

# SENATE BILL 1079

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CF HB 1349

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By: ~~Senator Mathias~~ Senators Mathias, Astle, Benson, Feldman, Hershey, Klausmeier, Middleton, Reilly, and Rosapepe

Introduced and read first time: February 12, 2018

Assigned to: Rules

Re-referred to: Finance, February 16, 2018

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2018

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

### 2 **Pharmacy Benefits Managers – Revisions**

3 FOR the purpose of ~~altering the application fee for a pharmacy benefits manager to register~~  
4 ~~with the Maryland Insurance Commissioner; requiring a pharmacy benefits~~  
5 ~~manager applying to register to file a certain financial statement with the~~  
6 ~~Commissioner;~~ authorizing the Maryland Insurance Commissioner to require  
7 certain additional information from a pharmacy benefits manager in a certain  
8 application; altering the date on which the registration of a pharmacy benefits  
9 manager expires unless the registration is renewed; altering the length of the term  
10 for which a pharmacy benefits manager may renew a certain registration; altering  
11 the circumstances under which a pharmacy benefits manager may renew a  
12 registration; authorizing the Commissioner to impose certain fees under certain  
13 circumstances; authorizing the Commissioner to require certain information or  
14 certain submissions from a pharmacy benefits manager for a certain purpose;  
15 authorizing a pharmacy benefits manager to pay a certain fee in lieu of a certain  
16 suspension under certain circumstances; authorizing a pharmacy benefits manager  
17 to reapply for a registration under certain circumstances; clarifying that certain  
18 actions of the Commissioner are subject to certain hearing provisions; providing that  
19 a certain provision prohibiting reimbursements in a certain amount does not apply  
20 to reimbursement for certain drugs or to certain chain pharmacies; prohibiting  
21 certain reimbursement from a pharmacy benefits manager ~~to~~ from reimbursing a  
22 pharmacy or pharmacist for a certain product or certain service in a certain amount;  
23 prohibiting a pharmacy benefits manager from prohibiting a pharmacy or

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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 ~~pharmacist from providing a beneficiary with certain information regarding a~~  
2 ~~certain retail price or certain cost share for a prescription drug; prohibiting a~~  
3 ~~pharmacy benefits manager from prohibiting a pharmacy or pharmacist from~~  
4 ~~discussing with a beneficiary a certain retail price or certain cost share for a~~  
5 ~~prescription drug; prohibiting a pharmacy benefits manager from prohibiting a~~  
6 ~~pharmacy or pharmacist from selling a certain alternative prescription drug under~~  
7 ~~certain circumstances; prohibiting a pharmacy benefits manager from prohibiting a~~  
8 ~~pharmacy or pharmacist from offering and providing store direct delivery services as~~  
9 ~~an ancillary service of the pharmacy; requiring each contract between a pharmacy~~  
10 ~~benefits manager and a contracted pharmacy to include the methodology used to~~  
11 ~~determine maximum allowable cost pricing; requiring a pharmacy benefits manager~~  
12 ~~to disclose certain information to a contracted pharmacy under certain~~  
13 ~~circumstances; requiring a pharmacy benefits manager to provide a certain means~~  
14 ~~on its website by which certain contracted pharmacies may promptly review certain~~  
15 ~~pricing updates, to use certain pricing information to calculate certain payments,~~  
16 ~~and to disclose certain information in certain contracts; requiring a pharmacy~~  
17 ~~benefits manager to disclose a certain maximum allowable cost list under certain~~  
18 ~~circumstances; requiring a pharmacy benefits manager to establish a certain process~~  
19 ~~by which a certain pharmacy has access to certain maximum allowable cost price~~  
20 ~~lists in a certain format as updated in accordance with certain requirements;~~  
21 ~~requiring a pharmacy benefits manager to use updated pricing information in~~  
22 ~~calculating certain payments immediately after a certain update; altering a certain~~  
23 ~~procedure that a pharmacy benefits manager is required to maintain; altering~~  
24 ~~certain requirements that a pharmacy benefits manager must meet before placing a~~  
25 ~~prescription drug on a certain list; ~~prohibiting a pharmacy benefits manager from~~~~  
26 ~~~~setting a maximum allowable cost for certain drugs, products, and devices that are~~~~  
27 ~~~~placed on a certain list that is below a certain amount; altering a certain process that~~~~  
28 ~~must be included in each contract between a pharmacy benefits manager and a~~  
29 ~~contracted pharmacy; ~~authorizing a contracted pharmacy to file a certain complaint~~~~  
30 ~~~~with the Commissioner; requiring a contracted pharmacy to exhaust a certain appeal~~~~  
31 ~~~~process before filing a certain complaint; requiring the Commissioner to hold a~~~~  
32 ~~~~certain hearing and issue a certain order in accordance with certain procedures;~~~~  
33 ~~~~providing that an appeal of a certain order may be taken in accordance with certain~~~~  
34 ~~~~statutory provisions; prohibiting a pharmacy benefits manager from retaliating~~~~  
35 ~~~~against a contracted pharmacy for exercising a certain right to appeal or filing a~~~~  
36 ~~~~certain complaint; prohibiting a pharmacy benefits manager from charging a~~~~  
37 ~~~~contracted pharmacy a certain fee; ~~establishing a certain civil penalty for a violation~~~~~~  
38 ~~~~of certain provisions of this Act; requiring the Commission to review a certain~~~~  
39 ~~~~compensation program for a certain purpose and take certain action on appeal and~~~~  
40 ~~~~order a pharmacy benefits manager to pay a certain claim under certain~~~~  
41 ~~~~circumstances; providing that certain information is considered to be confidential~~~~  
42 ~~~~and proprietary information and is not subject to disclosure under certain provisions~~~~  
43 ~~~~of law; authorizing the Commissioner, under certain circumstances, to issue an order~~~~  
44 ~~~~that requires a pharmacy benefits manager to pay a certain fine; authorizing the~~~~  
45 ~~~~Commissioner to adopt certain regulations and establish a certain complaint process;~~~~  
46 ~~defining a certain term; altering a certain definition; providing for the construction~~

1 of certain provisions of this Act; providing for the application of this Act; ~~providing~~  
 2 ~~for a delayed effective date;~~ and generally relating to pharmacy benefits managers.

3 BY repealing and reenacting, with amendments,  
 4 Article – Insurance  
 5 Section 15–1604, 15–1605, 15–1607, 15–1628.1, and ~~15–1642(e)~~ 15–1642  
 6 Annotated Code of Maryland  
 7 (2017 Replacement Volume)

8 BY adding to  
 9 Article – Insurance  
 10 Section 15–1611, ~~15–1612, and 15–1612.1~~  
 11 Annotated Code of Maryland  
 12 (2017 Replacement Volume)

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

15 **Article – Insurance**

16 15–1604.

17 (a) A pharmacy benefits manager shall register with the Commissioner as a  
 18 pharmacy benefits manager before providing pharmacy benefits management services in  
 19 the State to purchasers.

20 (b) An applicant for registration shall:

21 (1) file with the Commissioner an application on the form that the  
 22 Commissioner provides; ~~and~~

23 (2) pay to the Commissioner a registration fee ~~set by the Commissioner~~  
 24 ~~OF \$1,000; AND~~

25 ~~(3) FILE WITH THE COMMISSIONER A FINANCIAL STATEMENT,~~  
 26 ~~CERTIFIED BY A CERTIFIED PUBLIC ACCOUNTANT WITHIN THE IMMEDIATELY~~  
 27 ~~PRECEDING 6 MONTHS, THAT PRESENTS, IN ACCORDANCE WITH GENERALLY~~  
 28 ~~ACCEPTED ACCOUNTING PRINCIPLES, THE FINANCIAL POSITION OF THE APPLICANT~~  
 29 ~~AND CONTAINS THE INFORMATION THAT THE COMMISSIONER REQUIRES.~~

30 (c) THE COMMISSIONER MAY REQUIRE ANY ADDITIONAL INFORMATION OR  
 31 SUBMISSIONS FROM A PHARMACY BENEFITS MANAGER THAT MAY BE REASONABLY  
 32 NECESSARY TO VERIFY THE INFORMATION CONTAINED IN THE APPLICATION.

33 [(c)] (D) Subject to the provisions of § 15–1607 of this part, the Commissioner  
 34 shall register each pharmacy benefits manager that meets the requirements of this section.

1 15-1605.

2 (a) A pharmacy benefits manager registration expires on ~~the second~~ September  
3 30 after its effective date unless it is renewed as provided under this section.

4 (b) A pharmacy benefits manager may renew its registration for an additional  
5 ~~2-year~~ ~~1-YEAR~~ term, if the pharmacy benefits manager:

6 (1) otherwise is entitled to be registered;

7 (2) files with the Commissioner a renewal application on the form that the  
8 Commissioner requires; ~~and~~

9 (3) pays to the Commissioner a renewal fee ~~set by the Commissioner~~ ~~OF~~  
10 ~~\$1,000; AND~~

11 ~~(4) FILES WITH THE COMMISSIONER A FINANCIAL STATEMENT~~  
12 ~~CERTIFIED BY A CERTIFIED PUBLIC ACCOUNTANT WITHIN THE IMMEDIATELY~~  
13 ~~PRECEDING 6 MONTHS, THAT PRESENTS, IN ACCORDANCE WITH GENERALLY~~  
14 ~~ACCEPTED ACCOUNTING PRINCIPLES, THE FINANCIAL POSITION OF THE APPLICANT~~  
15 ~~AND CONTAINS THE INFORMATION THAT THE COMMISSIONER REQUIRES.~~

16 (c) An application for renewal of a pharmacy benefits manager registration shall  
17 be considered made in a timely manner if it is postmarked on or before the date the  
18 pharmacy benefits manager's registration expires.

19 ~~(D) IF A PHARMACY BENEFITS MANAGER FAILS TO PAY THE RENEWAL FEE~~  
20 ~~REQUIRED UNDER SUBSECTION (B)(3) OF THIS SECTION WHEN THE PHARMACY~~  
21 ~~BENEFITS MANAGER SUBMITS AN APPLICATION FOR RENEWAL, THE COMMISSIONER~~  
22 ~~MAY IMPOSE AN ADDITIONAL APPLICATION FEE OF \$500.~~

23 ~~(d)~~ ~~(E)~~ Subject to the provisions of § 15-1607 of this part, the Commissioner  
24 shall renew the registration of each pharmacy benefits manager that meets the  
25 requirements of this section.

26 ~~(F)~~ ~~(E)~~ THE COMMISSIONER MAY REQUIRE ANY ADDITIONAL  
27 INFORMATION OR SUBMISSIONS FROM A PHARMACY BENEFITS MANAGER THAT MAY  
28 BE REASONABLY NECESSARY TO VERIFY THE INFORMATION CONTAINED IN THE  
29 APPLICATION.

30 15-1607.

31 (a) ~~(1)~~ Subject to ~~PARAGRAPH (2) OF THIS SUBSECTION AND~~ the  
32 APPLICABLE hearing provisions of Title 2 of this article, the Commissioner may deny a

1 registration to a pharmacy benefits manager applicant or refuse to renew, suspend, or  
 2 revoke the registration of a pharmacy benefits manager if the pharmacy benefits manager,  
 3 or an officer, director, or employee of the pharmacy benefits manager:

4 ~~[(1)]~~ ~~(I)~~ makes a material misstatement or misrepresentation in an  
 5 application for registration;

6 ~~[(2)]~~ ~~(II)~~ fraudulently or deceptively obtains or attempts to obtain a  
 7 registration;

8 ~~[(3)]~~ ~~(III)~~ in connection with the administration of pharmacy benefits  
 9 management services, commits fraud or engages in illegal or dishonest activities; or

10 ~~[(4)]~~ ~~(IV)~~ violates any provision of this part or a regulation adopted under  
 11 this part.

12 ~~(2) SUBJECT TO THE APPROVAL OF THE COMMISSIONER, A~~  
 13 ~~PHARMACY BENEFITS MANAGER MAY, IN LIEU OF PART OR ALL OF THE DAYS OF ANY~~  
 14 ~~SUSPENSION PERIOD IMPOSED BY THE COMMISSIONER, PAY A FEE OF \$1,000 PER~~  
 15 ~~DAY OF THE SUSPENSION PERIOD.~~

16 ~~(B) IF THE COMMISSIONER'S DENIAL OR REVOCATION OF A PHARMACY~~  
 17 ~~BENEFITS MANAGER'S REGISTRATION IS SUSTAINED BY THE COMMISSIONER AFTER~~  
 18 ~~A HEARING IN ACCORDANCE WITH TITLE 2 OF THIS ARTICLE, A PHARMACY BENEFITS~~  
 19 ~~MANAGER MAY REAPPLY FOR A REGISTRATION NO EARLIER THAN 1 YEAR AFTER~~  
 20 ~~THE DATE ON WHICH A DENIAL OR REVOCATION WAS SUSTAINED BY THE~~  
 21 ~~COMMISSIONER.~~

22 ~~[(b)]~~ ~~(C)~~ This section does not limit any other regulatory authority of the  
 23 Commissioner under this article.

24 **15-1611.**

25 **(A) THIS SECTION DOES NOT APPLY TO REIMBURSEMENT:**

26 **(1) FOR SPECIALTY DRUGS;**

27 **(2) FOR MAIL ORDER DRUGS; OR**

28 **(3) TO A CHAIN PHARMACY WITH MORE THAN 15 STORES OR A**  
 29 **PHARMACIST WHO IS AN EMPLOYEE OF THE CHAIN PHARMACY.**

30 **(B) A PHARMACY BENEFITS MANAGER MAY NOT REIMBURSE A PHARMACY**  
 31 **OR PHARMACIST FOR A PHARMACEUTICAL PRODUCT OR PHARMACIST SERVICE IN**  
 32 **AN AMOUNT LESS THAN THE AMOUNT THAT THE PHARMACY BENEFITS MANAGER**

1 REIMBURSES ITSELF OR AN AFFILIATE FOR PROVIDING THE SAME PRODUCT OR  
2 SERVICE.

3 ~~15-1612.~~

4 ~~IN ADDITION TO THE REGISTRATION AND RENEWAL FEES ESTABLISHED~~  
5 ~~UNDER §§ 15-1604 AND 15-1605 OF THIS SUBTITLE, THE COMMISSIONER MAY~~  
6 ~~REQUIRE A PHARMACY BENEFITS MANAGER TO PAY A FEE SET BY THE~~  
7 ~~COMMISSIONER TO COVER THE COSTS OF IMPLEMENTATION AND ENFORCEMENT OF~~  
8 ~~THIS SUBTITLE, INCLUDING FEES TO COVER THE COSTS OF:~~

9 ~~(1) SALARIES AND BENEFITS PAID TO PERSONNEL ENGAGED IN THE~~  
10 ~~IMPLEMENTATION AND ENFORCEMENT OF THIS SUBTITLE;~~

11 ~~(2) REASONABLE TECHNOLOGY COSTS RELATING TO THE~~  
12 ~~ENFORCEMENT OF THIS SUBTITLE, INCLUDING THE COSTS OF:~~

13 ~~(I) SOFTWARE AND HARDWARE USED IN THE ENFORCEMENT~~  
14 ~~PROCESS; AND~~

15 ~~(H) TRAINING PERSONNEL IN THE PROPER USE OF THE~~  
16 ~~SOFTWARE OR HARDWARE; AND~~

17 ~~(3) EDUCATION AND TRAINING FOR PERSONNEL ENGAGED IN THE~~  
18 ~~ENFORCEMENT OF THIS SUBTITLE TO MAINTAIN PROFICIENCY AND COMPETENCE.~~

19 ~~15-1612.1.~~

20 ~~(A) A PHARMACY BENEFITS MANAGER MAY NOT PROHIBIT A PHARMACY OR~~  
21 ~~PHARMACIST FROM:~~

22 ~~(1) PROVIDING A BENEFICIARY WITH INFORMATION REGARDING THE~~  
23 ~~RETAIL PRICE FOR A PRESCRIPTION DRUG OR THE AMOUNT OF THE COST SHARE~~  
24 ~~FOR WHICH THE BENEFICIARY IS RESPONSIBLE FOR A PRESCRIPTION DRUG;~~

25 ~~(2) DISCUSSING WITH A BENEFICIARY INFORMATION REGARDING~~  
26 ~~THE RETAIL PRICE FOR A PRESCRIPTION DRUG OR THE AMOUNT OF THE COST~~  
27 ~~SHARE FOR WHICH THE BENEFICIARY IS RESPONSIBLE FOR A PRESCRIPTION DRUG;~~

28 ~~(3) IF A MORE AFFORDABLE DRUG IS AVAILABLE THAN ONE ON THE~~  
29 ~~PURCHASER'S FORMULARY AND THE REQUIREMENTS FOR A THERAPEUTIC~~  
30 ~~INTERCHANGE UNDER §§ 15-1633 THROUGH 15-1639 OF THIS SUBTITLE ARE MET,~~  
31 ~~SELLING THE MORE AFFORDABLE ALTERNATIVE TO THE BENEFICIARY; OR~~

~~(4) OFFERING AND PROVIDING STORE DIRECT DELIVERY SERVICES TO AN ENROLLEE AS AN ANCILLARY SERVICE OF THE PHARMACY.~~

~~(B) THIS SECTION MAY NOT BE CONSTRUED TO ALTER THE REQUIREMENTS FOR A THERAPEUTIC INTERCHANGE UNDER §§ 15-1633 THROUGH 15-1639 OF THIS SUBTITLE.~~

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) “DRUG SHORTAGE LIST” MEANS A LIST OF DRUG PRODUCTS SOLD AT A DISCOUNT WITH AN EXPIRATION DATE OF LESS THAN 1 YEAR FROM THE DATE OF PURCHASE BY THE CONTRACTED PHARMACY LISTED ON THE FEDERAL FOOD AND DRUG ADMINISTRATION’S DRUG SHORTAGES WEBSITE.~~

~~(3)~~ (4) (I) “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.

(II) “MAXIMUM ALLOWABLE COST” DOES NOT INCLUDE DISPENSING FEES.

~~(4)~~ (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) In each contract between a pharmacy benefits manager and a contracted pharmacy, the pharmacy benefits manager shall include the ~~METHODOLOGY AND~~ sources used to determine maximum allowable cost pricing.

~~(C) (1) A PHARMACY BENEFITS MANAGER SHALL DISCLOSE TO THE CONTRACTED PHARMACY WHETHER THE PHARMACY BENEFITS MANAGER IS USING AN IDENTICAL MAXIMUM ALLOWABLE COST LIST WITH ANY OTHER CONTRACTED PHARMACY.~~

~~(2) IF A PHARMACY BENEFITS MANAGER USES A DIFFERENT MAXIMUM ALLOWABLE COST LIST WITH ANOTHER CONTRACTED PHARMACY, THE PHARMACY BENEFITS MANAGER SHALL DISCLOSE TO THE CONTRACT PHARMACY ANY DIFFERENCES BETWEEN THE AMOUNT PAID TO ANY CONTRACTED PHARMACY AND THE AMOUNT CHARGED TO THE PURCHASER.~~

~~{(c)}~~ ~~(D)~~ A pharmacy benefits manager shall:

~~(1) update its pricing information at least every 7 days and provide a means ON THE PHARMACY BENEFITS MANAGER'S WEBSITE by which ALL contracted pharmacies may promptly review pricing updates in a format that is readily available and accessible AT THE TIME THE PHARMACY BENEFITS MANAGER UPDATES THE LIST FOR ITS OWN USE;~~

~~(2) ESTABLISH A REASONABLE PROCESS BY WHICH A CONTRACTED PHARMACY HAS ACCESS TO THE CURRENT AND APPLICABLE MAXIMUM ALLOWABLE COST PRICE LISTS IN AN ELECTRONIC FORMAT AS UPDATED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION; AND~~

~~(2) (3) IMMEDIATELY AFTER A PRICING INFORMATION UPDATE UNDER ITEM (1) OF THIS SUBSECTION, USE THE UPDATED PRICING INFORMATION IN CALCULATING THE PAYMENTS MADE TO ALL CONTRACTED PHARMACIES; AND.~~

~~(3) DISCLOSE IN EACH CONTRACT BETWEEN THE PHARMACY BENEFITS MANAGER AND A CONTRACTED PHARMACY WHETHER THE PHARMACY BENEFITS MANAGER USES A DIFFERENT MAXIMUM ALLOWABLE COST LIST FOR DRUGS, PRODUCTS, OR DEVICES DISPENSED AT RETAIL PHARMACIES THAN FOR DRUGS, PRODUCTS, OR DEVICES DISPENSED BY MAIL.~~

~~(E) A PHARMACY BENEFITS MANAGER SHALL DISCLOSE TO A CONTRACTED PHARMACY A MAXIMUM ALLOWABLE COST LIST USED BY THE PHARMACY BENEFITS MANAGER FOR DRUGS, PRODUCTS, OR DEVICES DISPENSED BY MAIL IF THE MAXIMUM ALLOWABLE COST LIST IS:~~

~~(1) DIFFERENT THAN THE MAXIMUM ALLOWABLE COST LIST USED BY THE PHARMACY BENEFITS MANAGER FOR DRUGS, PRODUCTS, OR DEVICES DISPENSED AT RETAIL PHARMACIES; AND~~

~~(2) ADOPTED BY THE PHARMACY BENEFITS MANAGER AFTER EXECUTING A CONTRACT WITH THE CONTRACTED PHARMACY.~~

~~{(d)}~~ ~~(F)~~ (1) 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] AS NECESSARY to:

1 (I) remain consistent with pricing changes;

2 (II) REMOVE FROM THE LIST DRUGS THAT NO LONGER MEET  
3 THE REQUIREMENTS OF SUBSECTION ~~(G)~~ (E) OF THIS SECTION; AND

4 (III) ~~ENSURE THE~~ REFLECT THE CURRENT AVAILABILITY OF  
5 DRUGS in the marketplace.

6 (2) A PRODUCT ON THE MAXIMUM ALLOWABLE COST LIST SHALL BE  
7 ELIMINATED FROM THE LIST BY THE PHARMACY BENEFITS MANAGER WITHIN ~~24~~  
8 HOURS 7 DAYS AFTER THE PHARMACY BENEFITS MANAGER KNOWS ~~OR SHOULD~~  
9 ~~HAVE KNOWN~~ OF A CHANGE IN THE ~~PRICING OR~~ AVAILABILITY OF THE PRODUCT.

10 ~~{(e)}~~ (G) Before placing a prescription drug on a maximum allowable cost list, a  
11 pharmacy benefits manager shall ensure that:

12 (1) the drug is listed as “A” or “B” rated in the most recent version of the  
13 U.S. Food and Drug Administration’s approved drug products with therapeutic equivalence  
14 evaluations, also known as the Orange Book, or has an “NR” or “NA” rating or similar  
15 rating by a nationally recognized reference; [and]

16 (2) (I) IF A DRUG IS MANUFACTURED BY MORE THAN ONE  
17 MANUFACTURER, the drug is ~~{generally}~~ available ~~IN AT LEAST THREE GENERICALLY~~  
18 ~~EQUIVALENT OR BIOEQUIVALENT VERSIONS~~ for purchase by contracted pharmacies,  
19 INCLUDING CONTRACTED RETAIL PHARMACIES, in the State from a [national or  
20 regional] wholesale distributor [and is not obsolete] WITH A PERMIT IN THE STATE; OR

21 (II) IF A DRUG IS MANUFACTURED BY ONLY ONE  
22 MANUFACTURER, THE DRUG IS GENERALLY AVAILABLE FOR PURCHASE BY  
23 CONTRACTED PHARMACIES, INCLUDING CONTRACTED RETAIL PHARMACIES, IN THE  
24 STATE FROM AT LEAST TWO WHOLESALE DISTRIBUTORS WITH A PERMIT IN THE  
25 STATE; AND

26 (3) THE DRUG IS NOT OBSOLETE, TEMPORARILY UNAVAILABLE, OR  
27 LISTED ON A DRUG SHORTAGE LIST AS CURRENTLY IN SHORTAGE.

28 ~~(H) A PHARMACY BENEFITS MANAGER MAY NOT SET THE MAXIMUM~~  
29 ~~ALLOWABLE COST FOR ANY DRUG, PRODUCT, OR DEVICE IT PLACES ON A MAXIMUM~~  
30 ~~ALLOWABLE COST LIST IN AN AMOUNT THAT IS BELOW THE AMOUNT ESTABLISHED~~  
31 ~~IN THE SOURCE USED BY THE PHARMACY BENEFITS MANAGER TO SET THE MAXIMUM~~  
32 ~~ALLOWABLE COST FOR THE DRUG, PRODUCT, OR DEVICE.~~

1 ~~[(f)]~~ ~~(H)~~ Each contract between a pharmacy benefits manager and a contracted  
 2 pharmacy must include a process to appeal, investigate, and resolve disputes regarding  
 3 maximum allowable cost pricing that includes:

4 (1) a requirement that an appeal be filed **BY THE CONTRACT PHARMACY**  
 5 no later than 21 days after the date of the initial **ADJUDICATED** claim;

6 (2) a requirement that [an appeal be investigated and resolved], within  
 7 ~~[21]~~ **7** days after the date the appeal is filed, **THE PHARMACY BENEFITS MANAGER**  
 8 **INVESTIGATE AND RESOLVE THE APPEAL AND REPORT TO THE CONTRACTED**  
 9 **PHARMACY ON THE PHARMACY BENEFITS MANAGER'S DETERMINATION ON THE**  
 10 **APPEAL;**

11 (3) **A REQUIREMENT THAT A PHARMACY BENEFITS MANAGER MAKE**  
 12 **AVAILABLE ON ITS WEBSITE INFORMATION ABOUT THE APPEAL PROCESS,**  
 13 **INCLUDING:**

14 (I) a ~~DIRECT~~ telephone number at which the contracted pharmacy  
 15 may **DIRECTLY** contact the **DEPARTMENT OR OFFICE RESPONSIBLE FOR PROCESSING**  
 16 **APPEALS FOR THE** pharmacy benefits manager to speak to an individual ~~SPECIFICALLY~~  
 17 **OR LEAVE A MESSAGE FOR AN INDIVIDUAL WHO IS** responsible for processing appeals;

18 (II) **AN E-MAIL ADDRESS OF THE DEPARTMENT OR OFFICE**  
 19 **RESPONSIBLE FOR PROCESSING APPEALS TO WHICH AN INDIVIDUAL WHO IS**  
 20 **RESPONSIBLE FOR PROCESSING APPEALS HAS ACCESS; AND**

21 ~~(H)~~ (III) **A NOTICE INDICATING THAT THE INDIVIDUAL**  
 22 ~~SPECIFICALLY~~ **RESPONSIBLE FOR PROCESSING APPEALS SHALL RETURN CALLS A**  
 23 **CALL OR AN E-MAIL MADE BY A CONTRACTED PHARMACY TO THE INDIVIDUAL**  
 24 **WITHIN 3 BUSINESS DAYS OR LESS OF RECEIVING THE CALL OR E-MAIL;**

25 (4) a requirement that a pharmacy benefits manager provide:

26 (i) a reason for any appeal denial; and

27 (ii) the national drug code of a drug ~~that IS READILY AVAILABLE~~  
 28 ~~FOR PURCHASE~~ **AND THE NAME OF THE WHOLESALE DISTRIBUTOR FROM WHICH THE**  
 29 ~~DRUG may be purchased by the contracted pharmacy~~ **WAS AVAILABLE ON THE DATE THE**  
 30 **CLAIM WAS ADJUDICATED** at a price at or below the [benchmark price] **MAXIMUM**  
 31 **ALLOWABLE COST** determined by the pharmacy benefits manager; and

32 (5) if an appeal is upheld, a requirement that a pharmacy benefits  
 33 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.~~

**(I) FOR THE APPEALING PHARMACY:**

**1. ADJUST THE MAXIMUM ALLOWABLE COST FOR THE DRUG AS OF THE DATE OF THE ORIGINAL CLAIM FOR PAYMENT; AND**

**2. WITHOUT REQUIRING THE APPEALING PHARMACY TO REVERSE AND REBILL THE CLAIMS, PROVIDE REIMBURSEMENT FOR THE CLAIM AND ANY SUBSEQUENT AND SIMILAR CLAIMS UNDER SIMILARLY APPLICABLE CONTRACTS WITH THE PHARMACY BENEFITS MANAGER:**

**A. FOR THE ORIGINAL CLAIM, IN THE FIRST REMITTANCE TO THE PHARMACY AFTER THE DATE THE APPEAL WAS DETERMINED; AND**

**B. FOR SUBSEQUENT AND SIMILAR CLAIMS UNDER SIMILARLY APPLICABLE CONTRACTS, IN THE SECOND REMITTANCE TO THE PHARMACY AFTER THE DATE THE APPEAL WAS DETERMINED; AND**

**(II) FOR A SIMILARLY SITUATED CONTRACTED PHARMACY IN THE STATE:**

**1. ADJUST THE MAXIMUM ALLOWABLE COST FOR THE DRUG AS OF THE DATE THE APPEAL WAS DETERMINED; AND**

**2. PROVIDE NOTICE TO THE PHARMACY OR PHARMACY'S CONTRACTED AGENT THAT:**

**A. AN APPEAL HAS BEEN UPHELD; AND**

**B. WITHOUT FILING A SEPARATE APPEAL, THE PHARMACY OR THE PHARMACY'S CONTRACTED AGENT MAY REVERSE AND REBILL A SIMILAR CLAIM.**

~~(j) (1) WITHIN 30 CALENDAR DAYS AFTER A PHARMACY BENEFITS MANAGER DENIES AN APPEAL BY A CONTRACTED PHARMACY UNDER SUBSECTION (i) OF THIS SECTION, THE CONTRACTED PHARMACY MAY FILE A COMPLAINT WITH THE COMMISSIONER FOR REVIEW OF THE DECISION BY THE PHARMACY BENEFITS MANAGER.~~

1 ~~(2) A CONTRACTED PHARMACY SHALL EXHAUST THE APPEAL~~  
2 ~~PROCESS ESTABLISHED BY THE PHARMACY BENEFITS MANAGER UNDER~~  
3 ~~SUBSECTION (I) OF THIS SECTION BEFORE FILING A COMPLAINT WITH THE~~  
4 ~~COMMISSIONER UNDER THIS SUBSECTION.~~

5 ~~(3) THE COMMISSIONER SHALL HOLD A HEARING ON THE~~  
6 ~~COMPLAINT AND ISSUE AN ORDER IN ACCORDANCE WITH THE HEARING AND REVIEW~~  
7 ~~PROCEDURES ESTABLISHED UNDER §§ 2-210 THROUGH 2-214 OF THIS ARTICLE.~~

8 ~~(4) AN APPEAL OF AN ORDER OF THE COMMISSIONER UNDER THIS~~  
9 ~~SUBSECTION MAY BE TAKEN IN ACCORDANCE WITH § 2-215 OF THIS ARTICLE.~~

10 ~~(5) (G)~~ A PHARMACY BENEFITS MANAGER MAY NOT RETALIATE  
11 AGAINST A CONTRACTED PHARMACY FOR EXERCISING ITS RIGHT TO APPEAL UNDER  
12 THIS SECTION OR FILING A COMPLAINT WITH THE COMMISSIONER UNDER THIS  
13 SUBSECTION.

14 ~~(K) (H)~~ A PHARMACY BENEFITS MANAGER MAY NOT CHARGE A  
15 CONTRACTED PHARMACY A FEE RELATED TO AN ADJUDICATION OF A CLAIM UNDER  
16 THE READJUDICATION OF A CLAIM OR CLAIMS RESULTING FROM CARRYING OUT  
17 THE REQUIREMENT OF A CONTRACT SPECIFIED IN SUBSECTION (F)(5) OF THIS  
18 SECTION OR THE UPHOLDING OF AN APPEAL UNDER SUBSECTION (I) OF THIS  
19 SECTION.

20 ~~(L) (1) A PHARMACY BENEFITS MANAGER THAT VIOLATES THIS SECTION~~  
21 ~~IS SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$1,000 FOR EACH VIOLATION.~~

22 ~~(2) EACH DAY THAT A VIOLATION CONTINUES SHALL BE A SEPARATE~~  
23 ~~VIOLATION.~~

24 (I) (1) IF A PHARMACY BENEFITS MANAGER DENIES AN APPEAL AND A  
25 CONTRACTED PHARMACY FILES A COMPLAINT WITH THE COMMISSIONER, THE  
26 COMMISSIONER SHALL:

27 (I) REVIEW THE COMPENSATION PROGRAM OF THE PHARMACY  
28 BENEFITS MANAGER TO ENSURE THAT THE REIMBURSEMENT FOR PHARMACY  
29 BENEFITS MANAGEMENT SERVICES PAID TO THE PHARMACIST OR A PHARMACY  
30 COMPLIES WITH THIS SUBTITLE AND THE TERMS OF THE CONTRACT; AND

31 (II) BASED ON A DETERMINATION MADE BY THE COMMISSIONER  
32 UNDER ITEM (I) OF THIS PARAGRAPH, DISMISS THE APPEAL OR UPHOLD THE APPEAL  
33 AND ORDER THE PHARMACY BENEFITS MANAGER TO PAY THE CLAIM OR CLAIMS IN  
34 ACCORDANCE WITH THE COMMISSIONER'S FINDINGS.

1           **(2) ALL PRICING INFORMATION AND DATA COLLECTED BY THE**  
2 **COMMISSIONER DURING A REVIEW REQUIRED BY PARAGRAPH (1) OF THIS**  
3 **SUBSECTION:**

4                   **(I) IS CONSIDERED TO BE CONFIDENTIAL AND PROPRIETARY**  
5 **INFORMATION; AND**

6                   **(II) IS NOT SUBJECT TO DISCLOSURE UNDER THE PUBLIC**  
7 **INFORMATION ACT.**

8 15-1642.

9           **(a) If the Commissioner determines that a pharmacy benefits manager has**  
10 **violated any provision of this subtitle or any regulation adopted under this subtitle, the**  
11 **Commissioner may issue an order that requires the pharmacy benefits manager to:**

12                   **(1) cease and desist from the identified violation and further similar**  
13 **violations;**

14                   **(2) take specific affirmative action to correct the violation; [or]**

15                   **(3) make restitution of money, property, or other assets to a person that**  
16 **has suffered financial injury because of the violation; OR**

17                   **(4) PAY A FINE IN AN AMOUNT DETERMINED BY THE COMMISSIONER.**

18           **(b) (1) An order of the Commissioner issued under this section may be served**  
19 **on a pharmacy benefits manager that is registered under Part II of this subtitle in the**  
20 **manner provided in § 2-204 of this article.**

21                   **(2) An order of the Commissioner issued under this section may be served**  
22 **on a pharmacy benefits manager that is not registered under Part II of this subtitle in the**  
23 **manner provided in § 4-206 or § 4-207 of this article for service on an unauthorized insurer**  
24 **that does an act of insurance business in the State.**

25                   **(3) A request for a hearing on any order issued under this section does not**  
26 **stay that portion of the order that requires the pharmacy benefits manager to cease and**  
27 **desist from conduct identified in the order.**

28                   **(4) The Commissioner may file a petition in the circuit court of any county**  
29 **to enforce an order issued under this section, whether or not a hearing has been requested**  
30 **or, if requested, whether or not a hearing has been held.**

31                   **(5) If the Commissioner prevails in an action brought under this section,**  
32 **the Commissioner may recover, for the use of the State, reasonable attorney's fees and the**  
33 **costs of the action.**

1 (c) In addition to any other enforcement action taken by the Commissioner under  
 2 this section ~~AND SUBJECT TO § 15-1628.1(L) OF THIS SUBTITLE~~, the Commissioner may  
 3 impose a civil penalty not exceeding \$10,000 for each violation of this subtitle.

4 **(D) THE COMMISSIONER MAY ADOPT REGULATIONS:**

5 **(1) TO CARRY OUT THIS SUBTITLE; AND**

6 **(2) TO ESTABLISH A COMPLAINT PROCESS TO ADDRESS GRIEVANCES**  
 7 **AND APPEALS BROUGHT IN ACCORDANCE WITH THIS SUBTITLE.**

8 ~~[(d)]~~ **(E) This section does not limit any other regulatory authority of the**  
 9 **Commissioner under this article.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all  
 11 contracts between a pharmacy benefits manager and a pharmacy entered into or ~~renewed~~  
 12 in effect on or after January 1, 2019.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 14 ~~January~~ June 1, 2019 2018.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.