

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 838 (Delegate Kipke, *et al.*)
Health and Government Operations

Finance

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

This bill expands the provisions governing audits and reimbursement of pharmacies and pharmacists by a pharmacy benefits manager (PBM). The Insurance Commissioner may adopt regulations regarding the documentation that may be requested during an audit and the process a PBM may use to conduct an audit.

Fiscal Summary

State Effect: Adoption of regulations and enforcement of the bill's provisions can be handled by the Maryland Insurance Administration (MIA) within existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: When conducting an audit, a PBM must (1) permit its auditors to enter the prescription area of a pharmacy only when accompanied by or authorized by a member of the pharmacy staff; and (2) allow a pharmacist or pharmacy to use any prescription or authorized change to a prescription that meets specified regulatory requirements to validate claims submitted for reimbursement for dispensing of original and refill prescriptions.

During an audit, a PBM may not disrupt the provision of services to the customers of a pharmacy. A PBM may not share information from an audit with another PBM or use information from an audit conducted by another PBM except under specified circumstances.

The bill clarifies, that, for purposes of validating a pharmacy record with respect to orders or refills for *any drug* rather than just a controlled dangerous substance, a PBM must allow the pharmacy or pharmacist to use records of a hospital or a physician or *other prescriber authorized by law* that are transmitted by *any means of communication* authorized by contract between the pharmacy and PBM.

The bill specifies that a PBM may not recoup by setoff any moneys for an overpayment or denial of a claim until the pharmacy or pharmacist has an opportunity to review the PBM's findings. Further, the current PBM recoupment schedule only applies if the pharmacy or pharmacist concurs with the PBM's findings of overpayment or denial of a claim. If the pharmacy or pharmacist does not concur with the PBM's findings of overpayment or denial, the PBM may not recoup by setoff any money pending the outcome of an appeal.

With the exception of overpayments, if a PBM approves a claim through adjudication, the PBM may not retroactively deny or modify reimbursement unless the claim was fraudulent, the pharmacy or pharmacist had been reimbursed for the claim previously, the services reimbursed were not rendered by the pharmacy or pharmacist, or the claim otherwise caused monetary loss to the PBM if the PBM allowed the pharmacy a reasonable opportunity to remedy the cause of the loss.

Current Law: When conducting an audit, a PBM must (1) for an on-site audit, provide written notice at least two weeks prior to conducting the audit for each audit cycle; (2) employ the services of a pharmacist if the audit requires the clinical or professional judgment of a pharmacist; (3) allow the pharmacy or pharmacist to use specified hospital or physician records to validate specified orders or refills; (4) audit each pharmacy and pharmacist under similar standards and parameters; (5) only audit claims submitted or adjudicated within the two years immediately preceding the audit unless otherwise provided by law; (6) deliver a preliminary audit report within 120 calendar days after completion of the audit; (7) allow a pharmacy or pharmacist to produce documentation to address any discrepancy within a specified timeframe; and (8) deliver the final audit report within a specified timeframe.

A PBM may not use extrapolation to calculate overpayments or underpayments. A PBM may not schedule an on-site audit to begin during the first five calendar days of a month unless requested by the pharmacy or pharmacist. Recoupment of claims payments must be based on actual overpayment or denial of an audited claim unless the projected

overpayment or denial is part of a settlement agreed to by the pharmacy or pharmacist. Any decision of a PBM on an appeal of a disputed claim in a preliminary audit report must be reflected in the final audit report.

A PBM must establish a specified internal appeals process for pharmacies or pharmacists to appeal any disputed claim in a preliminary audit report. A PBM must deliver a final audit report within 30 days after conclusion of the internal appeals process. A PBM may not recoup by setoff any moneys for an overpayment or denial of a claim until 30 working days after the final audit report has been delivered to the pharmacy or pharmacist. A PBM must remit any money due to a pharmacy or pharmacist within 30 working days after the final audit report has been provided. A PBM may withhold future payments prior to provision of the final audit report if the identified discrepancy exceeds \$25,000.

Background: PBMs are businesses that administer and manage prescription drug benefit plans for purchasers. PBMs 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. PBMs are prohibited from shipping, mailing, or delivering prescription drugs or devices to a person in the State through a nonresident pharmacy unless the nonresident pharmacy holds a nonresident pharmacy permit from the State Board of Pharmacy.

Additional Information

Prior Introductions: None.

Cross File: SB 903 (Senator Astle) - Finance.

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

Fiscal Note History: First Reader - February 28, 2012
mc/mwc Revised - House Third Reader - March 30, 2012

Analysis by: Jennifer B. Chasse

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