



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

February 12, 2025

The Honorable Pamela Beidle
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401-1991

RE: Senate Bill 438 – Pharmacy Benefits Administration – Maryland Medical Assistance Program and Pharmacy Benefits Managers – Letter of Opposition

Dear Chair Beidle and Committee Members:

The Maryland Department of Health (Department) respectfully submits this letter of opposition for Senate Bill (SB) 438 – *Pharmacy Benefits Administration – Maryland Medical Assistance Program and Pharmacy Benefits Managers*. SB 438 requires the Maryland Medical Assistance Program (Medical Assistance) 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 by, or under the same corporate affiliation, as a PBM, or (2) mail order pharmacies.

SB 438 will require the Medical Assistance Program to set the minimum reimbursement rate for drug products with a generic equivalent to be equal to the National Average Drug Acquisition Cost (NADAC) of the generic product plus the Department's Fee-for-Service (FFS) professional dispensing fee. This 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.

The Department notes that any change to the Medical Assistance Program reimbursement structure will have a fiscal impact. As drafted, SB 438 will have a fiscal impact of \$68.4 million in total funds (\$34.2 million federal funds, \$34.2 million state general funds) in fiscal year (FY) 2026 alone.¹ As part of a 2023 study for the General Assembly, the Department modeled the fiscal impact of increasing managed care organizations' dispensing to different rates ranging from \$1 to \$11, which would have a fiscal impact ranging from \$11.19 million total funds to \$123.04 million total funds.²

¹ Based on an effective date of April 1, 2025, as this bill is an emergency measure, the impact for the remaining three months of State Fiscal Year 2025 would be \$20.0 million. FY26: \$81.5 million; FY27 will be \$83.1 million; FY28 \$84.8 million; FY29 \$86.5 million; FY30 \$88.2 million.

² See p. 13, <https://health.maryland.gov/mmcp/Documents/JCRs/2023/MCOPharmacyclaimsJCRfinal10-23.pdf>.

Further, if enacted, SB 438 will reverse the General Assembly's prior policy direction³ to have MCOs administer the Medical Assistance Program 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, the Medical Assistance FFS program began reimbursing for drugs using actual acquisition costs (AAC). Maryland's FFS pharmacy reimbursement utilizes NADAC as a benchmark for determining AAC. Through this approach, the Medical Assistance Program reimbursement rate is the NADAC rate or the provider's Usual and Customary charges, whichever is lower.

The Department further notes that there have not been substantial reductions to the Medical Assistance Program's pharmacy network. According to a report provided by the Board of Pharmacy, in calendar year (CY) 2021, 20 pharmacies opened and enrolled in the Medical Assistance Program. In contrast, nine pharmacies closed during this time. In CY 2022, 20 pharmacies opened and enrolled in the Medical Assistance Program and six closed.⁴ The Department notes that none of these closures were in rural areas. Additionally, the federal government has established access standards. The HealthChoice program has met these requirements.

Finally, the Department notes that dispensing fees paid for by MCOs align with those paid by commercial payers. Historically, commercial dispensing fees are less than \$1 per pharmacy claim.⁵ In CY 2021, the average commercial dispensing fee was less than \$2 per claim.⁶ In CY 2021, the average dispensing fee paid for by MCOs was \$0.67 and \$0.59 in CY 2022.

Additionally, SB 438 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.

If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs at sarah.case-herron@maryland.gov or (410) 260-3190.

Sincerely,



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

³ HB 1290 (2015); report available at:

<https://mmcp.health.maryland.gov/Documents/ICRs/MCOpharmacynetworks/ICRfinal12-15.pdf>

⁴ This data does not include pharmacies that were pre-existing and either opened or closed during CY 2021 and CY 2022 due to new ownership or the issuance of a new Board of Pharmacy license.

⁵ <http://www.insidepatientcare.com/issues/2016/march-2016-vol-4-no-3/404-cms-introduces-professional-dispensing-fees-for-pharmacies>

⁶ <https://www.pcmantet.org/mandating-pharmacy-reimbursement-increase-spending/#:~:text=The%20average%20dispensing%20fee%20in,the%20state's%20Medicaid%20FFS%20rate>