

**Department of Legislative Services**  
Maryland General Assembly  
2023 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 398  
Finance

(Senators Lam and Feldman)

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**Health Insurance - Reimbursement and Use of Specific Pharmacies and  
Dispensaries - Prohibitions**

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This bill specifies that insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) that provide coverage for prescription drugs may not prohibit a subscriber, member, or beneficiary from choosing a pharmacy or dispensary to obtain a covered specialty drug if the pharmacy or dispensary meets specified requirements. Likewise, a pharmacy benefits manager (PBM) that provides pharmacy benefits management services on behalf of a carrier may no longer require a beneficiary to use a specific pharmacy or entity for a specialty drug.

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**Fiscal Summary**

**State Effect:** Any additional workload on the Maryland Insurance Administration (MIA) can be absorbed with existing budgeted resources. Revenues are not affected. No impact on the State Employee and Retiree Health and Welfare Benefits Program.

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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**Analysis**

**Bill Summary:** Although a carrier may no longer require use of a designated pharmacy for a covered specialty drug, a carrier may *recommend* that a covered specialty drug be obtained through a designated pharmacy *or dispensary*, as specified. If a subscriber, member, or beneficiary chooses to obtain a covered specialty drug from another pharmacy or dispensary, the carrier may not (1) prohibit or limit the pharmacy or dispensary from

participating in a plan, policy, or contract or (2) deny the pharmacy or dispensary the right to participate as a contract provider under the plan, policy, or contract if the pharmacy or dispensary agrees to provide pharmacy services, including specialty drugs, that meet specified terms and requirements.

The bill also repeals the authority of a PBM that provides pharmacy benefits management services on behalf of a carrier to require a beneficiary to use a specific pharmacy or entity for a specialty drug. Further, the prohibition against a PBM reimbursing a pharmacy or pharmacist in an amount less than the PBM reimburses itself or an affiliate for the same product or service is applied to all reimbursement, including reimbursement for specialty drugs, for mail order drugs, or to specified chain pharmacies.

### **Current Law:**

#### *Definitions*

A “specialty drug” means a prescription drug that (1) is prescribed for an individual with a complex or chronic medical condition or a rare medical condition; (2) costs \$600 or more for up to a 30-day supply; (3) is not typically stocked at retail pharmacies; and (4) requires either a difficult or unusual process of delivering the drug to the patient or enhanced patient education, management, or support before or after administration of the drug. A specialty drug does not include a prescription drug prescribed to treat diabetes, HIV, or AIDS; it does include a prescription drug prescribed to treat multiple sclerosis, hepatitis C, rheumatoid arthritis, cystic fibrosis, hemophilia, or multiple myeloma.

“Authorized prescriber” means a licensed dentist, licensed physician, or licensed podiatrist who is authorized under the Health Occupations Article to prescribe a drug or medicine.

#### *Pharmacy Benefits Managers*

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.

A PBM that provides pharmacy benefits management services on behalf of a carrier may not reimburse a pharmacy or pharmacist for a pharmaceutical product or pharmacist service in an amount less than the amount that the PBM reimburses itself or an affiliate for

providing the same product or service. This prohibition does not apply to reimbursement for specialty drugs, mail order drugs, or to a chain pharmacy with more than 15 stores or a pharmacist who is an employee of the chain pharmacy.

### *Carriers*

A carrier may require that a subscriber, member, or beneficiary obtain a specialty drug through a specific pharmacy, including a pharmacy participating in the carrier's provider network if the carrier determines that the pharmacy meets its performance standards and accepts its network reimbursement fees.

**Small Business Effect:** Small business pharmacies likely benefit from additional reimbursement under the bill. Additionally, small business pharmacies may see an increase in revenues due to more consumers being able to obtain specialty drugs from their pharmacies.

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## **Additional Information**

**Prior Introductions:** Similar legislation has been introduced within the last three years. See HB 1015 of 2022.

**Designated Cross File:** HB 650 (Delegates S. Johnson and A. Johnson) - Health and Government Operations.

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

**Fiscal Note History:** First Reader - February 14, 2023  
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