

HOUSE BILL 257

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8lr0726

By: Delegates Kullen, Elliott, Kipke, and ~~Rudolph~~ Rudolph, Beitzel, Benson, Bromwell, Costa, Donoghue, Hammen, Kach, McDonough, Morhaim, Nathan-Pulliam, Oaks, Pena-Melnyk, Pendergrass, Reznik, Riley, V. Turner, and Weldon

Introduced and read first time: January 23, 2008

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2008

CHAPTER _____

1 AN ACT concerning

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

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~~ disclose certain information to a pharmacy
6 or a pharmacist at the time of entering into a contract with the pharmacy or
7 pharmacist and at a certain time before a contract change; specifying provisions
8 that apply to audits carried out by pharmacy benefits managers of pharmacies
9 ~~or pharmacy claims, pharmacists, and claims of pharmacies and pharmacists;~~
10 making certain provisions of law applicable to pharmacy benefits managers;
11 requiring a pharmacy benefits manager to establish a certain appeals process;
12 establishing a process for a pharmacy or pharmacist to file a certain complaint
13 with the Maryland Insurance Commissioner; establishing a certain process for
14 review of the underpayment of a claim; making certain provisions of law
15 applicable to health maintenance organizations; providing for the application of
16 this Act; providing certain penalties; defining certain terms; and generally
17 relating to regulation of pharmacy benefits managers' contracts with
18 pharmacies and pharmacists.

19 BY adding to

20 Article – Insurance

21 Section 15–1601 through 15–1604 to be under the new subtitle “Subtitle 16.

22 Pharmacy Benefits Managers”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland
2 (2006 Replacement Volume and 2007 Supplement)

3 BY adding to
4 Article – Health – General
5 Section 19–706(ppp)
6 Annotated Code of Maryland
7 (2005 Replacement Volume and 2007 Supplement)

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

10 **Article – Insurance**

11 **SUBTITLE 16. PHARMACY BENEFITS MANAGERS.**

12 **15–1601.**

13 ~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE~~
14 ~~MEANINGS INDICATED.~~

15 ~~(2) “EXTRAPOLATION AUDIT” MEANS AN AUDIT OF A SAMPLE OF~~
16 ~~PRESCRIPTION DRUG BENEFIT CLAIMS SUBMITTED BY A PHARMACY PROVIDER~~
17 ~~TO A PHARMACY BENEFITS MANAGER OR ITS DESIGNATED CONTRACTOR OR~~
18 ~~AGENT THAT IS USED TO ESTIMATE AUDIT RESULTS FOR A LARGER BATCH OR~~
19 ~~GROUP OF CLAIMS.~~

20 ~~(3) (I) “PHARMACY BENEFITS MANAGEMENT SERVICES”~~
21 ~~MEANS THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG~~
22 ~~BENEFITS.~~

23 ~~(II) “PHARMACY BENEFITS MANAGEMENT SERVICES”~~
24 ~~INCLUDES:~~

25 ~~1. PROCUREMENT OF PRESCRIPTION DRUGS AT A~~
26 ~~NEGOTIATED RATE FOR DISPENSATION WITHIN THE STATE;~~

27 ~~2. PROCESSING OF PRESCRIPTION DRUG CLAIMS;~~

28 ~~3. ADMINISTRATION OF PAYMENTS RELATED TO~~
29 ~~PRESCRIPTION DRUG CLAIMS; AND~~

30 ~~4. NEGOTIATING OR ENTERING INTO CONTRACTUAL~~
31 ~~ARRANGEMENTS WITH PHARMACY PROVIDERS.~~

1 ~~(4) "PHARMACY BENEFITS MANAGER" MEANS A PERSON THAT~~
2 ~~PERFORMS PHARMACY BENEFITS MANAGEMENT SERVICES.~~

3 ~~(5) "PHARMACY PROVIDER" MEANS A PHARMACY OR A~~
4 ~~PHARMACIST.~~

5 ~~(6) (i) "PURCHASER" MEANS A PERSON THAT ENTERS INTO AN~~
6 ~~AGREEMENT WITH A PHARMACY BENEFITS MANAGER FOR THE PROVISION OF~~
7 ~~PHARMACY BENEFITS MANAGEMENT SERVICES.~~

8 ~~(ii) "PURCHASER" INCLUDES THE STATE.~~

9 ~~(b) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO A MANAGED~~
10 ~~CARE ORGANIZATION AUTHORIZED BY TITLE 15, SUBTITLE 1 OF THE HEALTH-~~
11 ~~GENERAL ARTICLE.~~

12 ~~(c) IF THE PHARMACY BENEFITS MANAGEMENT SERVICES PERFORMED~~
13 ~~BY A PHARMACY BENEFITS MANAGER FOR A PURCHASER INCLUDE~~
14 ~~NEGOTIATING OR ENTERING INTO CONTRACTUAL ARRANGEMENTS WITH~~
15 ~~PHARMACY PROVIDERS, BEFORE THE PHARMACY BENEFITS MANAGER MAY~~
16 ~~PROVIDE PHARMACY BENEFITS MANAGEMENT SERVICES FOR THE PURCHASER,~~
17 ~~THE PHARMACY BENEFITS MANAGER SHALL ENTER INTO ANY NECESSARY~~
18 ~~WRITTEN CONTRACTS WITH PHARMACY PROVIDERS.~~

19 ~~(d) A CONTRACT WITH A PHARMACY PROVIDER SHALL REQUIRE THE~~
20 ~~PHARMACY BENEFITS MANAGER TO:~~

21 ~~(1) DISCLOSE TO THE PHARMACY PROVIDER:~~

22 ~~(i) THE TERMS, CONDITIONS, FEES, BENEFIT DESIGNS,~~
23 ~~PROCESS, AND PROCEDURES FOR ACCESSING THE PHARMACY BENEFITS~~
24 ~~MANAGEMENT SERVICES PROVIDED BY THE PHARMACY BENEFITS MANAGER;~~
25 ~~AND~~

26 ~~(ii) THE PHARMACY BENEFITS MANAGER'S PROCEDURES~~
27 ~~FOR HANDLING DISPUTES; AND~~

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

32 ~~(e) THE FOLLOWING PROVISIONS SHALL APPLY TO AUDITS OF~~
33 ~~PHARMACIES OR CLAIMS FROM PHARMACIES CARRIED OUT BY PHARMACY~~
34 ~~BENEFITS MANAGERS OR THE AGENTS OF PHARMACY BENEFITS MANAGERS:~~

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

4 ~~(2) ONLY CLAIMS THAT HAVE BEEN SPECIFICALLY REQUESTED~~
5 ~~FOR AUDITING MAY BE SUBJECT TO AN AUDIT;~~

6 ~~(3) A PHARMACY BENEFITS MANAGER MAY NOT REQUIRE~~
7 ~~EXTRAPOLATION AUDITS AS A CONDITION OF A CONTRACT OR PARTICIPATION~~
8 ~~IN A NETWORK OR PROGRAM OF THE PHARMACY BENEFITS MANAGER;~~

9 ~~(4) (I) ANY AUDIT FINDING OF AN OVERPAYMENT OR~~
10 ~~UNDERPAYMENT SHALL BE BASED ON AN ACTUAL OVERPAYMENT OR~~
11 ~~UNDERPAYMENT FOUND IN CLAIMS SUBJECT TO AUDIT; AND~~

12 ~~(II) THE OVERPAYMENT OR UNDERPAYMENT MAY NOT BE A~~
13 ~~PROJECTED AMOUNT BASED ON THE NUMBER OF PATIENTS WITH A SIMILAR~~
14 ~~DIAGNOSIS WHO PURCHASE DRUGS AT THE PHARMACY OR ON THE NUMBER OF~~
15 ~~SIMILAR ORDERS OR REFILLS FOR SIMILAR DRUGS;~~

16 ~~(5) A CLAIM MAY NOT BE SUBJECTED TO AN AUDIT MORE THAN 1~~
17 ~~YEAR AFTER THE CLAIM WAS ADJUDICATED BY THE PHARMACY BENEFITS~~
18 ~~MANAGER;~~

19 ~~(6) A PHARMACY BENEFITS MANAGER MAY NOT RECOUP BY~~
20 ~~SETOFF ANY MONEYS THAT THE PHARMACY BENEFITS MANAGER CONTENDS~~
21 ~~ARE DUE AS A RESULT OF AN AUDIT UNTIL THE PHARMACY HAS THE~~
22 ~~OPPORTUNITY TO REVIEW AND CONCUR WITH THE AUDIT FINDINGS;~~

23 ~~(7) ANY MONEYS DUE TO A PHARMACY BENEFITS MANAGER OR A~~
24 ~~PHARMACY AS A RESULT OF AN AUDIT SHALL BE REMITTED WITHIN 30 DAYS OF~~
25 ~~NOTIFICATION; AND~~

26 ~~(8) IF THE PHARMACY BENEFITS MANAGER AND THE PHARMACY~~
27 ~~CANNOT AGREE ON THE MONEYS DUE AS A RESULT OF AN AUDIT, THE~~
28 ~~COMMISSIONER SHALL REVIEW THE AUDIT AND DETERMINE IF ANY MONEYS~~
29 ~~ARE DUE.~~

30 ~~(F) ON OR BEFORE APRIL 1, 2009, THE COMMISSIONER SHALL ADOPT~~
31 ~~REGULATIONS TO IMPLEMENT THIS SECTION.~~

32 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
33 INDICATED.

1 **(B) “BENEFICIARY” MEANS AN INDIVIDUAL WHO RECEIVES**
2 **PRESCRIPTION DRUG COVERAGE OR BENEFITS FROM A PURCHASER.**

3 **(C) “ERISA” HAS THE MEANING STATED IN § 8-301 OF THIS ARTICLE.**

4 **(D) “NONPROFIT HEALTH MAINTENANCE ORGANIZATION” HAS THE**
5 **MEANING STATED IN § 6-121(A) OF THIS ARTICLE.**

6 **(E) “PHARMACIST” HAS THE MEANING STATED IN § 12-101 OF THE**
7 **HEALTH OCCUPATIONS ARTICLE.**

8 **(F) “PHARMACY” HAS THE MEANING STATED IN § 12-101 OF THE**
9 **HEALTH OCCUPATIONS ARTICLE.**

10 **(G) (1) “PHARMACY BENEFITS MANAGEMENT SERVICES” MEANS:**

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

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

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

18 **1. MAIL SERVICE PHARMACY;**

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

22 **3. CLINICAL FORMULARY DEVELOPMENT AND**
23 **MANAGEMENT SERVICES;**

24 **4. REBATE CONTRACTING AND ADMINISTRATION;**

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

27 **6. DISEASE MANAGEMENT PROGRAMS.**

28 **(2) “PHARMACY BENEFITS MANAGEMENT SERVICES” DOES NOT**
29 **INCLUDE ANY SERVICE PROVIDED BY A NONPROFIT HEALTH MAINTENANCE**

1 ORGANIZATION THAT OPERATES AS A GROUP MODEL, PROVIDED THAT THE
2 SERVICE:

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

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

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

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

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

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

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

23 15-1602.

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

28 15-1603.

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

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

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

5 **(3) THE DISPUTE RESOLUTION AND AUDIT APPEALS PROCESS;**
6 **AND**

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

10 **15-1604.**

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

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

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

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

22 **(1) IF THE AUDIT IS ONSITE, PROVIDE WRITTEN NOTICE TO THE**
23 **PHARMACY OR PHARMACIST AT LEAST 2 WEEKS BEFORE CONDUCTING THE**
24 **INITIAL ONSITE AUDIT FOR EACH AUDIT CYCLE;**

25 **(2) EMPLOY THE SERVICES OF A PHARMACIST IF THE AUDIT**
26 **REQUIRES THE CLINICAL OR PROFESSIONAL JUDGMENT OF A PHARMACIST;**

27 **(3) FOR PURPOSES OF VALIDATING THE PHARMACY RECORD**
28 **WITH RESPECT TO ORDERS OR REFILLS OF A DRUG THAT IS A CONTROLLED**
29 **DANGEROUS SUBSTANCE, ALLOW THE PHARMACY OR PHARMACIST TO USE**
30 **HOSPITAL OR PHYSICIAN RECORDS THAT ARE:**

31 **(I) WRITTEN; OR**

32 **(II) TRANSMITTED ELECTRONICALLY;**

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

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

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

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

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

16 **(I) THE PRELIMINARY AUDIT REPORT; OR**

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

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

22 **(F) THE RECOUPMENT OF A CLAIMS PAYMENT FROM A PHARMACY OR**
23 **PHARMACIST BY A PHARMACY BENEFITS MANAGER SHALL BE BASED ON AN**
24 **ACTUAL OVERPAYMENT OR DENIAL OF AN AUDITED CLAIM UNLESS THE**
25 **PROJECTED OVERPAYMENT OR DENIAL IS PART OF A SETTLEMENT AGREED TO**
26 **BY THE PHARMACY OR PHARMACIST.**

27 **(G) (1) A PHARMACY BENEFITS MANAGER SHALL ESTABLISH AN**
28 **APPEALS PROCESS, IN ACCORDANCE WITH THE PROVISIONS OF SUBTITLE 10D**
29 **OF THIS TITLE, UNDER WHICH A PHARMACY OR PHARMACIST MAY APPEAL A**
30 **DISPUTED CLAIM IN A PRELIMINARY AUDIT REPORT.**

31 **(2) IF THE PHARMACY BENEFITS MANAGER REVERSES OR**
32 **MODIFIES ITS PRELIMINARY AUDIT REPORT AS A RESULT OF AN APPEAL OF A**
33 **DISPUTED CLAIM BY A PHARMACY OR PHARMACIST, THE PHARMACY BENEFITS**
34 **MANAGER SHALL DISMISS THE PRELIMINARY AUDIT REPORT OR THE**

1 UNSUBSTANTIATED PORTION OF THE PRELIMINARY AUDIT REPORT WITH NO
2 FURTHER PROCEEDINGS.

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

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

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

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

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

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

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

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

35 (4) (I) IF THE PHARMACY OR PHARMACIST DISAGREES WITH
36 THE PHARMACY BENEFITS MANAGER'S REVIEW OF AN UNDERPAYMENT OF A

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

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

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

12 ~~(G)~~ (K) (1) THE COMMISSIONER MAY ASSESS A CIVIL PENALTY NOT
13 EXCEEDING \$10,000 FOR EACH VIOLATION OF THIS SECTION SUBTITLE.

14 (2) IN ADDITION TO OR INSTEAD OF ASSESSING A CIVIL PENALTY,
15 THE COMMISSIONER MAY REQUIRE THE PHARMACY BENEFITS MANAGER TO
16 MAKE RESTITUTION TO ANY PERSON WHO HAS SUFFERED FINANCIAL INJURY
17 BECAUSE OF THE VIOLATION OF THIS SECTION SUBTITLE.

18 Article - Health - General

19 19-706.

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

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

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

27 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
28 effect October 1, 2008.