HB0257/276182/1

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 257
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike "and Rudolph" and substitute "Rudolph, Beitzel, Benson, Bromwell, Costa, Donoghue, Hammen, Kach, McDonough, Morhaim, Nathan–Pulliam, Oaks, Pena–Melnyk, Pendergrass, Reznik, Riley, V. Turner, and Weldon"; in line 2, after "Pharmacies" insert "and Pharmacists"; strike beginning with "enter" in line 3 down through "contracts" in line 5 and substitute "disclose certain information to a pharmacy or a pharmacist at the time of entering into a contract with the pharmacy or pharmacist and at a certain time before a contract change"; in line 6, strike "or pharmacy claims" and substitute ", pharmacists, and claims of pharmacies and pharmacists"; in the same line, after the semicolon insert "making certain provisions of law applicable to pharmacy benefits managers; requiring a pharmacy benefits manager to establish a certain appeals process; establishing a process for a pharmacy or pharmacist to file a certain complaint with the Maryland Insurance Commissioner; establishing a certain process for review of the underpayment of a claim; making certain provisions of law applicable to health maintenance organizations; providing for the application of this Act;"; in line 8, after "pharmacies" insert "and pharmacists"; in line 11, after "15–1601" insert "through 15–1604"; and after line 14, insert:

"BY adding to:
Article – Health – General
Section 19–706(ppp)
Annotated Code of Maryland
(2005 Replacement Volume and 2007 Supplement)".

AMENDMENT NO. 2

(Over)

On pages 1 through 4, strike in their entirety the lines beginning with line 20 on page 1 through line 16 on page 4, inclusive, and substitute:

"**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(B) "BENEFICIARY" MEANS AN INDIVIDUAL WHO RECEIVES PRESCRIPTION DRUG COVERAGE OR BENEFITS FROM A PURCHASER.

(C) "ERISA" HAS THE MEANING STATED IN § 8–301 OF THIS ARTICLE.

(D) "NONPROFIT HEALTH MAINTENANCE ORGANIZATION" HAS THE MEANING STATED IN § 6–121(A) OF THIS ARTICLE.

(E) "PHARMACIST" HAS THE MEANING STATED IN § 12-101 OF THE HEALTH OCCUPATIONS ARTICLE.

(F) "PHARMACY" HAS THE MEANING STATED IN § 12-101 OF THE HEALTH OCCUPATIONS ARTICLE.

(G) (1) "PHARMACY BENEFITS MANAGEMENT SERVICES" MEANS:

(I) THE PROCUREMENT OF PRESCRIPTION DRUGS AT A NEGOTIATED RATE FOR DISPENSATION WITHIN THE STATE TO BENEFICIARIES;

(II) THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG COVERAGE PROVIDED BY A PURCHASER FOR BENEFICIARIES; AND

(III) ANY OF THE FOLLOWING SERVICES PROVIDED WITH REGARD TO THE ADMINISTRATION OF PRESCRIPTION DRUG COVERAGE:

1. MAIL SERVICE PHARMACY;

2. CLAIMS PROCESSING, RETAIL NETWORK MANAGEMENT, AND PAYMENT OF CLAIMS TO PHARMACIES FOR PRESCRIPTION DRUGS DISPENSED TO BENEFICIARIES;

3. CLINICAL FORMULARY DEVELOPMENT AND MANAGEMENT SERVICES;

4. REBATE CONTRACTING AND ADMINISTRATION;

5. PATIENT COMPLIANCE, THERAPEUTIC INTERVENTION, AND GENERIC SUBSTITUTION PROGRAMS; OR

6. DISEASE MANAGEMENT PROGRAMS.

(2) "PHARMACY BENEFITS MANAGEMENT SERVICES" DOES NOT INCLUDE ANY SERVICE PROVIDED BY A NONPROFIT HEALTH MAINTENANCE ORGANIZATION THAT OPERATES AS A GROUP MODEL, PROVIDED THAT THE SERVICE:

(I) IS PROVIDED SOLELY TO A MEMBER OF THE NONPROFIT HEALTH MAINTENANCE ORGANIZATION; AND

(II) IS FURNISHED THROUGH THE INTERNAL PHARMACY OPERATIONS OF THE NONPROFIT HEALTH MAINTENANCE ORGANIZATION.

(H) "PHARMACY BENEFITS MANAGER" MEANS A PERSON THAT PERFORMS PHARMACY BENEFITS MANAGEMENT SERVICES.

(I) (1) "PURCHASER" MEANS THE STATE EMPLOYEE AND RETIREE HEALTH AND WELFARE BENEFITS PROGRAM, AN INSURER, A NONPROFIT HEALTH SERVICE PLAN, OR A HEALTH MAINTENANCE ORGANIZATION THAT:

(I) PROVIDES PRESCRIPTION DRUG COVERAGE OR BENEFITS IN THE STATE; AND

(II) ENTERS INTO AN AGREEMENT WITH A PHARMACY BENEFITS MANAGER FOR THE PROVISION OF PHARMACY BENEFITS MANAGEMENT SERVICES.

(2) "PURCHASER" DOES NOT INCLUDE A PERSON THAT PROVIDES PRESCRIPTION DRUG COVERAGE OR BENEFITS THROUGH PLANS SUBJECT TO ERISA AND THAT DOES NOT PROVIDE PRESCRIPTION DRUG COVERAGE OR BENEFITS THROUGH INSURANCE, UNLESS THE PERSON IS A MULTIPLE EMPLOYER WELFARE ARRANGEMENT AS DEFINED IN § 514(B)(6)(A)(II) OF ERISA.

15–1602.

THE PROVISIONS OF §§ 15–1008 AND 15–1009(B) OF THIS TITLE, SUBTITLE 10D OF THIS TITLE, AND § 27–303(2) OF THIS ARTICLE SHALL APPLY TO PHARMACY BENEFITS MANAGERS IN THE SAME MANNER THEY APPLY TO CARRIERS.

15–1603.

AT THE TIME OF ENTERING INTO A CONTRACT WITH A PHARMACY OR A PHARMACIST, AND AT LEAST 30 WORKING DAYS BEFORE ANY CONTRACT CHANGE, A PHARMACY BENEFITS MANAGER SHALL DISCLOSE TO THE PHARMACY OR PHARMACIST:

(1) THE APPLICABLE TERMS, CONDITIONS, AND REIMBURSEMENT RATES;

(2) THE PROCESS AND PROCEDURES FOR VERIFYING PHARMACY BENEFITS AND BENEFICIARY ELIGIBILITY;

(3) THE DISPUTE RESOLUTION AND AUDIT APPEALS PROCESS; AND

(4) THE PROCESS AND PROCEDURES FOR VERIFYING THE PRESCRIPTION DRUGS INCLUDED ON THE FORMULARIES USED BY THE PHARMACY BENEFITS MANAGER.

15–1604.

(A) THIS SECTION DOES NOT APPLY TO AN AUDIT THAT INVOLVES PROBABLE OR POTENTIAL FRAUD OR WILLFUL MISREPRESENTATION BY A PHARMACY OR PHARMACIST.

(B) A PHARMACY BENEFITS MANAGER SHALL CONDUCT AN AUDIT OF A PHARMACY OR PHARMACIST UNDER CONTRACT WITH THE PHARMACY BENEFITS MANAGER IN ACCORDANCE WITH THIS SECTION.

(C) A PHARMACY BENEFITS MANAGER MAY NOT SCHEDULE AN ONSITE AUDIT TO BEGIN DURING THE FIRST 5 CALENDAR DAYS OF A MONTH UNLESS REQUESTED BY THE PHARMACY OR PHARMACIST.

(D) WHEN CONDUCTING AN AUDIT, A PHARMACY BENEFITS MANAGER SHALL:

(1) IF THE AUDIT IS ONSITE, PROVIDE WRITTEN NOTICE TO THE PHARMACY OR PHARMACIST AT LEAST 2 WEEKS BEFORE CONDUCTING THE INITIAL ONSITE 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) FOR PURPOSES OF VALIDATING THE PHARMACY RECORD WITH RESPECT TO ORDERS OR REFILLS OF A DRUG THAT IS A CONTROLLED DANGEROUS SUBSTANCE, ALLOW THE PHARMACY OR PHARMACIST TO USE HOSPITAL OR PHYSICIAN RECORDS THAT ARE:

(I) WRITTEN; OR

(II) TRANSMITTED ELECTRONICALLY;

(4) AUDIT EACH PHARMACY AND PHARMACIST UNDER THE SAME STANDARDS AND PARAMETERS AS OTHER SIMILARLY SITUATED PHARMACIES OR PHARMACISTS AUDITED BY THE PHARMACY BENEFITS MANAGER;

(5) ONLY AUDIT CLAIMS SUBMITTED OR ADJUDICATED WITHIN THE 2-YEAR PERIOD IMMEDIATELY PRECEDING THE AUDIT, UNLESS A LONGER PERIOD IS PERMITTED UNDER FEDERAL OR STATE LAW;

(6) DELIVER THE PRELIMINARY AUDIT REPORT TO THE PHARMACY OR PHARMACIST WITHIN 120 CALENDAR DAYS AFTER THE COMPLETION OF THE AUDIT, WITH REASONABLE EXTENSIONS ALLOWED;

(7) ALLOW A PHARMACY OR PHARMACIST AT LEAST 30 WORKING DAYS FOLLOWING RECEIPT OF THE PRELIMINARY AUDIT REPORT, WITH REASONABLE EXTENSIONS ALLOWED, IN WHICH TO PRODUCE DOCUMENTATION TO ADDRESS ANY DISCREPANCY FOUND DURING THE AUDIT; AND

(8) DELIVER THE FINAL AUDIT REPORT TO THE PHARMACY OR PHARMACIST WITHIN 6 MONTHS AFTER DELIVERY OF:

(I) THE PRELIMINARY AUDIT REPORT; OR

(II) THE DECISION ON ANY APPEAL MADE THROUGH THE PROCESS PROVIDED UNDER SUBSECTION (G) OF THIS SECTION.

(E) A PHARMACY BENEFITS MANAGER MAY NOT USE THE ACCOUNTING PRACTICE OF EXTRAPOLATION TO CALCULATE OVERPAYMENTS OR UNDERPAYMENTS.

(F) THE RECOUPMENT OF A CLAIMS PAYMENT FROM A PHARMACY OR PHARMACIST BY A PHARMACY BENEFITS MANAGER SHALL BE BASED ON AN 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.

(G) (1) A PHARMACY BENEFITS MANAGER SHALL ESTABLISH AN APPEALS PROCESS, IN ACCORDANCE WITH THE PROVISIONS OF SUBTITLE 10D

OF THIS TITLE, UNDER WHICH A PHARMACY OR PHARMACIST MAY APPEAL A DISPUTED CLAIM IN A PRELIMINARY AUDIT REPORT.

(2) IF THE PHARMACY BENEFITS MANAGER REVERSES OR MODIFIES ITS PRELIMINARY AUDIT REPORT AS A RESULT OF AN APPEAL OF A DISPUTED CLAIM BY A PHARMACY OR PHARMACIST, THE PHARMACY BENEFITS MANAGER SHALL DISMISS THE PRELIMINARY AUDIT REPORT OR THE UNSUBSTANTIATED PORTION OF THE PRELIMINARY AUDIT REPORT WITH NO FURTHER PROCEEDINGS.

(3) THE DECISION OF THE PHARMACY BENEFITS MANAGER ON AN APPEAL OF A DISPUTED CLAIM IN A PRELIMINARY AUDIT REPORT BY A PHARMACY OR PHARMACIST SHALL BE REFLECTED IN THE FINAL AUDIT REPORT.

(H) (1) A PHARMACY BENEFITS MANAGER MAY NOT RECOUP BY SETOFF ANY MONEYS FOR AN OVERPAYMENT OR DENIAL OF A CLAIM UNTIL 30 WORKING DAYS AFTER THE DATE THE FINAL AUDIT REPORT HAS BEEN PROVIDED TO THE PHARMACY OR PHARMACIST.

(2) A PHARMACY BENEFITS MANAGER SHALL REMIT ANY MONEY DUE TO A PHARMACY OR PHARMACIST AS A RESULT OF AN UNDERPAYMENT OF A CLAIM WITHIN 30 WORKING DAYS AFTER THE FINAL AUDIT REPORT HAS BEEN PROVIDED TO THE PHARMACY OR PHARMACIST.

(3) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION, A PHARMACY BENEFITS MANAGER MAY WITHHOLD FUTURE PAYMENTS BEFORE THE DATE THE FINAL AUDIT REPORT HAS BEEN PROVIDED TO THE PHARMACY OR PHARMACIST IF THE IDENTIFIED DISCREPANCY FOR AN INDIVIDUAL AUDIT EXCEEDS $25,000.

(I) (1) A PHARMACY BENEFITS MANAGER SHALL ESTABLISH A REASONABLE INTERNAL PROCESS FOR A PHARMACY OR PHARMACIST TO REQUEST THE REVIEW OF AN UNDERPAYMENT OF A CLAIM.

(2) (I) A PHARMACY OR PHARMACIST MAY REQUEST A PHARMACY BENEFITS MANAGER TO REVIEW AN UNDERPAYMENT OF A CLAIM WITHIN 1 YEAR AFTER THE DATE THE CLAIM WAS PAID BY THE PHARMACY BENEFITS MANAGER.

(II) THE PHARMACY BENEFITS MANAGER SHALL GIVE WRITTEN NOTICE OF ITS REVIEW DECISION WITHIN 90 CALENDAR DAYS AFTER RECEIPT OF THE REQUEST FOR REVIEW.

(3) IF THE PHARMACY BENEFITS MANAGER DETERMINES THROUGH THE INTERNAL PROCESS THAT THE PHARMACY BENEFITS MANAGER UNDERPAID A PHARMACY OR PHARMACIST, THE PHARMACY BENEFITS MANAGER SHALL PAY ANY MONEY DUE TO THE PHARMACY OR PHARMACIST WITHIN 30 WORKING DAYS AFTER COMPLETION OF THE INTERNAL PROCESS.

(4) (I) IF THE PHARMACY OR PHARMACIST DISAGREES WITH THE PHARMACY BENEFITS MANAGER'S REVIEW OF AN UNDERPAYMENT OF A CLAIM THROUGH ITS INTERNAL PROCESS, THE PHARMACY OR PHARMACIST MAY FILE A COMPLAINT WITH THE COMMISSIONER FOR REVIEW OF THE UNDERPAYMENT BY THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE TO DETERMINE IF THE PHARMACY BENEFITS MANAGER'S CALCULATION OF THE PAYMENT AMOUNT WAS ARBITRARY AND CAPRICIOUS.

(II) A COMPLAINT FILED UNDER THIS SUBSECTION SHALL BE FILED WITHIN 30 WORKING DAYS AFTER RECEIPT OF WRITTEN NOTICE OF THE PHARMACY BENEFITS MANAGER'S REVIEW DECISION.

(J) ON REQUEST OF THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE, A PHARMACY BENEFITS MANAGER SHALL PROVIDE A COPY OF ITS AUDIT PROCEDURES OR APPEALS PROCESS.".

AMENDMENT NO. 3

On page 4, in line 17, strike "**(G)**" and substitute "**(K)**"; in lines 18 and 22, in each instance, strike "**SECTION**" and substitute "**SUBTITLE**"; after line 22, insert:

"Article – Health – General

19–706.

(PPP) THE PROVISIONS OF TITLE 15, SUBTITLE 16 OF THE INSURANCE ARTICLE APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to contracts entered into or renewed between a pharmacist or pharmacy and a pharmacy benefits manager on or after January 1, 2009.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to audits conducted by pharmacy benefits managers on or after January 1, 2009.";

and in line 23, strike "2." and substitute "4.".