



## Vote NO on MD HB 754

### Health Insurance and Pharmacy Benefits Managers – Cost Pricing and Reimbursement

HB 754 generally meets its goal to provide greater business clarity to pharmacies operating in Maryland. However, the bill proposes changes that will have a detrimental impact on pharmacy benefit services in the State of Maryland. These issues can be mitigated via amendment.

#### HB 754 Proposes Significant Changes to Maryland Law

- Prohibits the use of a generic effective rate by pharmacy benefit managers (PBMs) serving insurers, Medicaid managed care organizations (MCOs), and the State Employees Health Plan;
- Requires filing of all provider contracts for review and approval with the Insurance Commissioner;
- Makes changes to Maryland's Maximum Allowable Cost (MAC) appeal law; and
- Creates new, broad appeal language for pharmacy compensation programs.

#### Generic Effective Rate (GER) and the Role of Pharmacy Services Administrative Organizations (PSAOs)

- PSAOs pool the purchasing power of many independent pharmacies. These large purchasers, the biggest of which are owned by drug wholesalers, negotiate network contracts on behalf of groups of independent pharmacies. Approximately 80% of independent pharmacies contract with PBMs through a PSAO. They rely on their PSAO to communicate the contracted rates and reconciliation procedures with them.
- The market for generic drugs can be dynamic, and GER helps manage this environment. A GER reimbursement is an aggregate annual reimbursement level that a PBM and a PSAO, on behalf of individual independent community pharmacies, may negotiate. A PSAO will only agree to GER if it believes that it will be financially advantageous for its member pharmacies.
- GER is an overall guaranteed discount for all generic drugs that provides reimbursement predictability for all participating pharmacies during the contracting period, which is generally a year. PSAOs have up-to-date information regarding market pricing for drugs and agree on behalf of their participating pharmacies to the GER guarantee outlined in the PBM contract based on their expert knowledge.
- GER is not used to disadvantage independent community pharmacies. Chain pharmacies have contracted with PBMs using GER for a very long time and prefer it over regular maximum allowable cost (MAC) reimbursement alone.
- GER offers pharmacies a number of advantages, such as:
  - Overall reimbursement predictability and forecasting throughout the year;
  - Less administrative burden, enabling assessment of reimbursement on an aggregate basis rather than on a claim-by-claim basis; and
  - Price protection in the event of marketplace generic acquisition price erosion.

- GER is not a substitute for maximum allowable cost reimbursement (MAC) and the MAC appeals process requirements by existing Maryland law. Rather, the GER establishes guaranteed reimbursement levels, as negotiated in contracts between the PBM and PSAOs for the benefit of member pharmacies.
- In 2018, when PBMs, a large PSAO, and independent pharmacies negotiated HB 1349 with legislators, the PSAO knew GER existed, that it was actively negotiating contracts that included GER terms, and that the bill would not cover appeals related to GER. PBMs never mislead the General Assembly.
- Legislators should amend HB 754 to provide the option for pharmacies that do not wish to participate in a GER arrangement while preserving the opportunity for those pharmacies that do find that GER benefits their business.

### Contract Review

- HB 754 requires PBMs and PSAOs to file every contract or amendment of a contract with the Insurance Commissioner. Maryland does not require review and approval for any other provider contracts. The state has set requirements regarding required contract provisions and the Commissioner had several opportunities to review the language to ensure compliance without requiring prior approval.
- Requiring prior contract approval will have a negative impact on provider contracting and the efficient development and maintenance of networks. Further, to the extent the bill attempts to reach PSAOs, the Commissioner does not have any regulatory authority over PSAOs and cannot enforce the provisions of this requirement.

### Appeals Language

- In 2018, the General Assembly passed one of the country's most progressive MAC laws last year that provides extensive protections and appeals rights for pharmacists. HB 754 adds even more provisions to the existing, extensive MAC appeals law. Under current law, PBMs must already provide appropriate information in a notice to a pharmacy that has filed a reimbursement appeal.
- HB 754 would require PBMs to provide the "mathematical calculation" used to determine reimbursement. This raises significant concerns, as it would require the release of trade secret information. Releasing this information could have anti-competitive consequences. The existing law provides pharmacies with the necessary, useful information they desire without the inclusion of the proprietary data.
- Under current law, the Commissioner can access this proprietary information if there is a legitimate question. The Commissioner is required to treat the information as confidential.

### Effective Date

- The bill has been made an emergency bill and allows no time for companies to comply with numerous new requirements. Changes to existing contracts, complex systems and more will be required. In addition, as drafted, the bill requires the Commissioner to promulgate regulations with which PBM/s must comply. An alternate effective date or a compliance date in the future is necessary for the bill to be implemented without disrupting services.