

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1009 (Delegate Kipke)
Health and Government Operations

Health Insurance - Pharmacy Benefits Managers - Reimbursement and Cost
Sharing

This bill establishes the minimum reimbursement level that a pharmacy benefits manager (PBM) must provide a pharmacy or pharmacist for a prescription drug or pharmacy service. A PBM is prohibited from specified actions relating to reimbursement. The bill specifies that the prohibition against a PBM reimbursing a pharmacy or pharmacist in an amount less than the PBM reimburses itself or an affiliate for the same product or service applies to all reimbursement paid by any PBM. The bill repeals provisions of law relating to maximum allowable cost (MAC) pricing, disputes regarding cost pricing, and reimbursement and fees for performance-based reimbursement. A beneficiary's cost sharing must be calculated at the point of sale and based on a specified price. The Insurance Commissioner may order reimbursement to an insured, pharmacy, or pharmacist that has incurred a monetary loss as a result of a violation of the bill. **The bill takes effect January 1, 2023, and applies to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after that date.**

Fiscal Summary

State Effect: Expenditures for the State Employee and Retiree Health and Welfare Benefits Program increase by an estimated \$40.0 million annually beginning in FY 2023, as discussed below. Any additional impact on the Maryland Insurance Administration (MIA) can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: To the extent the cost of pharmacy services increases, local expenditures for prescription drug coverage increase by an indeterminate amount.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Minimum Reimbursement Amount for Pharmacies and Pharmacists

A PBM may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the National Average Drug Acquisition Cost (NADAC) at the time the drug is administered or dispensed plus the professional dispensing fee determined by the federal Centers for Medicare and Medicaid Services (CMS) that is in effect at the time the drug is administered or dispensed.

If NADAC is not available at the time a drug is administered or dispensed, a PBM may not reimburse in an amount that is less than the wholesale acquisition cost of the drug plus the professional dispensing fee determined by CMS that is in effect at the time the drug is administered or dispensed.

A PBM may offer a purchaser the option of charging the purchaser the same price for a prescription drug as it pays a pharmacy for the prescription drug as reimbursed by a Medicaid program.

Prohibitions on Pharmacy Benefits Managers

A PBM may not discriminate in reimbursement, assess any fees or adjustments, or exclude a pharmacy from the PBM's network on the basis that the pharmacy dispenses drugs subject to a specified federal agreement or engage in any practice that (1) unless agreed to by the pharmacy in advance, bases pharmacy reimbursement for a drug on patient outcomes, scores, or metrics; (2) imposes a point-of-sale fee or retroactive fee; or (3) except for receiving deductibles or copayments, derives any revenue from a pharmacy or insured in connection with performing pharmacy benefits management services.

Beneficiary Cost Sharing

A beneficiary's defined cost sharing for a prescription drug must be calculated at the point of sale based on a price that is reduced by an amount equal to at least 100% of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Any rebate over the defined cost sharing must be passed on to the purchaser to reduce premiums. This provision does not preclude a purchaser from decreasing a beneficiary's defined cost sharing by an amount greater than what was previously agreed to by the purchaser and the beneficiary. The Commissioner may adopt regulations to carry out this provision.

Current Law: A PBM is a business that administers and manages prescription drug benefit plans. A PBM must register with MIA prior to providing pharmacy benefits management services.

A PBM that provides pharmacy benefits management services on behalf of a carrier may not reimburse a pharmacy or pharmacist for a pharmaceutical product or pharmacist service in an amount less than the amount that the PBM reimburses itself or an affiliate for providing the same product or service. This prohibition does not apply to reimbursement for specialty drugs, mail order drugs, or to a chain pharmacy with more than 15 stores or a pharmacist who is an employee of the chain pharmacy.

Maximum Allowable Cost Pricing

MAC means the maximum amount that a PBM or a purchaser will reimburse a contracted pharmacy for the cost of a multisource generic drug, a medical product, or a device. MAC does not include dispensing fees. A PBM must (1) establish a reasonable process by which a contracted pharmacy has access to the current and applicable MAC price lists in an electronic format as updated in accordance with specified requirements and (2) immediately after a pricing update, use the updated pricing information in calculating the payments made to all contracted pharmacies. Before placing a prescription drug on a MAC list, a PBM must ensure its availability, as specified.

Disputes Regarding Cost Pricing

Each contract between a PBM and a contracted pharmacy must include a process to appeal, investigate, and resolve disputes regarding cost pricing and reimbursement under a pharmacy contract, as specified. A PBM may not retaliate against a contracted pharmacy for exercising its right to appeal or filing a complaint with the Commissioner. A PBM may not charge a contracted pharmacy a fee related to the readjudication of a claim or claims resulting from upholding of an appeal.

If a PBM denies an appeal and a contracted pharmacy files a complaint with the Commissioner, the Commissioner must (1) review the compensation program of the PBM to ensure that the reimbursement paid to the pharmacist or pharmacy complies with specified law and the terms of the contract and (2) based on this determination, dismiss the appeal or uphold the appeal and order the PBM to pay the claim or claims in accordance with the Commissioner's findings. All information and data collected by the Commissioner during such a review is confidential and proprietary and not subject to disclosure under the Public Information Act.

Reimbursement and Fees for Performance-based Reimbursement

A PBM or carrier may not directly or indirectly charge a contracted pharmacy, or hold a contracted pharmacy responsible for, a fee or performance-based reimbursement related to the adjudication of a claim or an incentive program. A PBM or carrier may not make or allow any reduction in payment for pharmacy services by a PBM or carrier or directly or indirectly reduce a payment for a pharmacy service under a reconciliation process to an effective rate of reimbursement, including generic effective rates, brand effective rates, direct and indirect remuneration fees, or any other reduction or aggregate reduction of payments.

State Expenditures: The Department of Budget and Management (DBM) advises that the State Employee and Retiree Health and Welfare Benefits Program is significantly impacted by the bill's provision establishing a minimum reimbursement level of NADAC plus the CMS professional dispensing fee (currently \$10.49). The program has negotiated dispensing fees of \$0.35 and \$0.50 per script for the active employee and retiree populations, respectively. Approximately 1,860,800 prescriptions are filled annually under the program. Thus, expenditures for the program increase by more than \$18.6 million annually for additional dispensing fees alone. In total, DBM advises that the bill's provisions increase costs by nearly \$40.0 million in calendar 2023; however, this cost estimate does not account for any rebate impact.

Small Business Effect: Small business pharmacies receive additional reimbursement under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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