

SENATE BILL 952

C3

4lr3106
CF HB 793

By: **Senator Astle**

Introduced and read first time: February 6, 2014

Assigned to: Rules

Re-referred to: Finance, February 27, 2014

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2014

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of requiring a pharmacy benefits manager to include in ~~its contract~~
5 ~~with a pharmacy, a pharmacy services administration organization, or a group~~
6 ~~purchasing organization the methodology used by the pharmacy benefits~~
7 ~~manager to calculate a certain reimbursement paid for each drug, medical~~
8 ~~product, and device that is a covered pharmacy benefit administered by the~~
9 ~~pharmacy benefits manager; requiring a pharmacy benefits manager to include~~
10 ~~in its contract with a pharmacy, a pharmacy services administration~~
11 ~~organization, or a group purchasing organization certain information and a~~
12 ~~certain methodology, make available to a contracted pharmacy a certain list and~~
13 ~~a certain maximum allowable cost, review and make certain adjustments to the~~
14 ~~maximum allowable cost, make available to a contracted pharmacy certain~~
15 ~~updates, allow a contracted pharmacy to resubmit a claim for payment under~~
16 ~~certain circumstances, and provide a process for a contracted pharmacy to~~
17 ~~appeal the maximum allowable cost; establishing certain requirements for the~~
18 ~~appeal process; requiring a pharmacy benefits manager, if it denies an appeal,~~
19 ~~to provide the reason for the denial and identify a certain national drug code~~
20 ~~product; requiring a pharmacy benefits manager to adjust the maximum~~
21 ~~allowable cost in a certain manner and provide a certain notice under certain~~
22 ~~circumstances; prohibiting a pharmacy benefits manager from requiring a~~
23 ~~pharmacy to dispense a prescription for a certain contractual reimbursement~~
24 ~~amount; defining certain terms; providing for the application of this Act; and~~

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 ~~generally relating to pharmacy benefits managers and payments to pharmacies~~
 2 ~~for covered drugs, medical products, and devices~~ each contract with a contracted
 3 pharmacy, the sources used to determine maximum allowable cost pricing;
 4 requiring the pharmacy benefits manager to update its pricing information with
 5 a certain frequency and provide a means by which contracted pharmacies may
 6 review pricing updates in a certain format; requiring a pharmacy benefits
 7 manager to maintain a procedure to eliminate products from a certain list for a
 8 certain purpose; requiring a pharmacy benefits manager to ensure that certain
 9 conditions are met before placing a prescription drug on a maximum allowable
 10 cost list; requiring each contract between a pharmacy benefits manager and a
 11 contracted pharmacy to include a certain process for appealing, investigating,
 12 and resolving disputes regarding maximum allowable cost pricing; defining
 13 certain terms; providing for a delayed effective date; and generally relating to
 14 contracts between pharmacy benefits managers and contracted pharmacies and
 15 maximum allowable cost pricing.

16 BY adding to
 17 Article – Insurance
 18 Section 15-1628.1 ~~and 15-1628.2~~
 19 Annotated Code of Maryland
 20 (2011 Replacement Volume and 2013 Supplement)

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

23 **Article – Insurance**

24 **15-1628.1.**

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

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

30 (I) THE PHARMACY BENEFITS MANAGER; OR

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

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

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

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

7 ~~(5)~~ (4) “MAXIMUM ALLOWABLE COST LIST” MEANS A LIST OF
8 MULTISOURCE GENERIC DRUGS, MEDICAL PRODUCTS, AND DEVICES FOR WHICH
9 A MAXIMUM ALLOWABLE COST HAS BEEN ESTABLISHED BY A PHARMACY
10 BENEFITS MANAGER OR A PURCHASER.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 ~~15-1628.2.~~

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

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

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

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

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

33 (1) THE DRUG IS LISTED AS "A" OR "B" RATED IN THE MOST
34 RECENT VERSION OF THE U.S. FOOD AND DRUG ADMINISTRATION'S APPROVED

1 DRUG PRODUCTS WITH THERAPEUTIC EQUIVALENCE EVALUATIONS, ALSO
2 KNOWN AS THE ORANGE BOOK, OR HAS AN “NR” OR “NA” RATING OR SIMILAR
3 RATING BY A NATIONALLY RECOGNIZED REFERENCE; AND

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

7 (F) EACH CONTRACT BETWEEN A PHARMACY BENEFITS MANAGER AND
8 A CONTRACTED PHARMACY MUST INCLUDE A PROCESS TO APPEAL,
9 INVESTIGATE, AND RESOLVE DISPUTES REGARDING MAXIMUM ALLOWABLE
10 COST PRICING THAT INCLUDES:

11 (1) A REQUIREMENT THAT AN APPEAL BE FILED NO LATER THAN
12 21 DAYS AFTER THE DATE OF THE INITIAL CLAIM;

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

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

18 (4) A REQUIREMENT THAT A PHARMACY BENEFITS MANAGER
19 PROVIDE:

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

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

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

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

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

31 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all~~
32 ~~contracts between a pharmacy benefits manager and a pharmacy, a pharmacy services~~

1 ~~administration organization, or a group purchasing organization entered into or~~
2 ~~renewed on or after July 1, 2014.~~

3 SECTION ~~3~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
4 effect ~~July 1, 2014~~ January 1, 2015.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.