SB 615-position paper-2021f.pdf

Uploaded by: Doyle, James

Position: FAV

SB 615 (HB 819 cross-file)

Pharmacy Benefit Managers-Prohibited Actions

Position of: INDEPENDENT PHARMACIES OF MARYLAND

Position: FAVORABLE

WHAT THIS BILL DOES:

SB 615 deals with unfair, anti-competitive, and anti-consumer routinely practiced by Pharmacy Benefit Managers (PBMs). It adds to actions that may not be taken by a PBM against a pharmacy. Under the bill, a PBM may not (1) diminish reimbursement to a pharmacy for a prescription based on patient scores or metrics; (2) engage in the practice of "spread pricing", which is where the PBM charges a prescription plan one price for a drug, and then pays the pharmacy a lesser amount, the PBM then pocketing the difference as profit; (3) deny any pharmacy the right to participate in a prescription plan, as long as the pharmacy agrees to meet the terms and conditions of the plan; (4) set different fees for a copay, based on whether the pharmacy is affiliated with an independent or a chain pharmacy; and (5) require that a beneficiary of a plan use a mail order pharmacy to fill a prescription.

WHY THIS BILL IS NECESSARY:

PBMs are the middlemen between insurers, pharmaceutical companies, and pharmacies. They are hired by insurers and managed care companies to negotiate prices, and they also set reimbursement amounts to the pharmacies which provide prescriptions to beneficiaries of the health plan. And the reimbursement contracts presented to the pharmacies are take it or leave it contracts.

There are three PBMs which control approximately 80% of the market. In addition, PBMs often have common ownership or corporate affiliation with the insurers or managed care organization, and**, more significantly, PBMs often own or are affiliated with large chain pharmacies and their own mail order pharmacies.**

Because of these common ownerships, PBMs have every incentive to steer beneficiaries to their own chain or mail order pharmacies, something recognized by an amicus filing joined in by the State of MD in a recent Supreme Court case. In that case, *Rutledge v. Pharmaceutical Care Management Association* (PCMA is the organization which represents PBMs) (Dec. 10, 2020), PBMs actually challenged a state law requiring them to at least reimburse pharmacies equal to the pharmacies' wholesale cost of the drug. **The Court**

unanimously ruled against the PBMs, recognizing the state's legitimate rights to broadly regulate PBMs.

Attorney General Brian Frosh, on behalf of the State of MD, joined many other states in an *amicus* filing urging the Court to take the case on appeal, which it did. With respect to PBMs, the *amicus* filing stated something which is key to this bill: that PBMs, in operating their own mail order and retail pharmacies, "are particularly susceptible to self-dealing and unfair advantage." *Amicus* filing, at p. 10.

The undisputed fact is that PBMs make tremendous profits under this system. See, for example, The Wall Street Journal, February 24, 2018, in the article "Hidden Profits in The Prescription Drug Supply Chain". **PBMs are among the most profitable part of that chain. Many independent pharmacies struggle financially, even as they subsidize PBMs through practices such as "spread pricing."**

Under current law, PBMs take actions designed to enrich themselves, or their affiliated chain or mail order pharmacies, at the expense of independent, community pharmacies. This bill will prohibit unfair, anti-competitive and anti-consumer practices.

1. PBMs should not be permitted to reduce reimbursement to a pharmacy based on the outcome of a patient on a drug. The pharmacist simply fills the prescription as ordered; his reimbursement should not be dependent or reduced simply because of a patient score or metric.
2. **PBMs make substantial revenue off of the deceptive practice of "spread pricing", a practice already banned by a number of states. This is where the PBM is paid for a drug by the plan sponsor at one price, and reimburses the pharmacy for a lesser amount. The PBM pockets the difference as its profit, even though it had absolutely nothing to do with dispensing the drug.** In 2020, a MDH study found that Medicaid PBMs received approximately $72 million in MD by spread pricing. Instead of going into the pockets of PBMs, this amount should have been passed through to the pharmacy so that it is adequately compensated, which is simply not happening. Independent pharmacies often lose money in filling prescriptions, an untenable business model.
3. **PBMs control which pharmacies may become participants under the plan. Of course, as the MD *amicus* filing notes, PBMs have a vested interest in promoting their own chain pharmacies that they are affiliated with.** This is, in itself, anti-competitive. In addition, it is anti-consumer. It deprives the consumer his right to have a prescription filled where most convenient, or at a pharmacy that he prefers. As long as a pharmacy is willing to accept the terms and conditions applicable to the plan, any willing pharmacy should be permitted to join the plan. Many states have enacted forms of "any willing pharmacy" legislation.
4. PBMs set the copay that a pharmacy must charge for a prescription. The pharmacy may get a portion of that copay. The law requires that all pharmacies, whether affiliated or independent, must receive the same amount of the copay. However, it does not require

that the copay amount be set equally among affiliated and independent pharmacies. PBMs, therefore, set different copay amounts; these are often lesser at affiliated pharmacies in order to attract consumers to use the PBM affiliated pharmacy rather than an independent pharmacy.

5. PBMs sometimes require that a specific drug be ordered through a mail order pharmacy. **Mail order pharmacies are typically affiliated with or owned by the PBM. While it perfectly fine to allow a consumer to use a mail order pharmacy, the consumer should not be required to do so. It should be his choice**. And the consumer should not be required to "opt out." It should be his unfettered choice at the outset.

We urge a FAVORABLE Report for SB 615.

Contact:

James J. Doyle

Jimdoyle3@comcast.net

443-676-2940

SB615 HB819 Pharmacy Benefits Managers - Prohibite

Uploaded by: locklair, cailey

Position: FAV

MARYLAND ASSOCIATION OF CHAIN DRUG STORES
171 CONDUIT STREET, ANNAPOLIS, MD 21401 | 410-269-1440

SB615/HB819 Pharmacy Benefits Managers - Prohibited Actions
Senate Finance Committee
Position: SUPPORT
February 24, 2021

Background: Prohibiting a pharmacy benefits manager from engaging in any practice that bases certain reimbursement for a prescription drug on patient outcomes, scores, or metrics under certain circumstances; prohibiting a pharmacy benefits manager from engaging in the practice of spread pricing; prohibiting a pharmacy benefits manager from denying any pharmacy a certain right; prohibiting a pharmacy benefits manager from taking more than 30 days to review the application of a pharmacy or pharmacist to participate in a certain policy or contract; etc.

Written Comments: The Maryland Retailers Association is in support of this legislation as we do not believe pharmacy benefit managers (PBMs) should engage in spread pricing. PBMs are currently able to pay the pharmacist or pharmacy a different price for a prescription drug than what they charge a purchaser which results in pharmacists and pharmacies receiving less. We support other provisions in the bill prohibiting PBMs from taking longer than 30 days to determine whether a pharmacy can participate in a plan or set different fees for a beneficiary's copay based on whether a pharmacy is affiliated with a chain or is an independent pharmacy and prohibiting a PBM from mandating mail order.

With regard to patient outcomes, we believe and support lowering healthcare costs and improving patient outcomes, but a pharmacist ultimately is not writing a prescription and cannot make changes without physician approval. Thus, product reimbursement should not be based upon these metrics.

It is for the above reasons we urge a favorable report.

SB 615 Sponsor testimony
Uploaded by: Ready, Justin
Position: FAV

Justin Ready
Legislative District 5
Carroll County

Finance Committee

James Senate Office Building
11 Bladen Street, Room 315
Annapolis, Maryland 21401
410-841-3683 · 301-858-3683
800-492-7122 *Ext.* 3683
Justin.Ready@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 25, 2021

Senate Bill 615 Pharmacy Benefits Managers – Prohibited Actions

Senate Bill 615 would add to the statutory list of prohibited acts by Pharmacy Benefit Managers (PBMs). PBMs

1. Diminishing reimbursement to a pharmacy based on patient outcomes.
2. The practice of "spread pricing"
3. Denying the right of a pharmacy to participate in a plan if the pharmacy agrees to the terms and conditions of the plan.
4. Setting of different fees for a copay based on whether the pharmacy is an affiliate of the PBM.
5. The requirement that the beneficiary of a plan use a mail order pharmacy.

WHAT IS THE NEED FOR THE BILL?

This bill will prohibit certain unfair, anti-competitive, and anti-consumer practices by PBMs. For example, PBMs should not be permitted to reduce reimbursement to a pharmacy based on patient outcomes. It should not be able to engage in "spread pricing", where it reimburses a pharmacy for a lesser amount than it is paid for the drug by the insurer or prescription plan. It then pockets the difference. A PBM should be required to permit any pharmacy to participate in a prescription plan if the pharmacy is willing to accept the terms and conditions of the plan. Consumers want the choice of having prescriptions filled where they choose, and this bill will allow that. Copays should be the same for all pharmacies. PBMs should not be permitted to favor affiliated pharmacies by setting a lower copay at those pharmacies. And finally, mail order pharmacies. Again, this should be the choice of the consumer, and not a requirement imposed by PBMs to favor affiliated mail order pharmacies over independent community pharmacies .

I respectfully request a favorable on Senate Bill 615.

MMCOA SB615 02 24 2021.pdf
Uploaded by: Briemann, Jennifer
Position: UNF

Senate Bill 615 – Pharmacy Benefits Managers - Prohibited Actions

OPPOSE

Senate Finance Committee
February 24, 2021

Thank you for the opportunity to submit testimony in opposition to Senate Bill 615 – Pharmacy Benefits Managers - Prohibited Actions.

The Maryland Managed Care Organization Association's (MMCOA) nine member Medicaid Managed Care Organizations (MCOs) that serve over 1.3 million Marylanders through the Medicaid HealthChoice program are committed to identifying ways to improve quality and access to care for all Medicaid participants.

The MCOs are regulated by the Maryland Department of Health with a focus on ensuring high quality care and cost effectiveness. While we applaud the sponsor's efforts, access and quality provisions- including recently enacted regulations- were adopted by MDH to improve the experience of pharmacists in the Medicaid program. We believe that this legislation may undermine those processes recently adopted by MDH to address pharmacist's concerns regarding participation in the HealthChoice program. For these reasons, we respectfully urge an unfavorable report on Senate Bill 615.

The MMCOA looks forward to continued collaboration with the State as we work to identify ways to improve access to affordable high-quality care for all Medicaid participants.

Please contact Jennifer Briemann, Executive Director of MMCOA, with any questions regarding this testimony at jbriemann@marylandmco.org.

SB615_PBM Prohibited Actions_Oppose.pdf
Uploaded by: Taylor, Allison
Position: UNF

KAISER PERMANENTE®

Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc
2101 East Jefferson Street
Rockville, Maryland 20852

February 24, 2021

The Honorable Delores G. Kelley
Senate Finance Committee
3 East, Miller Senate Office Building
11 Bladen Street
Annapolis, Maryland 21401

RE: SB 615 - Oppose

Dear Chair Kelley and Members of the Committee:

Kaiser Permanente respectfully opposed SB 615, "Pharmacy Benefit Managers, Prohibited Actions.

Kaiser Permanente is the largest private integrated health care delivery system in the United States, delivering health care to over 12 million members in eight states and the District of Columbia.[1] Kaiser Permanente of the Mid-Atlantic States, which operates in Maryland, provides and coordinates complete health care services for approximately 775,000 members. In Maryland, we deliver care to over 450,000 members.

Kaiser Permanente opposes, SB 615, Pharmacy Benefit Managers – Prohibited Actions. This bill prohibits a pharmacy benefits manager (PBM) from engaging in any practice that bases reimbursement for a prescription drug on patient outcomes, scores, or metrics and engaging in the practice of spread pricing. Further, pharmacy benefits managers are prohibited from denying any pharmacy the right to participate or to take more than 30 days to review the application of a pharmacy or pharmacist to participate in a policy or contract. This bill prohibits a pharmacy benefits manager from requiring a beneficiary to use a mail order pharmacy to fill a prescription.

The practice of spread pricing, as defined in this bill, prohibits a PBM from developing a prescription drug pricing model that charges the purchaser a contracted price that differs from the amount that is directly or indirectly paid by the pharmacy for the drug dispensed. The downstream fiscal impact in response to the recent prohibition on spread pricing in Maryland Medicaid resulted in higher administrative fees allowing PBMs to further shift the uncertainty in drug costs to payers. It also triggered an increased rate in internal procedural costs due to contract renegotiations. When payers have the opportunity to negotiate payments arrangement with PBMs, predictable compensation models materialize allowing plans to maintain patient's expectations for their premiums and other cost-sharing arrangements.

---

[1] Kaiser Permanente comprises Kaiser Foundation Health Plan, Inc., the nation's largest not-for-profit health plan, and its health plan subsidiaries outside California and Hawaii; the not-for-profit Kaiser Foundation Hospitals, which operates 39 hospitals and over 650 other clinical facilities; and the Permanente Medical Groups, self-governed physician group practices that exclusively contract with Kaiser Foundation Health Plan and its health plan subsidiaries to meet the health needs of Kaiser Permanente's members.

Under spread pricing arrangements, the difference between the amounts paid by the PBM to the carrier and the amounts paid to the pharmacy is retained by the PBMs. Payments to pharmacies are impacted by various fees and adjustments, which are established and imposed by PBMs, have the potential to increase the level of spread. Ensuring the appropriate financial and reporting provisions establish requirements over dispensing fees and allowable adjustments are key areas of focus that would best inform effective strategies to address variations in pricing methodologies.

With the increased emphasis on the utilization of telehealth services and as KP develops expanded opportunities to access care, we would like to continue to provide easy and convenient options for patients to receive prescriptions when an on-site pharmacy is not available. Most Kaiser Permanente members *voluntarily* choose to have their prescriptions mailed, providing them with an invaluable service. During an appointment, our physicians can electronically send prescription requests directly to our mail order pharmacy. When engaging in remote delivery of care, the most affordable option may be prescription home delivery. We have found mail order services decrease medication non-adherence rates and the integration of convenient care serves a critical benefit to our members

A vital component of our commitment to providing Kaiser Permanente members with safe, accessible, and affordable care is the availability of our mail order pharmacy. Year after year, Kaiser Permanente's mail-order pharmacy has ranked highest overall in the nation for customer satisfaction by J.D. Power. Over that time, J.D. Power considers our ordering process, prescription delivery, cost completeness and price sensitivity, and interaction with the pharmacist and non-pharmacist staff. With on-time delivery a key driver of overall customer satisfaction for mail order use, the turnaround from the time our mail order pharmacy receives a refill request to when the filled prescription is received by our members is 2.5 days. We are exploring options to expedite delivery expectations even more. Our pharmacists are available 24/7 to counsel and answer members' questions about their prescriptions.

For these reasons, Kaiser Permanente respectfully opposes SB 615 and strongly urges an unfavorable Committee report.

Thank you for the opportunity to comment. Please feel free to contact Allison Taylor at Allison.W.Taylor@kp.org or (202) 924-7496 with questions.

Sincerely,

Allison Taylor

Allison Taylor
Director of Government Relations
Kaiser Foundation Health Plan of Mid-Atlantic States, Inc.

3- SB 615- FIN- MDH- LOI.pdf

Uploaded by: Bennardi, Maryland Department of Health /Office of Governmen

Position: INFO

February 24, 2021

The Honorable Delores G. Kelley
Chair
Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 615 – Pharmacy Benefits Managers - Prohibited Actions – Letter of Information

Dear Chair Kelley and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of information on SB 615 – Pharmacy Benefits Managers - Prohibited Actions.

SB 615 would prohibit pharmacy benefits managers (PBMs) from engaging in certain activities by making § 15–1611(B) of the Insurance Article applicable to PBMs that contract with Medicaid Managed Care Organizations (MCOs). Among other requirements, PBMs would be prohibited from engaging in spread pricing; taking longer than 30 days to review an application from a pharmacy or pharmacist; denying a pharmacy the right to participate in a policy or contract if they agree to meet the terms of the policy or contract; or requiring a beneficiary to use a mail order pharmacy to fill a prescription.

The committee should be aware that SB 615's requirements would have a potentially substantial fiscal impact on MDH and undermine the marketplace. The legislation also reverses the General Assembly's previous policy direction[1] to MDH to have the MCOs administer the Medicaid pharmacy benefit to ensure access to prescription drugs by Marylanders and to manage skyrocketing drug costs. MDH further notes that legislation is not required to eliminate spread pricing from the MCOs' agreements with PBMs. MDH has already taken action on this issue and prohibited this practice as part of the MCOs' CY21 contracts. Further, MCO enrollees already have the ability to opt out of the use of mail order pharmacies under existing State regulations.[2]

The bill would effectively shift the PBMs to any willing provider model. Requiring PBMs to engage with any pharmacy if they agree to meet the terms of the PBMs policy or contract has the potential to significantly impact the PBM's ability to negotiate with drug manufacturers, resulting in the loss of savings realized today. MDH also anticipates that certain PBMs may not be able to meet the 30-day deadline for reviewing new applications from pharmacies and pharmacists,

[1] HB 1290 (2015); report available at: https://mmcp.health.maryland.gov/Documents/JCRs/MCOpharmacynetworksJCRfinal12-15.pdf
[2] COMAR 10.67.06.04

increasing the administrative burden on the PBM, which will be passed on to the MCOs in the form of new costs. To the extent that costs to the PBMs, and by extension the MCOs, to deliver pharmacy benefits increase, these costs will be passed on to MDH and require payment of higher capitation rates to the MCOs.

I hope this information is useful. If you would like to discuss this further, please do not hesitate to contact me at webster.ye@maryland.gov / (410) 260-3190 or Heather Shek, Director of Governmental Affairs at heather.shek@maryland.gov and at the same phone number.

Sincerely,

Webster Ye
Assistant Secretary, Health Policy