

**Commonwealth of Pennsylvania**  
**Office of the Budget**  
March 9, 2012 (*Revised*)

**Subject:** Fiscal Note  
HB 511  
PN 466

**Sponsor:** Hennessey

**Status:** Set on the House Calendar for March 12

**Summary:** Amends The Insurance Company Law of 1921, providing for access to community pharmacy services

**Analysis and Fiscal Impact:** House Bill (HB) 511 amends The Insurance Company Law of 1921 to provide for access to community pharmacy services. As long as a retail community pharmacy agrees to participate in a provider network, no health insurance policy, government program,<sup>1</sup> or pharmacy benefit manager (PBM) may:

- require use of a mail order pharmacy;
- impose any copayment, deductible, or other cost-sharing requirement or prior authorization requirement not imposed for the use of a mail order pharmacy;
- subject any medication to a minimum or maximum quantity limit, length of script, restriction on refills, or requirement to obtain refills not imposed upon a mail order pharmacy;
- require payment and seek reimbursement when an individual is not required to pay for and seek reimbursement in the same manner for a prescription dispensed by a mail order pharmacy;
- impose any other administrative requirements not imposed upon the use of a mail order pharmacy; or
- impose any other term, condition, or requirement that materially and unreasonably interferes with or impairs an individual's right to obtain prescription medications from a retail community pharmacy of his/her choice.

No health insurance company and no agent, affiliate, or contractor of an insurance company, government program, or PBM may promote, advertise, or encourage the use of a participating pharmacy, including a mail order pharmacy.

A health insurance company, agent, or contractor of an insurance company, PBM, or any pharmacy owned or affiliated with a health insurance company or PBM receiving rebates, discounts, allowances, or other incentive payments from any person for the dispensing of prescription medications shall at least annually disclose the amount, terms, and conditions of such payments to

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<sup>1</sup> "Government program" includes the commonwealth's medical assistance program; the adult basic coverage insurance program; children's health care program; Pharmaceutical Assistance for the Elderly; an employee benefit plan described in section 1003(b)(1) of the Employee Retirement Income Security Act of 1974 (Public Law 93-46, 29 U.S.C. § 1003 (b)(1)), applicable to government employees who are residents of this commonwealth; and any other program established or operated by the commonwealth that provides or pays for the cost of prescription medications and pharmacy services provided to residents of the commonwealth. HB 511 provides that certain drug programs (the Department of Public Welfare's specialty pharmacy drug program and the Pennsylvania Public Employees Benefit Trust Fund) may be exempt from the requirements to the extent that the commonwealth determines that the provisions of HB 511 will materially increase the costs of providing pharmacy services.

the Insurance Department (PID). PID may review and audit records supporting the accuracy and completeness of such report and shall make a summary of the report available to the purchaser of any health insurance policy or employee benefit plan and to any participating pharmacy within 90 days.

A pharmacy licensed and in good standing with the State Board of Pharmacy that is not disqualified from participation in the Medicaid or Medicare program for cause shall have a right to participate in a pharmacy provider network. The standard terms and conditions relating to dispensing fees and payment for product costs and other pharmacy services shall provide convenient access to retail community pharmacies and shall take into consideration the standards established by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services. They shall not be less than the amounts paid by or for the benefit of a health insurance company government program, or PBM for dispensing the same medications and the provision of comparable services to any mail order pharmacy, including amounts paid or distributed to a mail order pharmacy by an affiliate of the mail order pharmacy or by the PBM.

The provisions of HB 511 shall apply to health insurance policies, government programs, and agreements with PBMs that are offered, issued, executed, or renewed or that have provisions related to prescription medication benefits that are amended on or after the effective date of this section. PID may adopt regulations to administer and enforce the requirements of HB 511.

This act shall take effect in 120 days.

In Pennsylvania, health plans can create a pharmacy network in one of two ways:

- The plan can contract with a number of pharmacies to create their own network; or
- The plan can contract with a PBM to provide the network and manage the pharmacy part of the business.

Currently, prescription drugs cost health insurers an estimated 12% to 16% of their premium revenue, and are one of the main drivers of increased health care costs. As this cost continues to rise, negotiations between health plans and their network pharmacies or their PBM are a critical factor in determining the rates they will charge employers and employees in the commonwealth. Health plans typically look for rebates from drug manufacturers, discounts from retail pharmacies, more affordable pharmacy channels such as mail order and specialty pharmacy options, and encouraging use of generic drugs as ways to curb costs and reduce the bottom line for the plans they offer. Though this fiscal note addresses the cost to the commonwealth's prescription benefits programs, the issues we have identified will affect all employers in the commonwealth. We are not able to calculate a cost to the private sector, but we believe that the fiscal impact on large employers within the commonwealth will be comparable to the fiscal impact we expect to see on government programs.

In the short term, HB 511 will incent public and commercial payers to seek cost-saving alternatives such as limits on coverage of drugs and/or cost shifting to members through increases in premiums, deductibles, and co-payments. In the long term, as costs for pharmacy benefits continue to increase, prohibitions on industry-standard, effective, and efficient utilization management initiatives will affect the overall cost of care and, ultimately, may force greater reliance on public programs. For example, as the cost of health care coverage increases, more employers who sponsor health care coverage for their employees may be forced to limit pharmacy services or agree to prohibitive cost-sharing, making access to life-saving and health-maintaining medications for commonwealth citizens more and more difficult, to the extent that some who can no longer work will be forced to seek healthcare through publicly-funded programs like Medicaid, general assistance, children's health insurance program, and Medicare.

The Office of Administration (OA) and the Pennsylvania Employee Benefit Trust Fund (PEBTF) administer the prescription drug benefit program for both active and retired commonwealth employees. As a cost-savings measure, OA and PEBTF have encouraged the use of a mail order pharmacy. HB 511 would eliminate these savings, increasing overall costs by decreasing the effective discount rate and guaranteed minimum formulary rebate and increasing the dispensing fee. Section 635.6(c), for example, allows community pharmacies to claim that they need higher reimbursement rates and dispensing fees, forcing PBMs to pay community pharmacies higher rates in order to meet the access standards included in the bill. Although HB 511 allows for the possibility of an exemption for PEBTF, the process for evaluating and determining such an exemption is unclear. Assuming that the PEBTF is not exempt from the requirements of HB 511, we anticipate an increase of more than \$47.5 million in the first year alone.

The Medical Assistance (MA) program, managed by the Department of Public Welfare (DPW), currently enrolls mail order pharmacies but makes MA recipient participation in mail order voluntary. All regulations governing the scope of covered services, member cost sharing, and provider payments are the same as all other pharmacies enrolled in the MA Program. Although HB 511 attempts to exempt DPW's Specialty Pharmacy Drug Program, we are very concerned that the bill does nothing to exempt the MCO specialty or mail order programs, removing the possibility for MCOs to negotiate for better rates with mail order or specialty pharmacies. This limits DPW's ability to look to pharmacy benefits for future savings incentives in the MA Program and will translate into capitation rate increases.

HB 511 requires that an agency in charge of a government benefits program establish a petition process through which a member or pharmacist may file a direct complaint, which will impact OA, PID, Department of Labor and Industry, and DPW. Several of these agencies already have administrative appeals processes in place, though we do not know if they have the capacity to absorb the additional workload that would result from the petition process in HB 511. At a minimum, these agencies would have to train existing staff on their benefits programs and the requirements of HB 511.

We do not believe the pharmacy programs for the Department of Corrections or for individuals receiving benefits through the Department of Military and Veterans Affairs will be affected by this bill.

Finally, HB 511 shifts responsibility for the review of network adequacy and the review of standard provider contracts for managed care plans from the Department of Health, Bureau of Managed Care (DOH) to PID. It gives PID the responsibility for reviewing networks for sufficient access to community pharmacies; however, questions of network adequacy have been the responsibility of DOH under Article XXI of the Insurance Company Law of 1921 (40 P.S. §§ 991.2101-991.2193), commonly referred to as "Act 68," the HMO Act (40 P.S. § 1551 *et seq.*), and the PPO Act (40 P.S. § 764a). HB 511 also reassigns DOH's responsibility for reviewing the terms and conditions of standard pharmacy contracts to PID. The total for salary, benefits, and training for an additional 11 FTE, plus operating costs, is estimated to be between \$932,320 and \$1,057,320. Actual costs to PID will depend on the workload that comes with these additional responsibilities.

We should also note that DOH would maintain some of its current responsibilities with regard to pharmacy review, raising concerns about the efficiency of fragmenting the current system at a time when we are attempting to promote cost efficiencies through streamlined agency operations.