Maryland
DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Acting Secretary

February 10, 2021

The Honorable Shane E. Pendergrass
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis, MD 21401-1991

RE: House Bill 709 – Pharmacy Benefits Managers – Drug Reimbursement – Reporting Requirements – Letter of Information

Dear Chair Pendergrass and Committee Members:

The Department of Health (MDH) respectfully submits this letter of information on House Bill (HB) 709 – Pharmacy Benefits Managers – Drug Reimbursement – Reporting Requirements.

The bill requires pharmaceutical benefits managers (PBMs), including those under contract with managed care organizations, to file quarterly reports (beginning January 1, 2022) with the Maryland Insurance Administration on all drugs appearing on the National Average Drug Acquisition Cost (NADAC) list that were reimbursed by the PBM at an amount below the NADAC price plus the fee-for-service dispensing fee. The Insurance Commissioner is required to make the reports available to the public.

The committee should be aware that the reporting requirements in HB 709 would have a substantial fiscal impact on MDH and undermine the marketplace. It also reverses the General Assembly's previous policy direction[1] to MDH to have the managed care organizations (MCOs) administer the Medicaid pharmacy benefit to ensure access to prescription drugs by Marylanders and to manage skyrocketing drug costs.

The bill would require PBMs to publicly release information that is considered proprietary. Mandating the public disclosure of this pricing information has the potential to substantially disrupt the competitive nature of the marketplace, driving up costs. Absent an incentive to compete, PBMs may consolidate, reducing prices in the short term, but ultimately resulting in higher costs in absence of any competition. Further, the incentive for pharmacies to compete on price and improve quality in order to join a specific network would also be eliminated, again driving higher costs and potentially reducing quality. To the extent that costs to the MCOs for pharmacy benefits increase, these costs will be passed on to MDH and require payment of higher capitation rates to the MCOs.

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

Further, producing these types of reports also poses a substantial administrative burden on the PBMs that contract with the MCOs. The cost of producing these reports will be passed on to the MCOs and in turn passed on to the Medicaid Assistance Program. Such increases will also create a fiscal impact for MDH requiring the State to increase capitation rates to the MCOs.

Finally, MDH notes that driving the MCO marketplace to reimburse in a manner identical to the Medicaid fee-for-service (FFS) program, which pays for drugs based on the NADAC rate, would have a substantial fiscal impact on MDH estimated to exceed $94 million annually.

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, Deputy Director of Governmental Affairs at heather.shek@maryland.gov and at the same phone number.

Sincerely,

Webster Ye
Assistant Secretary, Health Policy