

# HOUSE BILL 793

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By: **Delegates Kach, Bromwell, Elliott, and Olszewski**

Introduced and read first time: February 3, 2014

Assigned to: Health and Government Operations

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## A BILL ENTITLED

AN ACT concerning

### **Pharmacy Benefits Managers – Pharmacy Contracts – Payments**

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.

BY adding to

Article – Insurance

Section 15–1628.1 and 15–1628.2

Annotated Code of Maryland

(2011 Replacement Volume and 2013 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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) “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) “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**

**(II) 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.**

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 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014.