Maryland
DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

March 2, 2023

The Honorable Joseline A. Peña-Melnyk
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis, MD 21401-1991

RE: HB 382 – Pharmacy Benefits Administration - Maryland Medical Assistance Program and Pharmacy Benefits Managers – Letter of Concern

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of concern for House Bill (HB) 382 – Pharmacy Benefits Administration – Maryland Medical Assistance Program and Pharmacy Benefits Managers. HB 382 requires the Maryland Medical Assistance Program (Medicaid) and Managed Care Organizations (MCOs) that use a Pharmacy Benefits Manager (PBM) to follow certain guidelines. This legislation applies to all pharmacies except (1) those that are owned, or under the same corporate affiliation, as a PBM, or (2) mail order pharmacies.

HB 382 will require Medicaid to set the minimum reimbursement rate for drug products with a generic equivalent to be equal to the National Average Drug Acquisition Cost (NADAC) plus MDH's Fee-for-Service (FFS) dispensing fee. The bill also creates a reimbursement requirement for brand name drug products. If a prescriber requires a specific brand name drug, the reimbursement level must be based on the NADAC amount of the product plus the FFS dispensing fee.

If enacted, HB 382 will reverse the General Assembly's prior policy direction[1] to have MCOs administer the Medicaid pharmacy benefit to ensure access to prescription drugs for Marylanders and to manage skyrocketing drug costs. Following regulatory changes in 2016 under the Affordable Care Act, Maryland Medicaid's FFS began reimbursing for drugs using actual acquisition costs (AAC). Maryland FFS's pharmacy reimbursement utilizes NADAC as a benchmark for determining AAC. Through this approach, the Medicaid reimbursement rate is the NADAC rate or the provider's Usual and Customary charges, whichever is lower. If enacted, MDH estimates that SB 382 will cost $90.2 million in fiscal year 2024 alone, with an approximately 50% federal match. These funds are unbudgeted and the five-year cost of this bill will be approximately $491 million.[2]

Additionally, HB 382 exempts pharmacies owned, or under the same corporate affiliation, as a PBM and mail order pharmacies from the bill's requirements, which may invite litigation.

[1] HB 1290 (2015); report available at:
https://mmcp.health.maryland.gov/Documents/JCRs/MCOpharmacynetworksJCRfinal12-15.pdf
[2] Based on an effective date of April 1, 2023, as this bill is an emergency measure, the impact for the remaining three months of State Fiscal Year 2023 would be $24.1 million. FY24: $98.4 million; FY25 will be $100.3 million; FY26 $102.3 million; FY27 $104.4 million; FY28 $106.5 million.

If you need more information, please contact Megan Peters, Acting Director of Governmental Affairs, at megan.peters@maryland.gov or (410) 260-3190.

Sincerely,

Laura Herrera Scott, M.D., M.P.H.
Secretary