

SENATE BILL 974

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11r2910
CF HB 1338

By: **Senator Astle**

Introduced and read first time: March 7, 2011

Assigned to: Rules

Re-referred to: Finance, March 14, 2011

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 31, 2011

CHAPTER _____

1 AN ACT concerning

2 **Health Insurance – Pharmacy Benefits Managers – ~~Contracts, Disclosures,~~**
3 **~~and Audits~~ Claims**

4 FOR the purpose of ~~requiring each contract between a pharmacy benefits manager~~
5 ~~and a pharmacy, pharmacist, or retail pharmacy network or agent of a~~
6 ~~pharmacy, pharmacist, or retail pharmacy network to contain at a minimum~~
7 ~~certain provisions; requiring a pharmacy benefits manager to disclose certain~~
8 ~~information to certain entities at certain times; requiring a pharmacy benefits~~
9 ~~manager that, in a certain contract, calculates reimbursement for prescription~~
10 ~~drugs and other products and supplies in accordance with a certain formula to~~
11 ~~use a certain price in that calculation; requiring a pharmacy benefit manager to~~
12 ~~update certain prices at an interval not less than a certain number of business~~
13 ~~days and to make certain disclosures about certain prices and a certain~~
14 ~~methodology; prohibiting a pharmacy benefits manager that has a certain~~
15 ~~management or ownership interest from discriminating or restricting the rights~~
16 ~~of a beneficiary or offering certain copayments to a beneficiary; altering the~~
17 ~~requirements for an audit conducted by a pharmacy benefits manager of a~~
18 ~~pharmacy or pharmacist under contract with the pharmacy benefits manager;~~
19 ~~requiring that a copy of a certain final audit report be delivered to a plan~~
20 ~~sponsor within certain periods of time under certain circumstances; requiring a~~
21 ~~certain recoupment of a certain claims payment to be based only on a certain fee~~
22 ~~and not on a certain cost; prohibiting a pharmacy benefits manager and a plan~~
23 ~~sponsor from taking certain actions on the basis of certain errors; making~~
24 ~~stylistic changes~~ providing that certain errors may not constitute fraud or

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 grounds for recoupment of specified claims payments under specified
 2 circumstances; specifying that certain claims remain subject to recoupment of
 3 overpayment or payment of any discovered underpayment by a pharmacy
 4 benefits manager; defining a certain term; and generally relating to pharmacy
 5 benefits managers.

6 BY repealing and reenacting, with amendments,
 7 Article – Insurance
 8 Section ~~15–1628~~ and 15–1629
 9 Annotated Code of Maryland
 10 (2006 Replacement Volume and 2010 Supplement)

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

13 **Article – Insurance**

14 ~~15–1628.~~

15 ~~(A) THIS SECTION APPLIES TO CONTRACTS BETWEEN:~~

16 ~~(1) A PHARMACY BENEFITS MANAGER; AND~~

17 ~~(2) A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK~~
 18 ~~OR AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK.~~

19 ~~(B) IN ADDITION TO ANY OTHER REQUIREMENTS OF LAW, EACH~~
 20 ~~CONTRACT SUBJECT TO THIS SECTION SHALL CONTAIN, AT A MINIMUM, THE~~
 21 ~~PROVISIONS REQUIRED BY THIS SECTION.~~

22 ~~(C) At the time of entering into a contract [with a pharmacy or a pharmacist]~~
 23 ~~SUBJECT TO THIS SECTION, and at least 30 working days before any [contract]~~
 24 ~~change IN A CONTRACT SUBJECT TO THIS SECTION, a pharmacy benefits manager~~
 25 ~~shall disclose to the [pharmacy or pharmacist] PHARMACY, PHARMACIST, OR~~
 26 ~~RETAIL PHARMACY NETWORK OR AGENT OF THE PHARMACY, PHARMACIST, OR~~
 27 ~~RETAIL PHARMACY NETWORK.~~

28 ~~(1) the applicable terms, conditions, and reimbursement rates;~~

29 ~~(2) the process and procedures for verifying pharmacy benefits and~~
 30 ~~beneficiary eligibility;~~

31 ~~(3) the dispute resolution and audit appeals process; and~~

32 ~~(4) the process and procedures for verifying the prescription drugs~~
 33 ~~included on the formularies used by the pharmacy benefits manager.~~

1 ~~(D) (1) IF IN A CONTRACT SUBJECT TO THIS SECTION A PHARMACY~~
2 ~~BENEFITS MANAGER CALCULATES REIMBURSEMENT FOR PRESCRIPTION DRUGS~~
3 ~~AND OTHER PRODUCTS AND SUPPLIES IN ACCORDANCE WITH A FORMULA THAT~~
4 ~~USES A NATIONALLY RECOGNIZED REFERENCE IN THE PRICING CALCULATION,~~
5 ~~THE PHARMACY BENEFITS MANAGER SHALL USE THE MOST CURRENT~~
6 ~~NATIONALLY RECOGNIZED REFERENCE PRICE IN THE ACTUAL OR~~
7 ~~CONSTRUCTIVE POSSESSION OF THE PHARMACY BENEFITS MANAGER OR AGENT~~
8 ~~OF THE PHARMACY BENEFITS MANAGER.~~

9 ~~(2) TO COMPLY WITH PARAGRAPH (1) OF THIS SUBSECTION, A~~
10 ~~PHARMACY BENEFITS MANAGER SHALL:~~

11 ~~(I) UPDATE THE NATIONALLY RECOGNIZED REFERENCE~~
12 ~~PRICES USED TO CALCULATE REIMBURSEMENT FOR PRESCRIPTION DRUGS AND~~
13 ~~OTHER PRODUCTS AND SUPPLIES NOT LESS THAN EVERY 3 BUSINESS DAYS; AND~~

14 ~~(II) DISCLOSE TO THE PHARMACY OR PHARMACIST THE~~
15 ~~NATIONALLY RECOGNIZED REFERENCE PRICES AND METHODOLOGY USED TO~~
16 ~~CALCULATE REIMBURSEMENT FOR PRESCRIPTION DRUGS OR OTHER PRODUCTS~~
17 ~~AND SUPPLIES.~~

18 ~~(E) A PHARMACY BENEFITS MANAGER THAT HAS A MANAGEMENT OR~~
19 ~~OWNERSHIP INTEREST IN A PHARMACY, PHARMACIST, OR RETAIL PHARMACY~~
20 ~~NETWORK OR IS THE AGENT OF A PHARMACY, PHARMACIST, OR RETAIL~~
21 ~~PHARMACY NETWORK MAY NOT DISCRIMINATE OR RESTRICT THE RIGHTS OF A~~
22 ~~BENEFICIARY OR OFFER PREFERENTIAL COPAYMENTS TO A BENEFICIARY~~
23 ~~BASED ON A PHARMACY CLASSIFICATION OF TRADE.~~

24 15-1629.

25 (a) This section does not apply to an audit that involves probable or potential
26 fraud or willful misrepresentation by a pharmacy or pharmacist.

27 (b) A pharmacy benefits manager shall conduct an audit of a pharmacy or
28 pharmacist under contract with the pharmacy benefits manager in accordance with
29 this section.

30 (c) A pharmacy benefits manager may not schedule an onsite audit to begin
31 during the first 5 calendar days of a month unless requested by the pharmacy or
32 pharmacist.

33 (d) When conducting an audit, a pharmacy benefits manager shall:

1 (1) if the audit is onsite, provide written notice to the pharmacy or
 2 pharmacist at least 2 weeks before conducting the initial onsite audit for each audit
 3 cycle;

4 (2) employ the services of a pharmacist if the audit requires the
 5 clinical or professional judgment of a pharmacist;

6 (3) for purposes of validating the pharmacy record with respect to
 7 orders or refills of a drug that is a controlled dangerous substance, allow the pharmacy
 8 or pharmacist to use hospital or physician records that are:

9 (i) written; or

10 (ii) transmitted electronically;

11 (4) audit each pharmacy and pharmacist under the same standards
 12 and parameters as other similarly situated pharmacies or pharmacists audited by the
 13 pharmacy benefits manager;

14 ~~(5) AUDIT THE SAME NUMBER OF CHAIN PHARMACIES AND~~
 15 ~~INDEPENDENT PHARMACIES;~~

16 ~~(6) AUDIT THE SAME NUMBER OF BRAND PRESCRIPTION DRUGS~~
 17 ~~AND GENERIC PRESCRIPTION DRUGS;~~

18 ~~[(5)] (7)~~ only audit claims submitted or adjudicated within the
 19 2-year period immediately preceding the audit, unless a longer period is permitted
 20 under federal or State law;

21 ~~[(6)] (8)~~ deliver the preliminary audit report to the pharmacy or
 22 pharmacist within 120 calendar days after the completion of the audit, with
 23 reasonable extensions allowed;

24 ~~[(7)] (9)~~ in accordance with subsection [(g)] ~~(H)~~ (H) of this section,
 25 allow a pharmacy or pharmacist to produce documentation to address any discrepancy
 26 found during the audit; and

27 ~~[(8)] (10)~~ deliver the final audit report to the pharmacy or pharmacist
 28 ~~AND A COPY OF THE FINAL AUDIT REPORT TO THE PLAN SPONSOR;~~

29 (i) within 6 months after delivery of the preliminary audit
 30 report if the pharmacy or pharmacist does not request an internal appeal under
 31 subsection [(g)] ~~(H)~~ (H) of this section; or

1 (ii) within 30 days after the conclusion of the internal appeals
 2 process under subsection [(g)] ~~(H)~~ (H) of this section if the pharmacy or pharmacist
 3 requests an internal appeal.

4 (e) A pharmacy benefits manager may not use the accounting practice of
 5 extrapolation to calculate overpayments or underpayments.

6 (f) The recoupment of a claims payment from a pharmacy or pharmacist by a
 7 pharmacy benefits manager shall be based on an actual overpayment or denial of an
 8 audited claim unless the projected overpayment or denial is part of a settlement
 9 agreed to by the pharmacy or pharmacist.

10 ~~(G) THE RECOUPMENT OF A CLAIMS PAYMENT FROM A PHARMACY OR~~
 11 ~~PHARMACIST BY A PHARMACY BENEFITS MANAGER:~~

12 ~~(1) SHALL BE BASED ONLY ON THE ACTUAL DISPENSING FEE; AND~~

13 ~~(2) MAY NOT INCLUDE THE COST OF THE PRESCRIBED DRUG~~
 14 ~~DISPENSED.~~

15 ~~(H) (1) ON THE BASIS OF A CLERICAL OR RECORD KEEPING ERROR~~
 16 ~~DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, A PHARMACY BENEFITS~~
 17 ~~MANAGER AND A PLAN SPONSOR MAY NOT:~~

18 ~~(I) DENY A CLAIM OR SEEK A PENALTY DURING OR AFTER~~
 19 ~~AN AUDIT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR~~
 20 ~~AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK;~~

21 ~~(II) SEEK RECOUPMENT FROM A PHARMACY, PHARMACIST,~~
 22 ~~OR RETAIL PHARMACY NETWORK OR AN AGENT OF A PHARMACY, PHARMACIST,~~
 23 ~~OR RETAIL PHARMACY NETWORK; OR~~

24 ~~(III) RECOUP BY SETOFF AGAINST AMOUNTS OWED TO A~~
 25 ~~PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AGENT OF A~~
 26 ~~PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK.~~

27 ~~(2) FOR PURPOSES OF THIS SUBSECTION, A CLERICAL OR~~
 28 ~~RECORD KEEPING ERROR INCLUDES A TYPOGRAPHICAL ERROR,~~
 29 ~~MATHEMATICAL CALCULATION ERROR, DATA ENTRY ERROR, AND SCRIVENER'S~~
 30 ~~ERROR, INCLUDING PATIENT DATA OMISSIONS AND INCOMPLETE~~
 31 ~~INFORMATION.~~

32 (G) (1) IN THIS SUBSECTION, "OVERPAYMENT" MEANS A PAYMENT BY
 33 THE PHARMACY BENEFITS MANAGER TO A PHARMACY OR PHARMACIST THAT IS
 34 GREATER THAN THE RATE OR TERMS SPECIFIED IN THE CONTRACT BETWEEN

1 THE PHARMACY OR PHARMACIST AND THE PHARMACY BENEFITS MANAGER AT
 2 THE TIME THAT THE PAYMENT IS MADE.

3 (2) A CLERICAL ERROR, RECORD-KEEPING ERROR,
 4 TYPOGRAPHICAL ERROR, OR SCRIVENER'S ERROR IN A REQUIRED DOCUMENT
 5 OR RECORD MAY NOT CONSTITUTE FRAUD OR GROUNDS FOR RECOUPMENT OF A
 6 CLAIMS PAYMENT FROM A PHARMACY OR PHARMACIST BY A PHARMACY
 7 BENEFITS MANAGER IF THE PRESCRIPTION WAS OTHERWISE LEGALLY
 8 DISPENSED AND THE CLAIM WAS OTHERWISE MATERIALLY CORRECT.

9 (3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION,
 10 CLAIMS REMAIN SUBJECT TO RECOUPMENT OF OVERPAYMENT OR PAYMENT OF
 11 ANY DISCOVERED UNDERPAYMENT BY THE PHARMACY BENEFITS MANAGER.

12 [(g)] ~~(H)~~ (H) (1) A pharmacy benefits manager shall establish an internal
 13 appeals process under which a pharmacy or pharmacist may appeal any disputed
 14 claim in a preliminary audit report.

15 (2) Under the internal appeals process, a pharmacy benefits manager
 16 shall allow a pharmacy or pharmacist to request an internal appeal within 30 working
 17 days after receipt of the preliminary audit report, with reasonable extensions allowed.

18 (3) The pharmacy benefits manager shall include in its preliminary
 19 audit report a written explanation of the internal appeals process, including the name,
 20 address, and telephone number of the person to whom an internal appeal should be
 21 addressed.

22 (4) The decision of the pharmacy benefits manager on an appeal of a
 23 disputed claim in a preliminary audit report by a pharmacy or pharmacist shall be
 24 reflected in the final audit report.

25 (5) The pharmacy benefits manager shall deliver the final audit report
 26 to the pharmacy or pharmacist within 30 calendar days after conclusion of the internal
 27 appeals process.

28 [(h)] ~~(I)~~ (I) (1) A pharmacy benefits manager may not recoup by setoff any
 29 moneys for an overpayment or denial of a claim until 30 working days after the date
 30 the final audit report has been delivered to the pharmacy or pharmacist.

31 (2) A pharmacy benefits manager shall remit any money due to a
 32 pharmacy or pharmacist as a result of an underpayment of a claim within 30 working
 33 days after the final audit report has been delivered to the pharmacy or pharmacist.

34 (3) Notwithstanding the provisions of paragraph (1) of this subsection,
 35 a pharmacy benefits manager may withhold future payments before the date the final
 36 audit report has been delivered to the pharmacy or pharmacist if the identified

1 discrepancy for all disputed claims in a preliminary audit report for an individual
2 audit exceeds \$25,000.

3 **[(i)] ~~(H)~~ (J)** On request of the Commissioner or the Commissioner’s designee, a
4 pharmacy benefits manager shall provide a copy of its audit procedures or internal
5 appeals process.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2011.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.