

Chapter 534

(House Bill 589)

AN ACT concerning

**Maryland Medical Assistance Program and Managed Care Organizations That
Use Pharmacy Benefits Managers – ~~Reimbursement Requirements~~ Audit and
Professional Dispensing Fees**

FOR the purpose of requiring the Maryland Medical Assistance Program to ~~establish certain reimbursement levels for certain drug products; providing that certain provisions of this Act apply to managed care organizations that use pharmacy benefits managers to manage prescription drug coverage; requiring a pharmacy benefits manager that contracts with a pharmacy on behalf of a managed care organization to reimburse the pharmacy an amount that is at least equal to a certain cost plus a certain fee~~ enter into a certain contract as soon as practicable for a certain audit of certain managed care organizations; requiring a certain auditor to be provided with access to certain documents and information; requiring the Program to provide the results of the audit to the General Assembly on or before a certain date; requiring the Maryland Department of Health, in consultation with the Maryland Insurance Administration, to develop and report certain recommendations to the General Assembly on or before a certain date; authorizing the Department to apply to the Centers for Medicare and Medicaid Services for certain authority as soon as practicable but not later than a certain date; making this Act an emergency measure; providing for the termination of certain provisions of this Act; and generally relating to the Maryland Medical Assistance Program and managed care organizations that use pharmacy benefits managers.

~~BY repealing and reenacting, with amendments,
Article — Health — General
Section 15 — 118(b)
Annotated Code of Maryland
(2015 Replacement Volume and 2018 Supplement)~~

~~BY adding to
Article — Health — General
Section 15 — 118(f)
Annotated Code of Maryland
(2015 Replacement Volume and 2018 Supplement)~~

~~BY adding to
Article — Insurance
Section 15 — 1632
Annotated Code of Maryland
(2017 Replacement Volume and 2018 Supplement)~~

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

~~Article — Health — General~~

~~15 — 118.~~

~~(b) (1) Except as provided under paragraph (2) of this subsection, the Program shall establish [maximum] THE FOLLOWING reimbursement levels for the drug products for which there is a generic equivalent authorized under § 12-504 of the Health Occupations Article[, based on the cost of the generic product]:~~

~~(i) MINIMUM REIMBURSEMENT LEVELS AT LEAST EQUAL TO THE NATIONAL AVERAGE DRUG ACQUISITION COST OF THE GENERIC PRODUCT PLUS THE FEE FOR SERVICE PROFESSIONAL DISPENSING FEE DETERMINED BY THE DEPARTMENT IN ACCORDANCE WITH THE MOST RECENT IN-STATE COST OF DISPENSING SURVEY; AND~~

~~(ii) MAXIMUM REIMBURSEMENT LEVELS, AS DETERMINED APPROPRIATE BY THE PROGRAM.~~

~~(2) If a prescriber directs a specific brand name drug, the reimbursement level shall be based on the [cost] NATIONAL AVERAGE DRUG ACQUISITION COST of the brand name product.~~

~~(f) THE PROVISIONS OF § 15-1632 OF THE INSURANCE ARTICLE APPLY TO A MANAGED CARE ORGANIZATION THAT USES A PHARMACY BENEFITS MANAGER TO MANAGE PRESCRIPTION DRUG COVERAGE BENEFITS ON BEHALF OF THE MANAGED CARE ORGANIZATION.~~

~~Article — Insurance~~

~~15 — 1632.~~

~~A PHARMACY BENEFITS MANAGER THAT CONTRACTS WITH A PHARMACY ON BEHALF OF A MANAGED CARE ORGANIZATION, AS DEFINED IN § 15-101 OF THE HEALTH — GENERAL ARTICLE, SHALL REIMBURSE THE PHARMACY AN AMOUNT THAT IS AT LEAST EQUAL TO THE NATIONAL AVERAGE DRUG ACQUISITION COST PLUS THE FEE FOR SERVICE PROFESSIONAL DISPENSING FEE DETERMINED BY THE MARYLAND DEPARTMENT OF HEALTH FOR THE MARYLAND MEDICAL ASSISTANCE PROGRAM IN ACCORDANCE WITH THE MOST RECENT IN-STATE COST OF DISPENSING SURVEY.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.~~

(a) The Maryland Medical Assistance Program shall enter into a contract with an independent auditor as soon as practicable to conduct an audit of pharmacy benefits managers that contract with managed care organizations for the purpose of determining the amount of Medicaid funds used to reimburse managed care organizations, pharmacy benefits managers, and pharmacies and the dollar amount of funds received by each respective party.

(b) The independent auditor shall be provided with access to the following documents and information by either the managed care organization, the pharmacy benefits manager, or the pharmacy:

(1) contracts between the managed care organization and the pharmacy benefits manager;

(2) contracts between the pharmacy benefits manager and pharmacies receiving reimbursement;

(3) full encounter claims data showing the amount the managed care organization paid the pharmacy benefits manager;

(4) full encounter claims data showing the amount that was paid to the pharmacies by the pharmacy benefits managers;

(5) information requested from the pharmacy benefits manager or the pharmacy via questionnaire by the auditor; and

(6) any additional information required by the auditor to determine the actual reimbursement to the managed care organizations, pharmacy benefits managers, and pharmacies.

(c) On or before December 1, 2019, the Maryland Medical Assistance Program shall provide the results of the audit to the General Assembly, in accordance with § 2-1246 of the State Government Article.

(d) As soon as practicable but not later than January 1, 2020, the Maryland Department of Health, in consultation with the Maryland Insurance Administration, shall develop recommendations for establishing a process for appealing decisions made in accordance with contracts between a pharmacy benefits manager and a managed care organization and, in accordance with § 2-1246 of the State Government Article, report the recommendations to the General Assembly.

SECTION 2. AND BE IT FURTHER ENACTED, That, as soon as practicable but not later than July 1, 2020, the Maryland Department of Health may apply to the Centers

for Medicare and Medicaid Services for the appropriate authority, subject to the limitations of the State budget, to provide professional dispensing fees or other measures for pharmacies based on volume of prescriptions and geographic designation or such other factors as determined by the Department in order to ensure access to pharmacy services.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted. Section 2 of this Act shall remain effective through July 1, 2021, and, at the end of July 1, 2021, Section 2 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, May 13, 2019.