

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 773

(Senator Hershey)

Finance

Health and Government Operations

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 (“financial assistance”) made by or on behalf of the insured or enrollee for a prescription drug. Except for a charitable organization, a person that provides financial assistance made by or on behalf of an insured or enrollee must comply with specified requirements. Failure to comply constitutes a violation of the Maryland Consumer Protection Act (MCPA). A carrier may not directly or indirectly set, alter, implement, or condition the terms of health benefit plan coverage based on information about the availability or amount of assistance available for a prescription drug. **The bill takes effect January 1, 2026, and applies to all policies, contracts, and health plans issued, delivered, or renewed in the State on or after that date. The bill terminates July 1, 2029.**

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 2026 only. Any additional MIA workload can likely be absorbed with existing 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 financial assistance 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.

A person that provides financial assistance made by or on behalf of an insured or enrollee that is used in the calculation of an insured's or enrollee's contribution to their coinsurance, copayment, deductible, or out-of-pocket maximum must notify the insured or enrollee, within seven days after the acceptance of the financial assistance, of (1) the maximum dollar amount of the financial assistance and (2) the expiration date for the financial assistance.

While a carrier may not directly or indirectly set, alter, implement, or condition the terms of health benefit plan coverage, including the benefit design, based on information about the availability or amount of financial or product assistance available for a prescription drug, this prohibition may not be construed to prohibit a carrier from using rebates in the design of prescription drug coverage or benefits.

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 2025, the maximum annual limitation on cost sharing is \$9,200 for individual coverage and \$18,400 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 has previously advised for similar legislation in a prior legislative session that requirements for calculating cost sharing contributions could limit 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 been introduced within the last three years. See HB 879 (third reader) of 2024.

Designated Cross File: None.

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

Fiscal Note History:
caw/jc

First Reader - February 24, 2025

Third Reader - March 26, 2025

Revised - Amendment(s) - March 26, 2025

Enrolled - April 29, 2025

Revised - Amendment(s) - April 29, 2025

Analysis by: Ralph W. Kettell

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