

## Chapter 363

(Senate Bill 952)

AN ACT concerning

### **Pharmacy Benefits Managers – Pharmacy Contracts – ~~Payments~~ Maximum Allowable Cost Pricing**

FOR the purpose of requiring a pharmacy benefits manager to include in ~~its contract with a pharmacy, a pharmacy services administration organization, or a group purchasing organization the methodology used by the pharmacy benefits manager to calculate a certain reimbursement paid for each drug, medical product, and device that is a covered pharmacy benefit administered by the pharmacy benefits manager; requiring a pharmacy benefits manager to include in its contract with a pharmacy, a pharmacy services administration organization, or a group purchasing organization certain information and a certain methodology, make available to a contracted pharmacy a certain list and a certain maximum allowable cost, review and make certain adjustments to the maximum allowable cost, make available to a contracted pharmacy certain updates, allow a contracted pharmacy to resubmit a claim for payment under certain circumstances, and provide a process for a contracted pharmacy to appeal the maximum allowable cost; establishing certain requirements for the appeal process; requiring a pharmacy benefits manager, if it denies an appeal, to provide the reason for the denial and identify a certain national drug code product; requiring a pharmacy benefits manager to adjust the maximum allowable cost in a certain manner and provide a certain notice under certain circumstances; prohibiting a pharmacy benefits manager from requiring a pharmacy to dispense a prescription for a certain contractual reimbursement amount; defining certain terms; providing for the application of this Act; and generally relating to pharmacy benefits managers and payments to pharmacies for covered drugs, medical products, and devices~~ each contract with a contracted pharmacy, the sources used to determine maximum allowable cost pricing; requiring the pharmacy benefits manager to update its pricing information with a certain frequency and provide a means by which contracted pharmacies may review pricing updates in a certain format; requiring a pharmacy benefits manager to maintain a procedure to eliminate products from a certain list for a certain purpose; requiring a pharmacy benefits manager to ensure that certain conditions are met before placing a prescription drug on a maximum allowable cost list; requiring each contract between a pharmacy benefits manager and a contracted pharmacy to include a certain process for appealing, investigating, and resolving disputes regarding maximum allowable cost pricing; defining certain terms; providing for a delayed effective date; and generally relating to contracts between pharmacy benefits managers and contracted pharmacies and maximum allowable cost pricing.

BY adding to

Article – Insurance

Section 15-1628.1 ~~and 15-1628.2~~

Annotated Code of Maryland

(2011 Replacement Volume and 2013 Supplement)

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

**Article – Insurance**

**15-1628.1.**

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

(2) “CONTRACTED PHARMACY” MEANS A PHARMACY THAT PARTICIPATES IN THE NETWORK OF A PHARMACY BENEFITS MANAGER THROUGH A CONTRACT WITH:

(I) THE PHARMACY BENEFITS MANAGER; OR

(II) A PHARMACY SERVICES ADMINISTRATION ORGANIZATION OR A GROUP PURCHASING ORGANIZATION.

~~(3) (I) “DRUG PRODUCT REIMBURSEMENT” MEANS THE AMOUNT PAID BY A PHARMACY BENEFITS MANAGER TO A CONTRACTED PHARMACY FOR THE COST OF A DRUG, A MEDICAL PRODUCT, OR A DEVICE DISPENSED TO A BENEFICIARY.~~

~~(II) “DRUG PRODUCT REIMBURSEMENT” DOES NOT INCLUDE A DISPENSING FEE OR A PROFESSIONAL FEE.~~

(4) (3) “MAXIMUM ALLOWABLE COST” MEANS THE MAXIMUM AMOUNT THAT A PHARMACY BENEFITS MANAGER OR A PURCHASER WILL REIMBURSE A CONTRACTED PHARMACY FOR THE COST OF A MULTISOURCE GENERIC DRUG, A MEDICAL PRODUCT, OR A DEVICE.

(5) (4) “MAXIMUM ALLOWABLE COST LIST” MEANS A LIST OF MULTISOURCE GENERIC DRUGS, MEDICAL PRODUCTS, AND DEVICES FOR WHICH A MAXIMUM ALLOWABLE COST HAS BEEN ESTABLISHED BY A PHARMACY BENEFITS MANAGER OR A PURCHASER.

~~(B) A PHARMACY BENEFITS MANAGER SHALL INCLUDE IN ITS CONTRACT WITH A PHARMACY, A PHARMACY SERVICES ADMINISTRATION ORGANIZATION, OR A GROUP PURCHASING ORGANIZATION THE METHODOLOGY USED BY THE PHARMACY BENEFITS MANAGER TO CALCULATE THE DRUG PRODUCT REIMBURSEMENT PAID FOR EACH DRUG, MEDICAL PRODUCT, AND DEVICE THAT IS A COVERED PHARMACY BENEFIT ADMINISTERED BY THE PHARMACY BENEFITS MANAGER.~~

~~(C) A PHARMACY BENEFITS MANAGER SHALL:~~

~~(1) INCLUDE IN ITS CONTRACT WITH A PHARMACY, A PHARMACY SERVICES ADMINISTRATION ORGANIZATION, OR A GROUP PURCHASING ORGANIZATION, FOR EVERY DRUG, MEDICAL PRODUCT, AND DEVICE FOR WHICH THE PHARMACY BENEFITS MANAGER ESTABLISHES A MAXIMUM ALLOWABLE COST TO DETERMINE THE DRUG PRODUCT REIMBURSEMENT:~~

~~(I) INFORMATION IDENTIFYING THE NATIONAL DRUG PRICING COMPENDIA OR OTHER SOURCE USED TO OBTAIN THE DRUG, MEDICAL PRODUCT, AND DEVICE PRICE DATA; AND~~

~~(II) THE METHODOLOGY USED TO CALCULATE THE MAXIMUM ALLOWABLE COST;~~

~~(2) MAKE AVAILABLE TO A CONTRACTED PHARMACY:~~

~~(I) THE MAXIMUM ALLOWABLE COST LIST OF THE PHARMACY BENEFITS MANAGER; AND~~

~~(II) THE MAXIMUM ALLOWABLE COST FOR EACH DRUG, MEDICAL PRODUCT, AND DEVICE ON THE MAXIMUM ALLOWABLE COST LIST;~~

~~(3) AT LEAST EVERY 7 DAYS, REVIEW AND MAKE ANY NECESSARY ADJUSTMENTS TO:~~

~~(I) THE DRUGS, MEDICAL PRODUCTS, AND DEVICES ON THE MAXIMUM ALLOWABLE COST LIST; AND~~

~~(II) THE MAXIMUM ALLOWABLE COST OF EACH DRUG, MEDICAL PRODUCT, AND DEVICE ON THE MAXIMUM ALLOWABLE COST LIST TO REFLECT THE CURRENT MANUFACTURER PRICE FOR THE DRUG, MEDICAL PRODUCT, AND DEVICE;~~

~~(4) AFTER REVIEWING AND MAKING NECESSARY ADJUSTMENTS, MAKE AVAILABLE TO A CONTRACTED PHARMACY WEEKLY UPDATES OF:~~

~~(I) THE MAXIMUM ALLOWABLE COST LIST; AND~~

~~(H) THE MAXIMUM ALLOWABLE COST FOR EACH DRUG, MEDICAL PRODUCT, AND DEVICE ON THE MAXIMUM ALLOWABLE COST LIST;~~

~~(5) ALLOW A CONTRACTED PHARMACY TO RESUBMIT A CLAIM FOR PAYMENT AT THE MAXIMUM ALLOWABLE COST IN EFFECT ON THE DATE OF THE ORIGINAL CLAIM SUBMISSION IF THE PHARMACY'S CLAIM WAS ORIGINALLY SUBMITTED AT A MAXIMUM ALLOWABLE COST THAT CHANGED ON OR BEFORE THE ORIGINAL CLAIM SUBMISSION DATE; AND~~

~~(6) PROVIDE A PROCESS FOR A CONTRACTED PHARMACY TO APPEAL A MAXIMUM ALLOWABLE COST.~~

~~(D) THE APPEAL PROCESS REQUIRED UNDER SUBSECTION (C)(6) OF THIS SECTION SHALL:~~

~~(1) ALLOW A CONTRACTED PHARMACY TO APPEAL A MAXIMUM ALLOWABLE COST WITHIN 60 DAYS AFTER THE DATE OF THE ORIGINAL CLAIM SUBMISSION; AND~~

~~(2) REQUIRE A PHARMACY BENEFITS MANAGER TO INVESTIGATE AND MAKE A DECISION ON AN APPEAL WITHIN 7 BUSINESS DAYS AFTER RECEIVING THE APPEAL.~~

~~(E) IF A PHARMACY BENEFITS MANAGER DENIES AN APPEAL, THE PHARMACY BENEFITS MANAGER SHALL:~~

~~(1) PROVIDE THE REASON FOR THE DENIAL; AND~~

~~(2) IDENTIFY THE NATIONAL DRUG CODE PRODUCT AVAILABLE TO PHARMACIES IN THE STATE THAT MAY BE PURCHASED AT A PRICE AT OR BELOW THE MAXIMUM ALLOWABLE COST.~~

~~(F) IF, AS A RESULT OF AN APPEAL, A PHARMACY BENEFITS MANAGER DETERMINES THAT THE MAXIMUM ALLOWABLE COST HAS BEEN APPLIED INCORRECTLY, THE PHARMACY BENEFITS MANAGER SHALL:~~

~~(1) ADJUST THE MAXIMUM ALLOWABLE COST RETROACTIVE TO THE DATE OF THE ORIGINAL CLAIM; AND~~

~~(2) NOTIFY THE CONTRACTED PHARMACY THAT ALL PAYMENT CLAIMS SUBMITTED AFTER THE EFFECTIVE DATE OF THE MAXIMUM ALLOWABLE COST ADJUSTMENT MAY BE RESUBMITTED, AT NO ADDITIONAL COST TO THE CONTRACTED PHARMACY, FOR PAYMENT AT THE ADJUSTED MAXIMUM ALLOWABLE COST.~~

~~15-1628.2.~~

~~A PHARMACY BENEFITS MANAGER MAY NOT REQUIRE A PHARMACY TO DISPENSE A PRESCRIPTION FOR A CONTRACTUAL REIMBURSEMENT AMOUNT THAT IS BELOW THE PHARMACY'S ACQUISITION COST.~~

(B) IN EACH CONTRACT BETWEEN A PHARMACY BENEFITS MANAGER AND A CONTRACTED PHARMACY, THE PHARMACY BENEFITS MANAGER SHALL INCLUDE THE SOURCES USED TO DETERMINE MAXIMUM ALLOWABLE COST PRICING.

(C) A PHARMACY BENEFITS MANAGER SHALL UPDATE ITS PRICING INFORMATION AT LEAST EVERY 7 DAYS AND PROVIDE A MEANS BY WHICH CONTRACTED PHARMACIES MAY PROMPTLY REVIEW PRICING UPDATES IN A FORMAT THAT IS READILY AVAILABLE AND ACCESSIBLE.

(D) A PHARMACY BENEFITS MANAGER SHALL MAINTAIN A PROCEDURE TO ELIMINATE PRODUCTS FROM THE LIST OF DRUGS SUBJECT TO MAXIMUM ALLOWABLE COST PRICING IN A TIMELY MANNER TO REMAIN CONSISTENT WITH PRICING CHANGES IN THE MARKETPLACE.

(E) BEFORE PLACING A PRESCRIPTION DRUG ON A MAXIMUM ALLOWABLE COST LIST, A PHARMACY BENEFITS MANAGER SHALL ENSURE THAT:

(1) THE DRUG IS LISTED AS "A" OR "B" RATED IN THE MOST RECENT VERSION OF THE U.S. FOOD AND DRUG ADMINISTRATION'S APPROVED DRUG PRODUCTS WITH THERAPEUTIC EQUIVALENCE EVALUATIONS, ALSO KNOWN AS THE ORANGE BOOK, OR HAS AN "NR" OR "NA" RATING OR SIMILAR RATING BY A NATIONALLY RECOGNIZED REFERENCE; AND

(2) THE DRUG IS GENERALLY AVAILABLE FOR PURCHASE BY CONTRACTED PHARMACIES IN THE STATE FROM A NATIONAL OR REGIONAL WHOLESALE DISTRIBUTOR AND IS NOT OBSOLETE.

(F) EACH CONTRACT BETWEEN A PHARMACY BENEFITS MANAGER AND A CONTRACTED PHARMACY MUST INCLUDE A PROCESS TO APPEAL,

**INVESTIGATE, AND RESOLVE DISPUTES REGARDING MAXIMUM ALLOWABLE COST PRICING THAT INCLUDES:**

**(1) A REQUIREMENT THAT AN APPEAL BE FILED NO LATER THAN 21 DAYS AFTER THE DATE OF THE INITIAL CLAIM;**

**(2) A REQUIREMENT THAT AN APPEAL BE INVESTIGATED AND RESOLVED WITHIN 21 DAYS AFTER THE DATE THE APPEAL IS FILED;**

**(3) A TELEPHONE NUMBER AT WHICH THE CONTRACTED PHARMACY MAY CONTACT THE PHARMACY BENEFITS MANAGER TO SPEAK TO AN INDIVIDUAL RESPONSIBLE FOR PROCESSING APPEALS;**

**(4) A REQUIREMENT THAT A PHARMACY BENEFITS MANAGER PROVIDE:**

**(I) A REASON FOR ANY APPEAL DENIAL; AND**

**(II) THE NATIONAL DRUG CODE OF A DRUG THAT MAY BE PURCHASED BY THE CONTRACTED PHARMACY AT A PRICE AT OR BELOW THE BENCHMARK PRICE DETERMINED BY THE PHARMACY BENEFITS MANAGER; AND**

**(5) IF AN APPEAL IS UPHELD, A REQUIREMENT THAT A PHARMACY BENEFITS MANAGER:**

**(I) MAKE THE CHANGE IN THE MAXIMUM ALLOWABLE COST NO LATER THAN 1 BUSINESS DAY AFTER THE DATE OF DETERMINATION ON THE APPEAL; AND**

**(II) PERMIT THE APPEALING CONTRACTING PHARMACY TO REVERSE AND REBILL THE CLAIM, AND ANY SUBSEQUENT SIMILAR CLAIMS.**

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all contracts between a pharmacy benefits manager and a pharmacy, a pharmacy services administration organization, or a group purchasing organization entered into or renewed on or after July 1, 2014.~~

SECTION ~~2.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~July 1, 2014~~ January 1, 2015.

Approved by the Governor, May 5, 2014.