

HOUSE BILL 785

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By: **Delegates Morgan, Kipke, and Krebs**
Introduced and read first time: February 3, 2020
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance and Pharmacy Benefits Managers – Freedom of Choice of**
3 **Pharmacy Act**

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 carriers unreasonably withholding a certain approval; defining certain terms;
2 providing for the application of this Act; providing for a delayed effective date; and
3 generally relating to health insurance and pharmacy services.

4 BY repealing

5 Article – Insurance
6 Section 15–805(d), 15–806, and 15–847(d) and (e)
7 Annotated Code of Maryland
8 (2017 Replacement Volume and 2019 Supplement)

9 BY repealing and reenacting, with amendments,

10 Article – Insurance
11 Section 15–1611.1
12 Annotated Code of Maryland
13 (2017 Replacement Volume and 2019 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 (2017 Replacement Volume and 2019 Supplement)

20 BY renumbering

21 Article – Insurance
22 Section 15–847(f) and (g), respectively
23 to be Section 15–847(d) and (e), respectively
24 Annotated Code of Maryland
25 (2017 Replacement Volume and 2019 Supplement)

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

28 **Article – Insurance**

29 15–805.

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

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

1 [15–806.

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

5 15–847.

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

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

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

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

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

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

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

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

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

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

29 15–1611.1.

30 (a) (1) Except as provided in subsection (b) of this section, a pharmacy benefits
31 manager may not require that a beneficiary use a specific pharmacy or entity to fill a
32 prescription if:

1 [(1)] (I) the pharmacy benefits manager or a corporate affiliate of the
2 pharmacy benefits manager has an ownership interest in the pharmacy or entity; or

3 [(2)] (II) the pharmacy or entity has an ownership interest in the
4 pharmacy benefits manager or a corporate affiliate of the pharmacy benefits manager.

5 (2) A PHARMACY BENEFITS MANAGER MAY NOT REQUIRE THAT A
6 BENEFICIARY USE A MAIL ORDER PHARMACY TO FILL OR REFILL A PRESCRIPTION
7 AS A CONDITION FOR REIMBURSING THE COST OF THE DRUG.

8 (b) A pharmacy benefits manager may require a beneficiary to use a specific
9 pharmacy or entity for a specialty drug as defined in § 15–847 of this title.

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

11 **15–2001.**

12 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

14 (B) “CARRIER” MEANS:

15 (1) AN INSURER;

16 (2) A NONPROFIT HEALTH SERVICE PLAN;

17 (3) A HEALTH MAINTENANCE ORGANIZATION; OR

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

20 (C) “CONTRACT PROVIDER” MEANS A PHARMACY AUTHORIZED TO PROVIDE
21 PHARMACY SERVICES, INCLUDING PRESCRIPTION DRUGS AND DEVICES, UNDER THE
22 TERMS AND CONDITIONS OF A CARRIER HEALTH BENEFIT PLAN.

23 (D) “ENROLLEE” MEANS A PERSON ENTITLED TO HEALTH CARE BENEFITS
24 FROM A CARRIER.

25 (E) “HEALTH BENEFIT PLAN” HAS THE MEANING STATED IN § 15–112 OF
26 THIS TITLE.

27 (F) “PHARMACIST” HAS THE MEANING STATED IN § 12–101 OF THE HEALTH
28 OCCUPATIONS ARTICLE.

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

3 15-2002.

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

8 15-2003.

9 A CARRIER MAY NOT:

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

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

16 (I) PROVIDE PHARMACY SERVICES IN A MANNER THAT MEETS
17 THE TERMS AND CONDITIONS ESTABLISHED BY THE CARRIER UNDER THE HEALTH
18 BENEFIT PLAN; AND

19 (II) THE TERMS OF REIMBURSEMENT ESTABLISHED BY THE
20 CARRIER UNDER THE HEALTH BENEFIT PLAN;

21 (3) FOR PHARMACY SERVICES PROVIDED TO AN ENROLLEE UNDER A
22 HEALTH BENEFIT PLAN THAT ARE RECEIVED FROM A CONTRACT PROVIDER, IMPOSE
23 ON THE ENROLLEE A COPAYMENT, FEE, OR CONDITION FOR THE PHARMACY
24 SERVICE THAT IS DIFFERENT FROM THE COPAYMENT, FEE, OR CONDITION IMPOSED
25 ON ALL OTHER ENROLLEES FOR THE SAME PHARMACY SERVICE UNDER THE HEALTH
26 BENEFIT PLAN;

27 (4) IMPOSE A MONETARY ADVANTAGE OR PENALTY UNDER A HEALTH
28 BENEFIT PLAN, INCLUDING A HIGHER COPAYMENT, A REDUCTION IN
29 REIMBURSEMENT FOR SERVICES, OR PROMOTION OF ONE PARTICIPATING
30 PHARMACY OVER ANOTHER PARTICIPATING PHARMACY THAT MAY AFFECT AN
31 ENROLLEE'S CHOICE OF PHARMACY FROM AMONG THE PHARMACIES THAT
32 PARTICIPATE IN THE HEALTH BENEFIT PLAN OFFERED BY THE CARRIER;

1 **(5) BECAUSE OF AN ENROLLEE’S SELECTION OF A PHARMACY OF THE**
2 **ENROLLEE’S CHOICE, REDUCE ALLOWABLE REIMBURSEMENT FOR AN ENROLLEE’S**
3 **PHARMACY SERVICES UNDER A HEALTH BENEFIT PLAN IF THE PHARMACY HAS**
4 **AGREED TO PARTICIPATE IN THE HEALTH BENEFIT PLAN OFFERED BY THE CARRIER**
5 **UNDER TERMS AND CONDITIONS THAT ARE OFFERED TO ALL PHARMACIES UNDER**
6 **THE HEALTH BENEFIT PLAN;**

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

10 **(7) IMPOSE ON AN ENROLLEE A COPAYMENT, AN AMOUNT OF**
11 **REIMBURSEMENT, A LIMITATION ON THE NUMBER OF DAYS OF A DRUG SUPPLY FOR**
12 **WHICH REIMBURSEMENT WILL BE ALLOWED, OR ANY OTHER PAYMENT OR**
13 **CONDITION RELATING TO THE PURCHASE OF A PHARMACY SERVICE FROM A**
14 **PHARMACY THAT IS COSTLIER OR MORE RESTRICTIVE TO AN ENROLLEE THAN**
15 **WOULD BE IMPOSED ON THE ENROLLEE IF THE SAME PHARMACY SERVICE WERE**
16 **PURCHASED FROM A MAIL-ORDER PHARMACY.**

17 **15-2004.**

18 **(A) IN THIS SECTION, “PHARMACY” INCLUDES A PHARMACIST ACTING ON**
19 **BEHALF OF A PHARMACY AS AN EMPLOYEE, AGENT, OR OWNER OF THE PHARMACY.**

20 **(B) (1) A PHARMACY MAY NOT WAIVE, DISCOUNT, REBATE, OR MODIFY AN**
21 **ENROLLEE’S COPAYMENT, COINSURANCE REQUIREMENT, OR REIMBURSEMENT FOR**
22 **PRESCRIPTION DRUG COVERAGE UNDER A HEALTH BENEFIT PLAN.**

23 **(2) IF A PHARMACY PROVIDES A PHARMACY SERVICE TO AN**
24 **ENROLLEE OF A HEALTH BENEFIT PLAN THAT MEETS THE TERMS AND CONDITIONS**
25 **OF THE HEALTH BENEFIT PLAN ESTABLISHED BY THE CARRIER, THE PHARMACY**
26 **SHALL OFFER THE SAME PHARMACY SERVICE TO ALL ENROLLEES OF THE HEALTH**
27 **BENEFIT PLAN UNDER THE SAME TERMS AND CONDITIONS ESTABLISHED BY THE**
28 **CARRIER.**

29 **15-2005.**

30 **(A) IF A CARRIER LIMITS COVERAGE AND REIMBURSEMENT OF PHARMACY**
31 **SERVICES UNDER A HEALTH BENEFIT PLAN TO PHARMACIES THAT CONTRACT WITH**
32 **THE CARRIER TO PROVIDE PHARMACY SERVICES, ON OR BEFORE MARCH 1, 2020,**
33 **THE CARRIER SHALL:**

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

4 **(2) OFFER TO THE PHARMACY THE OPPORTUNITY TO PARTICIPATE IN**
5 **THE HEALTH BENEFIT PLAN DURING THE NEXT PLAN YEAR.**

6 **(B) EACH PHARMACY TO WHICH A CARRIER EXTENDS AN OFFER TO**
7 **PARTICIPATE IN A HEALTH BENEFIT PLAN UNDER SUBSECTION (A) OF THIS SECTION**
8 **SHALL BE ELIGIBLE TO PARTICIPATE IN THE HEALTH BENEFIT PLAN UNDER**
9 **IDENTICAL REIMBURSEMENT TERMS AND CONDITIONS.**

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

13 **(D) A PHARMACY MAY INFORM ITS CUSTOMERS OF THE PHARMACY'S**
14 **PARTICIPATION IN A HEALTH BENEFIT PLAN NETWORK THROUGH A MEANS THAT IS**
15 **ACCEPTABLE TO THE PHARMACY AND THE CARRIER OFFERING THE HEALTH**
16 **BENEFIT PLAN.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 15–847(f) and (g),
18 respectively, of Article – Insurance of the Annotated Code of Maryland be renumbered to
19 be Section(s) 15–847(d) and (e), respectively.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all
21 policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or
22 after January 1, 2021.

23 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 January 1, 2021.