

HOUSE BILL 257

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By: **Delegates Kullen, Elliott, Kipke, and Rudolph**

Introduced and read first time: January 23, 2008

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Pharmacy Benefits Managers – Contracts with Pharmacies**

3 FOR the purpose of requiring a pharmacy benefits manager to enter into certain
4 contracts with pharmacy providers under certain circumstances; specifying
5 certain requirements of the contracts; specifying provisions that apply to audits
6 carried out by pharmacy benefits managers of pharmacies or pharmacy claims;
7 providing certain penalties; defining certain terms; and generally relating to
8 regulation of pharmacy benefits managers' contracts with pharmacies.

9 BY adding to

10 Article – Insurance

11 Section 15–1601 to be under the new subtitle “Subtitle 16. Pharmacy Benefits
12 Managers”

13 Annotated Code of Maryland

14 (2006 Replacement Volume and 2007 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Insurance**

18 **SUBTITLE 16. PHARMACY BENEFITS MANAGERS.**

19 **15–1601.**

20 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
21 MEANINGS INDICATED.

22 (2) “EXTRAPOLATION AUDIT” MEANS AN AUDIT OF A SAMPLE OF
23 PRESCRIPTION DRUG BENEFIT CLAIMS SUBMITTED BY A PHARMACY PROVIDER

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 TO A PHARMACY BENEFITS MANAGER OR ITS DESIGNATED CONTRACTOR OR
2 AGENT THAT IS USED TO ESTIMATE AUDIT RESULTS FOR A LARGER BATCH OR
3 GROUP OF CLAIMS.

4 (3) (I) "PHARMACY BENEFITS MANAGEMENT SERVICES"
5 MEANS THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG
6 BENEFITS.

7 (II) "PHARMACY BENEFITS MANAGEMENT SERVICES"
8 INCLUDES:

9 1. PROCUREMENT OF PRESCRIPTION DRUGS AT A
10 NEGOTIATED RATE FOR DISPENSATION WITHIN THE STATE;

11 2. PROCESSING OF PRESCRIPTION DRUG CLAIMS;

12 3. ADMINISTRATION OF PAYMENTS RELATED TO
13 PRESCRIPTION DRUG CLAIMS; AND

14 4. NEGOTIATING OR ENTERING INTO CONTRACTUAL
15 ARRANGEMENTS WITH PHARMACY PROVIDERS.

16 (4) "PHARMACY BENEFITS MANAGER" MEANS A PERSON THAT
17 PERFORMS PHARMACY BENEFITS MANAGEMENT SERVICES.

18 (5) "PHARMACY PROVIDER" MEANS A PHARMACY OR A
19 PHARMACIST.

20 (6) (I) "PURCHASER" MEANS A PERSON THAT ENTERS INTO AN
21 AGREEMENT WITH A PHARMACY BENEFITS MANAGER FOR THE PROVISION OF
22 PHARMACY BENEFITS MANAGEMENT SERVICES.

23 (II) "PURCHASER" INCLUDES THE STATE.

24 (B) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO A MANAGED
25 CARE ORGANIZATION AUTHORIZED BY TITLE 15, SUBTITLE 1 OF THE HEALTH -
26 GENERAL ARTICLE.

27 (C) IF THE PHARMACY BENEFITS MANAGEMENT SERVICES PERFORMED
28 BY A PHARMACY BENEFITS MANAGER FOR A PURCHASER INCLUDE
29 NEGOTIATING OR ENTERING INTO CONTRACTUAL ARRANGEMENTS WITH
30 PHARMACY PROVIDERS, BEFORE THE PHARMACY BENEFITS MANAGER MAY
31 PROVIDE PHARMACY BENEFITS MANAGEMENT SERVICES FOR THE PURCHASER,

1 THE PHARMACY BENEFITS MANAGER SHALL ENTER INTO ANY NECESSARY
2 WRITTEN CONTRACTS WITH PHARMACY PROVIDERS.

3 (D) A CONTRACT WITH A PHARMACY PROVIDER SHALL REQUIRE THE
4 PHARMACY BENEFITS MANAGER TO:

5 (1) DISCLOSE TO THE PHARMACY PROVIDER:

6 (I) THE TERMS, CONDITIONS, FEES, BENEFIT DESIGNS,
7 PROCESS, AND PROCEDURES FOR ACCESSING THE PHARMACY BENEFITS
8 MANAGEMENT SERVICES PROVIDED BY THE PHARMACY BENEFITS MANAGER;
9 AND

10 (II) THE PHARMACY BENEFITS MANAGER'S PROCEDURES
11 FOR HANDLING DISPUTES; AND

12 (2) PROVIDE AT LEAST 30 DAYS' WRITTEN NOTICE TO THE
13 PHARMACY PROVIDER OF BENEFIT CHANGES, INCLUDING ADDITIONS OR
14 DELETIONS TO COVERED PRESCRIPTION DRUGS, WITH THE EXCEPTION OF NEW
15 DRUGS APPROVED BY THE U.S. FOOD AND DRUG ADMINISTRATION.

16 (E) THE FOLLOWING PROVISIONS SHALL APPLY TO AUDITS OF
17 PHARMACIES OR CLAIMS FROM PHARMACIES CARRIED OUT BY PHARMACY
18 BENEFITS MANAGERS OR THE AGENTS OF PHARMACY BENEFITS MANAGERS:

19 (1) A PHARMACY BENEFITS MANAGER OR THE AGENT OF A
20 PHARMACY BENEFITS MANAGER SHALL PROVIDE WRITTEN NOTICE TO A
21 PHARMACY AT LEAST 2 WEEKS BEFORE BEGINNING THE AUDIT;

22 (2) ONLY CLAIMS THAT HAVE BEEN SPECIFICALLY REQUESTED
23 FOR AUDITING MAY BE SUBJECT TO AN AUDIT;

24 (3) A PHARMACY BENEFITS MANAGER MAY NOT REQUIRE
25 EXTRAPOLATION AUDITS AS A CONDITION OF A CONTRACT OR PARTICIPATION
26 IN A NETWORK OR PROGRAM OF THE PHARMACY BENEFITS MANAGER;

27 (4) (I) ANY AUDIT FINDING OF AN OVERPAYMENT OR
28 UNDERPAYMENT SHALL BE BASED ON AN ACTUAL OVERPAYMENT OR
29 UNDERPAYMENT FOUND IN CLAIMS SUBJECT TO AUDIT; AND

30 (II) THE OVERPAYMENT OR UNDERPAYMENT MAY NOT BE A
31 PROJECTED AMOUNT BASED ON THE NUMBER OF PATIENTS WITH A SIMILAR
32 DIAGNOSIS WHO PURCHASE DRUGS AT THE PHARMACY OR ON THE NUMBER OF
33 SIMILAR ORDERS OR REFILLS FOR SIMILAR DRUGS;

1 **(5) A CLAIM MAY NOT BE SUBJECTED TO AN AUDIT MORE THAN 1**
2 **YEAR AFTER THE CLAIM WAS ADJUDICATED BY THE PHARMACY BENEFITS**
3 **MANAGER;**

4 **(6) A PHARMACY BENEFITS MANAGER MAY NOT RECOUP BY**
5 **SETOFF ANY MONEYS THAT THE PHARMACY BENEFITS MANAGER CONTENDS**
6 **ARE DUE AS A RESULT OF AN AUDIT UNTIL THE PHARMACY HAS THE**
7 **OPPORTUNITY TO REVIEW AND CONCUR WITH THE AUDIT FINDINGS;**

8 **(7) ANY MONEYS DUE TO A PHARMACY BENEFITS MANAGER OR A**
9 **PHARMACY AS A RESULT OF AN AUDIT SHALL BE REMITTED WITHIN 30 DAYS OF**
10 **NOTIFICATION; AND**

11 **(8) IF THE PHARMACY BENEFITS MANAGER AND THE PHARMACY**
12 **CANNOT AGREE ON THE MONEYS DUE AS A RESULT OF AN AUDIT, THE**
13 **COMMISSIONER SHALL REVIEW THE AUDIT AND DETERMINE IF ANY MONEYS**
14 **ARE DUE.**

15 **(F) ON OR BEFORE APRIL 1, 2009, THE COMMISSIONER SHALL ADOPT**
16 **REGULATIONS TO IMPLEMENT THIS SECTION.**

17 **(G) (1) THE COMMISSIONER MAY ASSESS A CIVIL PENALTY NOT**
18 **EXCEEDING \$10,000 FOR EACH VIOLATION OF THIS SECTION.**

19 **(2) IN ADDITION TO OR INSTEAD OF ASSESSING A CIVIL PENALTY,**
20 **THE COMMISSIONER MAY REQUIRE THE PHARMACY BENEFITS MANAGER TO**
21 **MAKE RESTITUTION TO ANY PERSON WHO HAS SUFFERED FINANCIAL INJURY**
22 **BECAUSE OF THE VIOLATION OF THIS SECTION.**

23 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
24 **October 1, 2008.**