HB 819

Pharmacy Benefit Managers-Prohibited Actions

Position of: INDEPENDENT PHARMACIES OF MARYLAND

Position: FAVORABLE

WHAT THIS BILL DOES:

The bill adds to actions that may not be taken by a Pharmacy Benefit Manager (PBM) against a pharmacy. Under the bill, a PBM may not (1) diminish reimbursement to a pharmacy for a prescription based on patient outcomes; (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; (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:

Under current law, PBMs take actions designed to enrich themselves, or their affiliated chain pharmacies, at the expense of independent pharmacies. This bill will prohibit 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 a patient does not do as well as expected.
2. PBMs make substantial revenue off of the practice of "spread pricing." 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. In 2018, 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 be passed through to the pharmacy so that it is adequately compensated. A number of states have required pass through, and have banned spread pricing.
3. PBMs control which pharmacies may become participants under the plan. But 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 such "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.
5. PBMs sometimes require that a specific drug be ordered through a mail order pharmacy. Mail order pharmacies are typically affiliated with 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.

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