prescriber directs a brand name drug, the reimbursement level must be based on the cost of the brand name product.

Chapter 534 of 2019, among other things, required Medicaid to contract with an independent auditor for an audit of PBMs that contract with Medicaid MCOs and provide the results to the General Assembly.

Outpatient pharmacy coverage is an optional benefit under Medicaid. Reimbursement for prescription drugs varies between 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 $10.67 for brand name and generic drugs.

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 the Maryland Department of Health (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. 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.

Definition of Purchaser Relating to Pharmacy Benefits Managers

Chapter 358 of 2021 defined "carrier" and altered the definition of "purchaser," including repealing the exclusion of plans subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), for purposes of State law governing PBMs. The Act, among other things, (1) applied specified provisions governing PBMs to self-funded ERISA plans; (2) altered the applicability of certain PBM requirements to apply to a carrier (rather than a purchaser); and (3) specified that certain provisions apply only to a PBM that provides pharmacy benefits management services on behalf of a carrier.

"Carrier" means the State Employee and Retiree Health and Welfare Benefits Program, an insurer, a nonprofit health service plan, or an HMO that provides prescription drug coverage or benefits in the State and enters into an agreement with a PBM for the provision of pharmacy benefits management services. "Carrier" does not include a person that provides prescription drug coverage or benefits through plans subject to ERISA and does not provide prescription drug coverage or benefits through insurance, unless the person is a multiple employer welfare arrangement as defined under ERISA.

"Purchaser" means a person that offers a plan or program in the State, including the State Employee and Retiree Health and Welfare Benefits Program, that (1) provides prescription drug coverage or benefits in the State and (2) enters into an agreement with a PBM for the provision of pharmacy benefits management services.

State Expenditures:

Medicaid Reimbursement for Prescription Drugs

Medicaid expenditures increase by an estimated $22.1 million (56% federal funds, 44% general funds) in fiscal 2023, which assumes April 1, 2023 implementation of the emergency bill. This estimate reflects the additional cost for PBMs used by all nine Medicaid MCOs to reimburse for prescription drugs according to the bill's requirements. Expenditures are eligible for a 56% federal matching rate in fiscal 2023, decreasing to 51% in fiscal 2024, and 50% in fiscal 2025 and beyond.

This analysis *does not* reflect that the bill's minimum reimbursement requirements do not apply to a pharmacy owned by, or under the same corporate affiliation as, a PBM or to a mail order pharmacy.

Small Business Effect: Small business pharmacies benefit from increased professional dispensing fees for Medicaid MCO enrollees, particularly those pharmacies that serve a high proportion of Medicaid enrollees.

Additional Comments: It is unclear if the bill's provision exempting pharmacies owned or under the same corporate affiliation as a PBM and mail order pharmacies from the minimum reimbursement rates are legally permissible on equal protection and commerce clause grounds.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1007 of 2022; HB 602 of 2021; and HB 756 of 2020.

Designated Cross File: HB 382 (Delegate Kipke) - Health and Government Operations.

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

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