

Chapter 434

(House Bill 1150)

AN ACT concerning

State Health and Welfare Benefits Program – Maryland Competitive Pharmacy Benefits Manager Marketplace Act

FOR the purpose of requiring the Department of Budget and Management to use a reverse auction, as provided for in certain provisions of law established by this Act, to select a pharmacy benefits manager or other entity to administer the State Rx Program; requiring the Department of Budget and Management to procure a certain platform and associated services in a certain manner a certain period of time before a certain reverse auction is scheduled to be completed; requiring that the platform have certain capabilities; prohibiting a responsive offeror from proposing to subcontract certain services; requiring the Department of Budget and Management to consult with the Department of Information Technology and the Department of General Services in conducting a certain procurement; prohibiting the Department of Budget and Management from awarding a certain contract to certain entities; authorizing the Department of Budget and Management to structure a certain contract in a certain manner; requiring the Department of Budget and Management, in consultation with a certain vendor and with consideration of certain recommendations by the Maryland Prescription Drug Affordability Board, to specify certain terms of a certain participant bidding agreement; prohibiting the terms of a certain agreement from being modified except under certain circumstances; requiring the Department of Budget and Management to select a pharmacy benefits manager for the State Health and Welfare Benefits Program by conducting a certain reverse auction within a certain period of time before the expiration of a certain contract; authorizing the Department of Budget and Management to perform a certain market ~~check~~ checks during the term of a certain contract for a certain purpose; requiring certain market checks to include a certain evaluation of the effects of certain pricing metrics; requiring the Department of Budget and Management to make certain payments within certain time periods based on a certain adjudication; authorizing certain health plans to use a certain reverse auction process in a certain manner; establishing that a certain health plan retains certain autonomy but requiring the health plan to agree to accept a certain pricing plan; requiring a certain pharmacy benefits manager to provide access to certain data for certain purposes; authorizing a certain prospective bidder or offeror, a bidder, or an offeror to submit a certain protest in a certain manner; authorizing a prescription benefits manager to submit a contract claim in a certain manner under certain circumstances; authorizing the Department of Budget and Management to delay implementation of certain provisions of law established by this Act if the Department of Budget and Management and the Department of General Services make a certain determination; authorizing the Board of Public Works to approve a certain request for an exemption from certain provisions of procurement law under certain circumstances; stating the intent of the General Assembly; defining certain

terms; providing for the application of this Act; and generally relating to pharmacy benefits managers and the State Health and Welfare Benefits Program.

BY repealing and reenacting, without amendments,
 Article – Insurance
 Section 15–1601(l) and (m)
 Annotated Code of Maryland
 (2017 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 2–502.1(f) and (g)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY adding to
 Article – State Personnel and Pensions
 Section 2–502.2
 Annotated Code of Maryland
 (2015 Replacement Volume and 2019 Supplement)

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

Article – Insurance

15–1601.

(l) (1) “Pharmacy benefits management services” means:

(i) the procurement of prescription drugs at a negotiated rate for dispensation within the State to beneficiaries;

(ii) the administration or management of prescription drug coverage provided by a purchaser for beneficiaries; and

(iii) any of the following services provided with regard to the administration of prescription drug coverage:

1. mail service pharmacy;
2. claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;
3. clinical formulary development and management services;

4. rebate contracting and administration;
5. patient compliance, therapeutic intervention, and generic substitution programs; or
6. disease management programs.

(2) “Pharmacy benefits management services” does not include any service provided by a nonprofit health maintenance organization that operates as a group model, provided that the service:

(i) is provided solely to a member of the nonprofit health maintenance organization; and

(ii) is furnished through the internal pharmacy operations of the nonprofit health maintenance organization.

(m) “Pharmacy benefits manager” means a person that performs pharmacy benefits management services.

Article – State Personnel and Pensions

2-502.1.

(f) The Department may[:

(1) charge an administrative fee to an entity sufficient to offset the administrative costs resulting from the entity’s participation in the Maryland Rx Program[:
and

(2) contract with a pharmacy benefit manager or other entity to administer the Maryland Rx Program].

(g) [If the] THE Department [contracts with] SHALL USE A REVERSE AUCTION, AS PROVIDED FOR IN § 2-502.2 OF THIS SUBTITLE, TO SELECT a pharmacy benefit manager or other entity to administer the Maryland Rx Program[, the Department shall consider contracting with a nonprofit entity].

2-502.2.

(A) (1) **IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.**

(2) **“MARKET CHECK” MEANS A TECHNOLOGY-DRIVEN EVALUATION OF PRESCRIPTION DRUG PRICING BASED ON BENCHMARKS DERIVED FROM**

PHARMACY BENEFITS MANAGERS' REVERSE AUCTION PROCESSES CONDUCTED IN THE UNITED STATES OVER THE IMMEDIATELY PRECEDING 12 MONTHS.

(3) "PHARMACY BENEFITS MANAGER" HAS THE MEANING STATED IN § 15-1601 OF THE INSURANCE ARTICLE.

(4) "PRICE" MEANS THE PROJECTED COST OF A BID FOR PROVIDING SERVICES OVER THE DURATION OF THE CONTRACT.

(5) "REVERSE AUCTION" MEANS AN AUTOMATED BIDDING PROCESS CONDUCTED ONLINE THAT STARTS WITH AN OPENING PRICE AND ALLOWS QUALIFIED BIDDERS TO COUNTEROFFER A LOWER PRICE FOR MULTIPLE ROUNDS OF BIDDING.

(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO OPTIMIZE PRESCRIPTION DRUG SAVINGS BY THE STATE THROUGH:

(1) ADOPTION OF A REVERSE AUCTION PROCESS FOR THE SELECTION OF A PHARMACY BENEFITS MANAGER FOR THE PROGRAM;

(2) ELECTRONIC REVIEW AND VALIDATION OF PHARMACY BENEFITS MANAGER CLAIMS INVOICES AS THE FOUNDATION FOR RECONCILING PHARMACY BILLS; ~~AND~~

(3) MARKET CHECKS OF THE INCUMBENT PHARMACY BENEFITS MANAGER'S PRESCRIPTION DRUG PRICING; AND

(4) LIMITING INDEPENDENT PHARMACIES FROM UNSUSTAINABLE REIMBURSEMENT PRACTICES WHILE PREVENTING A REDUCTION IN EMPLOYEE BENEFITS.

(C) (1) AT LEAST 3 MONTHS BEFORE A PHARMACY BENEFITS MANAGER REVERSE AUCTION IS SCHEDULED TO BE COMPLETED, THE DEPARTMENT SHALL PROCURE, THROUGH A COMPETITIVE SEALED PROPOSAL CONDUCTED IN ACCORDANCE WITH § 13-104 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, A TECHNOLOGY PLATFORM, AND ANY ASSOCIATED PROFESSIONAL SERVICES NECESSARY TO OPERATE THE PLATFORM, TO:

(I) EVALUATE THE QUALIFICATIONS OF PROSPECTIVE PHARMACY BENEFITS MANAGERS FOR THE PROGRAM; ~~AND~~

(II) AUTOMATICALLY ADJUDICATE PRESCRIPTION DRUG CLAIMS; AND

(III) COLLECT DATA ON PHARMACY REIMBURSEMENT.

(2) THE PLATFORM PROCURED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL HAVE THE CAPABILITY TO:

(I) HOST AND CONDUCT AN ONLINE AUTOMATED REVERSE AUCTION;

(II) AUTOMATE REPRICING OF DIVERSE AND COMPLEX PHARMACY BENEFITS MANAGER PRESCRIPTION DRUG PRICING PROPOSALS TO ENABLE DIRECT COMPARISONS OF THE PRICE OF BIDS USING ALL ANNUAL CLAIMS DATA AVAILABLE FOR STATE-FUNDED HEALTH PLANS OR MULTIPLE HEALTH PLAN PRESCRIPTION DRUG PURCHASING GROUPS USING CODE-BASED CLASSIFICATION OF PRESCRIPTION DRUGS FROM NATIONALLY ACCEPTED DRUG SOURCES;

(III) PRODUCE AN AUTOMATED REPORT AND ANALYSIS OF BIDS, INCLUDING THE RANKING OF BIDS BASED ON THE COMPARATIVE COSTS AND QUALITATIVE ASPECTS OF THE COSTS WITHIN 48 HOURS AFTER THE CLOSE OF EACH ROUND OF REVERSE AUCTION BIDDING; ~~AND~~

(IV) AFTER THE CLOSE OF A REVERSE AUCTION, PERFORM ELECTRONIC, LINE BY LINE, CLAIM BY CLAIM REVIEW OF ALL INVOICED PHARMACY BENEFITS MANAGER CLAIMS WITHIN 12 HOURS OF RECEIPT AND IDENTIFY ALL DEVIATIONS FROM THE SPECIFIC TERMS OF THE SERVICES CONTRACT RESULTING FROM THE REVERSE AUCTION PROCESS; AND

(V) IF AVAILABLE, AFTER THE CLOSE OF A REVERSE AUCTION, PERFORM COMPARISONS OF THE FINANCIAL EFFECTS ON THE STATE OF ALTERNATIVE DRUG-PRICING METRICS, SUCH AS THE NATIONAL AVERAGE DRUG ACQUISITION COST AND AVERAGE WHOLESALE PRICE.

(3) A RESPONSIVE OFFEROR UNDER PARAGRAPH (2) OF THIS SUBSECTION MAY NOT SUBCONTRACT ANY PART OF THE REVERSE AUCTION OR A REVIEW DESCRIBED UNDER PARAGRAPH (2)(IV) OF THIS SUBSECTION.

(4) THE DEPARTMENT SHALL CONSULT WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY AND DEPARTMENT OF GENERAL SERVICES IN CONDUCTING THE PROCUREMENT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(5) THE DEPARTMENT MAY NOT AWARD A CONTRACT UNDER PARAGRAPH (1) OF THIS SUBSECTION TO:

(I) A PHARMACY BENEFITS MANAGER;

(II) A SUBSIDIARY OR AFFILIATE OF A PHARMACY BENEFITS MANAGER; OR

(III) A VENDOR THAT IS MANAGED BY A PHARMACY BENEFITS MANAGER OR RECEIVES, DIRECTLY OR INDIRECTLY, REMUNERATION FROM A PHARMACY BENEFITS MANAGER FOR AGGREGATING CLIENTS INTO A CONTRACTUAL RELATIONSHIP WITH A PHARMACY BENEFITS MANAGER.

(6) THE DEPARTMENT MAY STRUCTURE A CONTRACT AWARDED UNDER THIS SUBSECTION TO REQUIRE THE PHARMACY BENEFITS MANAGER SELECTED UNDER SUBSECTION (E) OF THIS SECTION TO PAY THE COST OF THE TECHNOLOGY PLATFORM AND ASSOCIATED PROFESSIONAL SERVICES CONTRACTED UNDER THIS SUBSECTION BY ASSESSING A PER-PRESCRIPTION FEE PAID BY THE PHARMACY BENEFITS MANAGER DIRECTLY TO THE TECHNOLOGY PLATFORM VENDOR.

(D) (1) IN CONSULTATION WITH THE VENDOR SELECTED UNDER SUBSECTION (C) OF THIS SECTION, ~~THE DEPARTMENT SHALL SPECIFY THE TERMS OF A PARTICIPANT BIDDING AGREEMENT, INCLUDING COMMON DEFINITIONS, PRESCRIPTION DRUG CLASSIFICATIONS, RULES, WHETHER THE VENDOR WILL BE ASSESSED A PLATFORM VENDOR FEE DESCRIBED UNDER SUBSECTION (C)(6) OF THIS SECTION, AND OTHER CONTRACT TERMS THAT ALL BIDDERS MUST ACCEPT AS A PREREQUISITE FOR PARTICIPATION IN THE REVERSE AUCTION~~ AND WITH CONSIDERATION OF RECOMMENDATIONS THAT MAY BE OFFERED BY THE MARYLAND PRESCRIPTION DRUG AFFORDABILITY BOARD, THE DEPARTMENT SHALL SPECIFY THE TERMS OF A PARTICIPANT BIDDING AGREEMENT THAT ALL BIDDERS MUST ACCEPT AS A PREREQUISITE FOR PARTICIPATION IN THE REVERSE AUCTION, INCLUDING:

(I) COMMON DEFINITIONS;

(II) PRESCRIPTION DRUG CLASSIFICATIONS;

(III) RULES THAT MAY INCLUDE RETAIL PRICING RULES SUCH AS MAXIMUM ALLOWABLE COST PRICE LISTS AND DISPENSING FEES;

(IV) WHETHER THE VENDOR WILL BE ASSESSED A PLATFORM VENDOR FEE DESCRIBED UNDER SUBSECTION (C)(6) OF THIS SECTION; AND

(V) ANY OTHER CONTRACT TERMS THE DEPARTMENT DETERMINES ARE NECESSARY TO FURTHER THE INTENT OF THE GENERAL ASSEMBLY AS ESTABLISHED IN SUBSECTION (B) OF THIS SECTION.

(2) THE TERMS OF A PARTICIPANT BIDDING AGREEMENT SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE MODIFIED EXCEPT BY AFFIRMATIVE APPROVAL BY THE DEPARTMENT.

~~(E) NOT LATER THAN 6 MONTHS BEFORE THE EXPIRATION OF A CONTRACT FOR PHARMACY BENEFITS MANAGER SERVICES FOR THE PROGRAM, THE DEPARTMENT SHALL SELECT A PHARMACY BENEFITS MANAGER FOR THE PROGRAM BY CONDUCTING A REVERSE AUCTION.~~

~~(F)~~ (E) (1) (I) THE DEPARTMENT MAY PERFORM ~~A MARKET CHECK~~ ANNUAL MARKET CHECKS OF PHARMACY BENEFITS MANAGER SERVICES DURING THE TERM OF A PHARMACY BENEFITS MANAGER CONTRACT TO ENSURE CONTINUING COMPETITIVENESS OF PRESCRIPTION DRUG PRICING OVER THE LIFE OF THE CONTRACT.

(II) A MARKET CHECK PERFORMED UNDER THIS PARAGRAPH SHALL INCLUDE AN EVALUATION OF THE EFFECT OF ALTERNATIVE DRUG-PRICING METRICS, SUCH AS THE NATIONAL AVERAGE DRUG ACQUISITION COST AND AVERAGE WHOLESALE PRICE, ON THE COST OF PRESCRIPTION DRUGS AND SAVINGS TO THE STATE.

(2) THE DEPARTMENT SHALL MAKE REGULAR, PERIODIC PAYMENT OF INVOICES WITHIN THE TIME PERIODS SPECIFIED IN A CONTRACT BASED ON THE AUTOMATED ADJUDICATION OF INVOICED CLAIMS USING THE TECHNOLOGY PLATFORM TO VALIDATE THAT CLAIMS PAYMENTS COMPLY WITH THE TERMS OF THE CONTRACT.

~~(G)~~ (F) (1) THE FOLLOWING HEALTH PLANS IN THE STATE MAY USE THE REVERSE AUCTION PROCESS ESTABLISHED UNDER THIS SECTION INDIVIDUALLY OR COLLECTIVELY AS A JOINT PURCHASING GROUP WITH THE PROGRAM:

(I) A STATE-FUNDED HEALTH PLAN OTHER THAN THE PROGRAM;

(II) A SELF-FUNDED COUNTY, MUNICIPAL, OR OTHER LOCAL GOVERNMENT EMPLOYEE HEALTH PLAN;

(III) A PUBLIC SCHOOL EMPLOYEE HEALTH PLAN; AND

(IV) A HEALTH PLAN OF A PUBLIC INSTITUTION OF HIGHER EDUCATION.

(2) A HEALTH PLAN THAT PARTICIPATES IN A REVERSE AUCTION PURCHASING GROUP UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL:

(I) RETAIN FULL AUTONOMY OVER DETERMINATION OF THE ENTITY'S PRESCRIPTION DRUG FORMULARY AND PHARMACY BENEFIT DESIGNS; BUT

(II) AGREE, BEFORE PARTICIPATING IN THE REVERSE AUCTION, TO ACCEPT THE PRESCRIPTION DRUG PRICING PLAN THAT IS SELECTED THROUGH THE REVERSE AUCTION PROCESS.

~~(H)~~ (G) A PHARMACY BENEFITS MANAGER THAT SUBMITS A BID UNDER SUBSECTION (E) OF THIS SECTION OR ENTERS INTO A CONTRACT WITH THE DEPARTMENT OR A HEALTH PLAN DESCRIBED UNDER SUBSECTION (G)(1) OF THIS SECTION SHALL PROVIDE THE DEPARTMENT AND HEALTH PLAN ACCESS TO COMPLETE PHARMACY CLAIMS DATA NECESSARY FOR THE DEPARTMENT AND HEALTH PLAN TO:

(1) CONDUCT THE REVERSE AUCTION; AND

(2) CARRY OUT ADMINISTRATIVE AND MANAGEMENT DUTIES.

~~(H)~~ (H) (1) A PROSPECTIVE BIDDER OR OFFEROR, A BIDDER, OR AN OFFEROR MAY SUBMIT A PROTEST AS PROVIDED UNDER TITLE 15, SUBTITLE 2 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) IF THE PRESCRIPTION BENEFITS MANAGER SELECTED UNDER SUBSECTION (E) OF THIS SECTION ASSERTS THAT THE DEPARTMENT HAS UNDERPAID ON A CLAIM, THE PRESCRIPTION BENEFITS MANAGER MAY SUBMIT A CONTRACT CLAIM AS PROVIDED UNDER TITLE 15, SUBTITLE 2 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(1) (1) IF THE DEPARTMENT AND THE DEPARTMENT OF GENERAL SERVICES DETERMINE THAT THE IMPLEMENTATION OF THIS SECTION IS NOT ADMINISTRATIVELY FEASIBLE FOR THE BENEFIT YEAR BEGINNING AFTER DECEMBER 31, 2020, THE DEPARTMENT MAY DELAY IMPLEMENTATION OF THIS SECTION TO THE BENEFIT YEAR BEGINNING AFTER DECEMBER 31, 2021.

(2) FOR PURPOSES OF CARRYING OUT THE PROVISIONS OF SUBSECTIONS (C) AND (D) OF THIS SECTION BEFORE JANUARY 1, 2021, THE BOARD OF PUBLIC WORKS MAY APPROVE A REQUEST FROM THE DEPARTMENT FOR AN

EXEMPTION FROM SPECIFIC PROVISIONS OF DIVISION II OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract for pharmacy benefits management services entered into before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2020.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.