

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 565
Finance

(Senators Ready and Klausmeier)

Health Insurance - Pharmacy Benefits Managers - Audits of Pharmacies and
Pharmacists

This bill (1) expands the applicability of specified requirements governing pharmacy audits to all pharmacy benefits managers (PBMs), including those used by Medicaid managed care organizations (MCOs); (2) authorizes PBMs to conduct an audit through an auditing entity that is registered with the Insurance Commissioner; (3) imposes additional requirements and restrictions on PBMs during the audit process; (4) stipulates that PBMs or purchasers pay specified fees to a pharmacy or pharmacist in connection with an audit; and (5) requires a final audit report to contain specified information. The Commissioner may adopt regulations to carry out the registration of auditing entities.

Fiscal Summary

State Effect: To the extent that the bill increases the cost of PBM contracts for MCOs, Medicaid expenditures (and federal matching fund revenues) increase by an indeterminate amount, as discussed below. Expenditures (general, federal, and special funds) for the State Employee and Retiree Health and Welfare Benefits Program (State Plan) also increase if PBMs incur significant costs that are passed on to purchasers, as discussed below. Any additional workload on the Maryland Insurance Administration (MIA) can be handled with existing budgeted resources. MIA revenues are not affected.

Local Effect: To the extent health insurance costs increase as a result of the bill, health care expenditures for local governments that purchase fully insured health benefit plans may increase. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary/Current Law: A PBM is a business that administers and manages prescription drug benefit plans for purchasers. A PBM must register with MIA prior to providing pharmacy benefits management services. The Insurance Commissioner is authorized to examine the affairs, transactions, accounts, and records of a registered PBM at the PBM's expense.

Pharmacy Audits

When conducting an audit of a pharmacy or pharmacist under contract with the PBM, the PBM must follow specified procedures and requirements. Under current law, an audit must be conducted by a PBM itself; however, the bill authorizes a PBM to conduct an audit through an auditing entity. Before conducting any audit in the State, an auditing entity must be registered with the Commissioner.

Current law specifies that the procedures and requirements that govern pharmacy audits only apply to a PBM that provides pharmacy benefits management services on behalf of a carrier. The bill repeals this limitation and extends the applicability of the procedures and requirements in place for pharmacy audits to all PBMs.

Audit Procedures

Under current law, when conducting an audit of a pharmacy or pharmacist, a PBM may only audit claims submitted or adjudicated within the two-year period immediately preceding the audit, unless a longer period is permitted under federal or State law. For an on-site audit, the PBM must provide written notice to a pharmacy or pharmacist at least two weeks before initiating the audit and may not schedule an audit to begin during the first five calendar days of a month, unless requested by the pharmacy. Under current law, a PBM must also:

- employ the services of a pharmacist if an audit requires the clinical or professional judgment of a pharmacist;
- permit its auditors to enter the prescription area of a pharmacy only when accompanied by or authorized by a pharmacy staff member;
- allow a pharmacist or pharmacy to use any prescription (or authorized change to a prescription) that meets specified requirements to validate claims submitted for reimbursement for dispensing of original and refill prescriptions;
- allow a pharmacy or pharmacist to use the written or electronically transmitted records of a hospital, physician, or authorized prescriber to validate the pharmacy record with respect to orders or refills of a drug;

- audit each pharmacy and pharmacist using the same standards and parameters as used for others similarly situated; and
- avoid disrupting a pharmacy's provision of services to customers.

Additional Audit Procedures: In addition to meeting the audit procedures and requirements specified above, the bill requires a PBM to:

- for purposes of an invoice audit, accept as validation invoices issued before the date of dispensing from (1) a wholesale distributor from which the pharmacy or pharmacist has purchased prescription drugs or (2) a distributor authorized to do business in the State (for invoiced durable medical equipment or sickroom supplies); and
- allow a completed register transaction to serve as proof of delivery or pickup for a pharmacy customer.

Telephone Hotline: The bill requires a PBM to provide a pharmacy or pharmacist being audited with a phone number that can be used to ask questions regarding the audit. An individual who is familiar with the audit must respond to any telephone inquiry by the pharmacy or pharmacist within 72 hours.

Email and Fax Communications: The bill requires a PBM to give a pharmacy or pharmacist the option to provide requested audit documentation by mail, email, or facsimile. If a PBM or auditing entity requests a document during an audit, the PBM must provide a secure facsimile number and a mechanism for receiving secure emails.

Financial-related Restrictions on Pharmacy Benefits Managers: The bill prohibits a PBM from charging a pharmacy or pharmacist a fee (1) unless an audit finds there was a financial detriment to the pharmacy customer or purchaser or (2) if, with respect to an incorrect days of supply calculation, the PBM is unable to accept the correct days of supply without help desk intervention. Additionally, the bill prohibits a PBM from having or requesting access to a pharmacy's or pharmacist's bank, credit card, or depository statements or data.

Fee Provisions: Under the bill, a PBM or purchaser must pay a pharmacy or pharmacist \$250 per hour of audit or \$10 per prescription audited (adjusted annually for inflation in accordance with the Consumer Price Index), whichever is greater. In addition, a PBM or purchaser may not audit more than 50 prescriptions during a desk or site audit unless the PBM or purchaser pays the pharmacy or pharmacist \$20 per additional prescription or proof of delivery or pickup request.

The bill prohibits a PBM from auditing claims that were reversed or for which there was no remuneration by the purchaser or cost to the pharmacy customer. For each claim audited

that violates this prohibition, the PBM or purchaser must pay the affected pharmacy or pharmacist \$20 per claim found to be in violation.

Final Audit Reports

Under current law, a PBM must deliver the preliminary audit report to the pharmacy or pharmacist within 120 calendar days after the completion of the audit, with reasonable extensions allowed. A PBM must allow a pharmacy or pharmacist to produce documentation to address any discrepancy found during the audit and deliver the final audit within six months after delivery of the preliminary audit or within 30 days after the conclusion of the internal appeals process if the pharmacy or pharmacist requests an internal appeal.

The bill maintains these specifications, but additionally requires that the final audit report must, if applicable, identify each pharmacy customer or purchaser receiving a refund and specify the amount the customer or purchaser is being refunded. A pharmacy or pharmacist may confirm with the pharmacy customer or purchaser that they received the stated refund amount from the PBM.

State Fiscal Effect: The Department of Budget and Management (DBM) and the Maryland Department of Health both advise that the bill's changes likely result in an indeterminate increase in expenditures for the State Plan and Medicaid MCOs, respectively, and that this increase may be significant.

According to DBM, the bill's audit provisions are generally less favorable to PBMs and any additional net costs are likely to be passed on to purchasers. However, DBM advises that it is not privy to all the audit procedures contained in existing agreements and, thus, cannot determine the magnitude of any cost difference between current audit procedures and those required under the bill as they apply to the State Plan. To the extent that PBMs pass along increased administrative expenses to purchasers, expenditures for the State Plan (general, federal, and special funds) increase under the bill.

To the extent that PBMs pass along increased administrative expenses to MCOs, Medicaid general and federal fund expenditures (and federal matching fund revenues) also increase. Expenditures are eligible for a 51% federal matching rate in fiscal 2024, decreasing to 50% in fiscal 2025 and beyond.

Small Business Effect: Independent and community pharmacies benefit from more accommodating audit procedures and the receipt of audit-related fees from PBMs. Conversely, due to the heightened administrative burdens and fees imposed on PBMs for pharmacy audits, premiums for small businesses that purchase fully insured health benefit plans may increase slightly.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 374 (Delegate Kipke) - Health and Government Operations.

Information Source(s): Department of Budget and Management; Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

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js/jc

Analysis by: Ralph W. Kettell

Direct Inquiries to:
(410) 946-5510
(301) 970-5510