

HOUSE BILL 1121

C3

7lr3130
CF 7lr3165

By: **Delegates Kipke, Cullison, Hayes, Krebs, McDonough, Metzgar, Oaks, Szeliga, West, and K. Young**

Introduced and read first time: February 9, 2017

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance – Freedom of Choice of Pharmacy Act**

3 FOR the purpose of prohibiting certain carriers from prohibiting an enrollee from selecting,
4 or limiting the ability of an enrollee to select, a certain pharmacy for the receipt of
5 certain services under certain circumstances; prohibiting certain carriers, under
6 certain circumstances, from denying a pharmacy a certain right or imposing on an
7 enrollee certain payments, fees, reimbursement amounts, limitations, and conditions
8 for certain services; prohibiting certain carriers from imposing certain advantages
9 and penalties under a health benefit plan or reducing certain reimbursement to an
10 enrollee for certain services for a certain reason; prohibiting certain carriers from
11 requiring an enrollee to purchase certain services in a certain manner under certain
12 circumstances; prohibiting a pharmacy from waiving, discounting, rebating, or
13 modifying certain copayments, coinsurance requirements, and reimbursement;
14 requiring a pharmacy to offer a certain pharmacy service to certain enrollees under
15 certain circumstances; requiring certain carriers to provide a certain notice and
16 extend a certain offer to certain pharmacies on or before a certain date; requiring
17 that certain pharmacies be eligible to participate in certain health benefit plans
18 under certain terms and conditions; requiring certain carriers to inform certain
19 enrollees of the names and locations of certain pharmacies on a certain basis;
20 authorizing a pharmacy to inform certain customers of certain information;
21 repealing a certain prohibition on the imposition of certain copayments, deductibles,
22 and conditions under certain circumstances; repealing a requirement that a certain
23 nonprofit health service plan allow a subscriber, member, or beneficiary to fill a
24 prescription at a certain pharmacy; repealing certain provisions of law authorizing
25 certain carriers to require that certain drugs be obtained through certain pharmacies
26 or certain sources under certain conditions; repealing a certain authorization for a
27 certain pharmacy to apply to be a certain designated pharmacy for a certain purpose,
28 under certain conditions; repealing a certain prohibition on certain carriers
29 unreasonably withholding a certain approval; defining certain terms; providing for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 the application of this Act; providing for a delayed effective date; and generally
2 relating to health insurance and pharmacy services.

3 BY renumbering

4 Article – Insurance

5 Section 15–847(f) and (g), respectively

6 to be Section 15–847(d) and (e), respectively

7 Annotated Code of Maryland

8 (2011 Replacement Volume and 2016 Supplement)

9 BY repealing

10 Article – Insurance

11 Section 15–805(d), 15–806, and 15–847(d) and (e)

12 Annotated Code of Maryland

13 (2011 Replacement Volume and 2016 Supplement)

14 BY adding to

15 Article – Insurance

16 Section 15–2001 through 15–2005 to be under the new subtitle “Subtitle 20. Freedom
17 of Choice of Pharmacy Act”

18 Annotated Code of Maryland

19 (2011 Replacement Volume and 2016 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That Section(s) 15–847(f) and (g), respectively, of Article – Insurance of the Annotated Code
22 of Maryland be renumbered to be Section(s) 15–847(d) and (e), respectively.

23 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
24 as follows:

25 **Article – Insurance**

26 15–805.

27 [(d) (1) This subsection applies to each individual or group policy or contract
28 that is issued or delivered in the State to an employer or individual by an insurer or
29 nonprofit health service plan and that provides benefits for pharmaceutical products.

30 (2) A policy or contract subject to this subsection may not impose a
31 copayment, deductible, or other condition on an insured or certificate holder who uses the
32 services of a community pharmacy that is not imposed when the insured or certificate
33 holder uses the services of a mail order pharmacy, if the benefits are provided under the
34 same program, policy, or contract.]

35 [15–806.

1 A nonprofit health service plan that provides pharmaceutical services shall allow a
2 subscriber, member, or beneficiary to fill prescriptions at the pharmacy of the subscriber's,
3 member's, or beneficiary's choice.]

4 15–847.

5 [(d) Subject to § 15–805 of this subtitle and notwithstanding § 15–806 of this
6 subtitle, nothing in this article or regulations adopted under this article precludes an entity
7 subject to this section from requiring a covered specialty drug to be obtained through:

8 (1) a designated pharmacy or other source authorized under the Health
9 Occupations Article to dispense or administer prescription drugs; or

10 (2) a pharmacy participating in the entity's provider network, if the entity
11 determines that the pharmacy:

12 (i) meets the entity's performance standards; and

13 (ii) accepts the entity's network reimbursement rates.

14 (e) (1) A pharmacy registered under § 340B of the federal Public Health
15 Services Act may apply to an entity subject to this section to be a designated pharmacy
16 under subsection (d)(1) of this section for the purpose of enabling the pharmacy's patients
17 with HIV, AIDS, or hepatitis C to receive the copayment or coinsurance maximum provided
18 for in subsection (c) of this section if:

19 (i) the pharmacy is owned by a federally qualified health center, as
20 defined in 42 U.S.C. § 254B;

21 (ii) the federally qualified health center provides integrated and
22 coordinated medical and pharmaceutical services to HIV positive, AIDS, and hepatitis C
23 patients; and

24 (iii) the prescription drugs are covered specialty drugs for the
25 treatment of HIV, AIDS, or hepatitis C.

26 (2) An entity subject to this section may not unreasonably withhold
27 approval of a pharmacy's application under paragraph (1) of this subsection.]

28 **SUBTITLE 20. FREEDOM OF CHOICE OF PHARMACY ACT.**

29 **15–2001.**

30 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
31 **INDICATED.**

1 (B) "CARRIER" MEANS:

2 (1) AN INSURER;

3 (2) A NONPROFIT HEALTH SERVICE PLAN;

4 (3) A HEALTH MAINTENANCE ORGANIZATION; OR

5 (4) ANY OTHER PERSON THAT PROVIDES HEALTH BENEFIT PLANS
6 SUBJECT TO REGULATION BY THE STATE.

7 (C) "CONTRACT PROVIDER" MEANS A PHARMACY AUTHORIZED TO PROVIDE
8 PHARMACY SERVICES, INCLUDING PRESCRIPTION DRUGS AND DEVICES, UNDER THE
9 TERMS AND CONDITIONS OF A CARRIER HEALTH BENEFIT PLAN.

10 (D) "ENROLLEE" MEANS A PERSON ENTITLED TO HEALTH CARE BENEFITS
11 FROM A CARRIER.

12 (E) "HEALTH BENEFIT PLAN" HAS THE MEANING STATED IN § 15-112 OF
13 THIS TITLE.

14 (F) "PHARMACIST" HAS THE MEANING STATED IN § 12-101 OF THE HEALTH
15 OCCUPATIONS ARTICLE.

16 (G) "PHARMACY" HAS THE MEANING STATED IN § 12-101 OF THE HEALTH
17 OCCUPATIONS ARTICLE.

18 15-2002.

19 THIS SUBTITLE APPLIES TO CARRIERS THAT PROVIDE, DIRECTLY OR
20 THROUGH A PHARMACY BENEFITS MANAGER, COVERAGE FOR PHARMACY SERVICES,
21 INCLUDING PRESCRIPTION DRUGS AND DEVICES, UNDER HEALTH BENEFIT PLANS
22 THAT ARE ISSUED OR DELIVERED IN THE STATE.

23 15-2003.

24 A CARRIER MAY NOT:

25 (1) PROHIBIT AN ENROLLEE FROM SELECTING, OR LIMIT THE ABILITY
26 OF AN ENROLLEE TO SELECT, A PHARMACY OF THE ENROLLEE'S CHOICE FOR THE
27 RECEIPT OF PHARMACY SERVICES IF THE PHARMACY PARTICIPATES AS A CONTRACT
28 PROVIDER IN THE HEALTH BENEFIT PLAN OFFERED BY THE CARRIER;

1 **(2) DENY A PHARMACY THE RIGHT TO PARTICIPATE AS A CONTRACT**
2 **PROVIDER UNDER A HEALTH BENEFIT PLAN IF THE PHARMACY AGREES TO:**

3 **(I) PROVIDE PHARMACY SERVICES IN A MANNER THAT MEETS**
4 **THE TERMS AND CONDITIONS ESTABLISHED BY THE CARRIER UNDER THE HEALTH**
5 **BENEFIT PLAN; AND**

6 **(II) THE TERMS OF REIMBURSEMENT ESTABLISHED BY THE**
7 **CARRIER UNDER THE HEALTH BENEFIT PLAN;**

8 **(3) FOR PHARMACY SERVICES PROVIDED TO AN ENROLLEE UNDER A**
9 **HEALTH BENEFIT PLAN THAT ARE RECEIVED FROM A CONTRACT PROVIDER, IMPOSE**
10 **ON THE ENROLLEE A COPAYMENT, FEE, OR CONDITION FOR THE PHARMACY**
11 **SERVICE THAT IS DIFFERENT THAN THE COPAYMENT, FEE, OR CONDITION IMPOSED**
12 **ON ALL OTHER ENROLLEES FOR THE SAME PHARMACY SERVICE UNDER THE HEALTH**
13 **BENEFIT PLAN;**

14 **(4) IMPOSE A MONETARY ADVANTAGE OR PENALTY UNDER A HEALTH**
15 **BENEFIT PLAN, INCLUDING A HIGHER COPAYMENT, A REDUCTION IN**
16 **REIMBURSEMENT FOR SERVICES, OR PROMOTION OF ONE PARTICIPATING**
17 **PHARMACY OVER ANOTHER PARTICIPATING PHARMACY THAT MAY AFFECT AN**
18 **ENROLLEE'S CHOICE OF PHARMACY FROM AMONG THE PHARMACIES THAT**
19 **PARTICIPATE IN THE HEALTH BENEFIT PLAN OFFERED BY THE CARRIER;**

20 **(5) BECAUSE OF AN ENROLLEE'S SELECTION OF A PHARMACY OF THE**
21 **ENROLLEE'S CHOICE, REDUCE ALLOWABLE REIMBURSEMENT FOR AN ENROLLEE'S**
22 **PHARMACY SERVICES UNDER A HEALTH BENEFIT PLAN IF THE PHARMACY HAS**
23 **AGREED TO PARTICIPATE IN THE HEALTH BENEFIT PLAN OFFERED BY THE CARRIER**
24 **UNDER TERMS AND CONDITIONS THAT ARE OFFERED TO ALL PHARMACIES UNDER**
25 **THE HEALTH BENEFIT PLAN;**

26 **(6) AS A CONDITION OF PAYMENT OR REIMBURSEMENT UNDER A**
27 **HEALTH BENEFIT PLAN, REQUIRE AN ENROLLEE TO PURCHASE PHARMACY**
28 **SERVICES EXCLUSIVELY THROUGH A MAIL-ORDER PHARMACY; OR**

29 **(7) IMPOSE ON AN ENROLLEE A COPAYMENT, AN AMOUNT OF**
30 **REIMBURSEMENT, A LIMITATION ON THE NUMBER OF DAYS OF A DRUG SUPPLY FOR**
31 **WHICH REIMBURSEMENT WILL BE ALLOWED, OR ANY OTHER PAYMENT OR**
32 **CONDITION RELATING TO THE PURCHASE OF A PHARMACY SERVICE FROM A**
33 **PHARMACY THAT IS COSTLIER OR MORE RESTRICTIVE TO AN ENROLLEE THAN WHAT**
34 **WOULD BE IMPOSED ON THE ENROLLEE IF THE SAME PHARMACY SERVICE WERE**
35 **PURCHASED FROM A MAIL-ORDER PHARMACY.**

1 15-2004.

2 (A) IN THIS SECTION, "PHARMACY" INCLUDES A PHARMACIST ACTING ON
3 BEHALF OF A PHARMACY AS AN EMPLOYEE, AGENT, OR OWNER OF THE PHARMACY.

4 (B) (1) A PHARMACY MAY NOT WAIVE, DISCOUNT, REBATE, OR MODIFY AN
5 ENROLLEE'S COPAYMENT, COINSURANCE REQUIREMENT, OR REIMBURSEMENT FOR
6 PRESCRIPTION DRUG COVERAGE UNDER A HEALTH BENEFIT PLAN.

7 (2) IF A PHARMACY PROVIDES A PHARMACY SERVICE TO AN
8 ENROLLEE OF A HEALTH BENEFIT PLAN THAT MEETS THE TERMS AND CONDITIONS
9 OF THE HEALTH BENEFIT PLAN ESTABLISHED BY THE CARRIER, THE PHARMACY
10 SHALL OFFER THE SAME PHARMACY SERVICE TO ALL ENROLLEES OF THE HEALTH
11 BENEFIT PLAN UNDER THE SAME TERMS AND CONDITIONS ESTABLISHED BY THE
12 CARRIER.

13 15-2005.

14 (A) IF A CARRIER LIMITS COVERAGE AND REIMBURSEMENT OF PHARMACY
15 SERVICES UNDER A HEALTH BENEFIT PLAN TO PHARMACIES THAT CONTRACT WITH
16 THE CARRIER TO PROVIDE PHARMACY SERVICES, ON OR BEFORE MARCH 1, 2018,
17 THE CARRIER SHALL:

18 (1) PROVIDE WRITTEN NOTICE TO EACH PHARMACY THAT IS LOCATED
19 WITHIN THE GEOGRAPHICAL SERVICE AREA OF THE HEALTH BENEFIT PLAN OF THE
20 NETWORK REQUIREMENTS ESTABLISHED BY THE CARRIER; AND

21 (2) OFFER TO THE PHARMACY THE OPPORTUNITY TO PARTICIPATE IN
22 THE HEALTH BENEFIT PLAN DURING THE NEXT PLAN YEAR.

23 (B) EACH PHARMACY TO WHICH A CARRIER EXTENDS AN OFFER TO
24 PARTICIPATE IN A HEALTH BENEFIT PLAN UNDER SUBSECTION (A) OF THIS SECTION
25 SHALL BE ELIGIBLE TO PARTICIPATE IN THE HEALTH BENEFIT PLAN UNDER
26 IDENTICAL REIMBURSEMENT TERMS AND CONDITIONS.

27 (C) ON AN ANNUAL BASIS, A CARRIER SHALL INFORM THE ENROLLEES OF A
28 HEALTH BENEFIT PLAN OFFERED BY THE CARRIER OF THE NAMES AND LOCATIONS
29 OF PHARMACIES THAT ARE PARTICIPATING IN THE HEALTH BENEFIT PLAN.

30 (D) A PHARMACY MAY INFORM ITS CUSTOMERS OF THE PHARMACY'S
31 PARTICIPATION IN A HEALTH BENEFIT PLAN NETWORK THROUGH A MEANS THAT IS
32 ACCEPTABLE TO THE PHARMACY AND THE CARRIER OFFERING THE HEALTH
33 BENEFIT PLAN.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all
2 policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or
3 after January 1, 2018.

4 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 January 1, 2018.