

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 879

(Delegate S. Johnson, *et al.*)

Health and Government Operations

Finance

Health Benefit Plans - Calculation of Cost Sharing Contribution - Requirements

This bill requires certain insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers), including those that provide prescription drug coverage through a pharmacy benefits manager, when calculating an insured's or enrollee's cost-sharing contributions, to include any discount, financial assistance payment, product voucher, or other out-of-pocket expense made by or on behalf of the insured or enrollee for prescription drugs, as specified. A person that provides such a discount, financial assistance payment, product voucher, or other out-of-pocket expense made by or on behalf of an insured or enrollee must notify the insured or enrollee of the maximum dollar amount of and expiration date for the discount, financial assistance payment, product voucher, or other out-of-pocket expense. Failure to comply with this requirement constitutes a violation of the Maryland Consumer Protection Act (MCPA). **The bill takes effect January 1, 2025, and applies to all policies, contracts, and health plans 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) from the \$125 rate and form filing fee in FY 2025 only. Any additional MIA workload is assumed to be absorbable within existing budgeted resources. No impact on the State Employee and Retiree Health and Welfare Benefits Program, as discussed below.

Local Effect: To the extent the bill's requirements increase the cost of health insurance, expenditures for local governments that purchase fully insured medical plans may increase. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: When calculating an insured's or enrollee's contribution to the insured's or enrollee's coinsurance, copayment, deductible, or out-of-pocket maximum, a carrier must include any discount, financial assistant payment, product voucher, or other out-of-pocket expense made by or on behalf of the insured or enrollee for a prescription drug that (1) is covered under the insured's or enrollee's health benefit plan and (2) does not have an AB-rated generic equivalent or an interchangeable biological product preferred under the health benefit plan's formulary or, if there is such an alternative, the insured or enrollee has obtained access to a brand drug through a prior authorization, step therapy protocol, or exception or appeal process of the carrier.

If an insured or enrollee is covered under a health savings account-eligible high-deductible health plan (HDHP), a carrier must apply this requirement after the insured or enrollee satisfies the HDHP's minimum deductible requirement.

Current Law:

Cost Sharing – Patient Protection and Affordable Care Act

Under the federal Patient Protection and Affordable Care Act, all nongrandfathered group health plans must ensure that any annual cost sharing imposed under the plan does not exceed specified limitations. For plan or policy years beginning in 2024, the maximum annual limitation on cost sharing is \$9,450 for individual coverage and \$18,900 for family coverage. The out-of-pocket maximum is set annually by the U.S. Department of Health and Human Services based on a formula that calculates how much the average premium for employer-sponsored health insurance in the preceding year exceeds the average 2014 premium for employer-sponsored health insurance.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind, which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Office of the Attorney General’s Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

State Expenditures: The Department of Budget and Management (DBM) advises that the bill has no impact on the program at this time. However, DBM notes that the bill limits the program’s future flexibility to implement cost-saving measures related to cost sharing for prescription drugs.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years; however, legislation with similar provisions has been proposed. For example, see HB 167 and SB 290 of 2021.

Designated Cross File: SB 595 (Senator Hershey) - Finance.

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

Fiscal Note History: First Reader - February 27, 2024
js/jc Third Reader - April 8, 2024
Revised - Amendment(s) - April 8, 2024

Analysis by: Ralph W. Kettell

Direct Inquiries to:
(410) 946-5510
(301) 970-5510