

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 898

(Senators Ready and Klausmeier)

Finance

Pharmacy Benefits Managers - Definitions of Carrier, ERISA, and Purchaser

This bill repeals the definitions of “carrier” and “ERISA” and alters the definition of “purchaser” to include an insurer, nonprofit health service plan, or health maintenance organization (HMO), with one exception, for purposes of State law governing pharmacy benefits managers (PBMs). As a result, the bill generally applies provisions of law governing PBMs to all entities providing prescription drug coverage or benefits in the State, including programs subject to the federal Employee Retirement Income Security Act of 1974 (ERISA). **The bill takes effect January 1, 2024.**

Fiscal Summary

State Effect: The Maryland Insurance Administration can handle any additional workload under the bill, including increased complaint volume, using existing budgeted resources. No impact on the State Employee and Retiree Health and Welfare Benefits Program. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law: Chapter 358 of 2021 defined “carrier” and altered the definition of “purchaser,” including repealing the exclusion of plans subject to ERISA, for purposes of State law governing PBMs. The Act (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); (3) specified that certain

provisions apply only to a PBM that provides pharmacy benefits management services on behalf of a carrier; and (4) altered requirements regarding review and approval of certain contract forms and filings by the Insurance Commissioner.

Under current law, “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. Under the bill, “purchaser” is expanded to include carriers, with the exception of a nonprofit HMO that operates as a group model, provides services solely to members or patients, and furnishes services through internal pharmacy operations.

Under current law, “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. Under the bill, the definition of “carrier” is repealed, and carriers (with the specified exception noted above) are included in the definition of “purchaser.” The bill also makes conforming changes regarding the terms “purchaser” and “carrier.”

Under Chapter 358, certain provisions of law governing PBMs applied only to PBMs that provide pharmacy benefits management services on behalf of a carrier. The bill makes the following provisions of the Insurance Article apply to all PBMs, including those providing services on behalf of self-funded plans and insured plans:

- information on and sales of prescription drugs (§ 15-1611);
- choice of pharmacy by a beneficiary (§ 15-1611.1);
- reimbursement for a pharmaceutical product or pharmacist service (§ 15-1612);
- pharmacy and therapeutics committee requirements (§§ 15-1613 through 15-1618);
- requirements before entering into a contract (§ 15-1623);
- rebate sharing contract requirements (§ 15-1624);
- audits by PBMs (§ 15-1629);
- internal review process requirements (§ 15-1630); and
- therapeutic interchange requirements (§§ 15-1633.1 through 15-1639).

Small Business Effect: Small business pharmacies benefit from having State law protections in additional areas of the self-funded market and increased uniformity in the regulatory framework for PBMs.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1014 and SB 690 of 2022.

Designated Cross File: HB 357 (Delegate Kipke) - 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

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