

Chapter 455

(House Bill 1307)

AN ACT concerning

Pharmacy Benefits Managers – ~~Network Adequacy~~ Credentialing and Reimbursement

FOR the purpose of ~~requiring a pharmacy benefits manager to maintain a certain network that provides certain access to pharmacy services; requiring the Commissioner to establish certain criteria for determining the adequacy of a pharmacy benefits manager's network; authorizing the Commissioner to adopt certain regulations; prohibiting a pharmacy benefits manager from requiring a certain pharmacy or pharmacist to obtain certain accreditation, certification, or credentialing as a condition for participating in a certain network with certain frequency or charging a pharmacy or pharmacist a certain fee; authorizing the Commissioner to use certain contracts to determine certain network adequacy; altering the fees or other certain reimbursement that a pharmacy benefits manager is prohibited from directly or indirectly charging a certain pharmacy or for which a pharmacy benefits manager is prohibited from holding a certain pharmacy responsible; authorizing a pharmacist or pharmacy to decline to provide certain pharmacy services under certain circumstances; repealing certain circumstances under which a pharmacy benefits manager or purchaser is authorized to charge certain fees or hold certain pharmacies responsible for certain reimbursement that the pharmacy benefits manager or purchaser is otherwise prohibited from doing; prohibiting a pharmacy benefits manager or purchaser from reducing certain payment for certain pharmacy services under certain circumstances; providing for the application of this Act; providing for a delayed effective date; making a technical change; and generally relating to pharmacy benefits managers, network adequacy, and reimbursement.~~

~~BY adding to~~~~Article – Insurance~~~~Section 15–1611.2~~~~Annotated Code of Maryland~~~~(2017 Replacement Volume and 2019 Supplement)~~

BY repealing and reenacting, with amendments,

Article – Insurance

Section 15–1628, 15–1628.2(d), and 15–1628.3

Annotated Code of Maryland

(2017 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

~~15-1611.2.~~

~~(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A PHARMACY BENEFITS MANAGER SHALL MAINTAIN A REASONABLY ADEQUATE AND ACCESSIBLE PHARMACY BENEFITS MANAGER NETWORK CONSISTING OF CONTRACTED PHARMACIES THAT PROVIDE CONVENIENT PATIENT ACCESS TO PHARMACY SERVICES.~~

~~(B) (1) THE COMMISSIONER SHALL ESTABLISH CRITERIA FOR DETERMINING THE ADEQUACY OF A PHARMACY BENEFITS MANAGER'S NETWORK THAT INCLUDES:~~

~~(I) A DETERMINATION OF THE PURCHASERS THAT CONTRACT WITH THE PHARMACY BENEFITS MANAGER AND THE GEOGRAPHIC LOCATION IN WHICH THE PURCHASERS OFFER COVERAGE FOR PRESCRIPTION DRUG BENEFITS;~~

~~(II) A CALCULATION FOR DETERMINING A REASONABLE DISTANCE FROM A PATIENT'S HOME TO A CONTRACTED PHARMACY; AND~~

~~(III) A REVIEW OF COMPENSATION PROGRAMS TO ENSURE THAT THE REIMBURSEMENT PAID TO PHARMACIES AND PHARMACISTS FOR PHARMACY SERVICES IS FAIR AND REASONABLE.~~

~~(2) A MAIL ORDER PHARMACY MAY NOT BE INCLUDED IN A DETERMINATION OF A PHARMACY BENEFITS MANAGER'S NETWORK ADEQUACY.~~

~~(C) THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION.~~

15-1628.

(a) (1) At the time of entering into a contract with a pharmacy or a pharmacist, and at least 30 working days before any contract change, a pharmacy benefits manager shall disclose to the pharmacy or pharmacist:

[(1)] (I) the applicable terms, conditions, and reimbursement rates;

[(2)] (II) the process and procedures for verifying pharmacy benefits and beneficiary eligibility;

[(3)] (III) the dispute resolution and audit appeals process; and

[(4)] (IV) the process and procedures for verifying the prescription drugs

included on the formularies used by the pharmacy benefits manager.

~~(2) A PHARMACY BENEFITS MANAGER MAY NOT REQUIRE A PHARMACY OR A PHARMACIST, AS A CONDITION FOR PARTICIPATING IN THE PHARMACY BENEFITS MANAGER'S NETWORK, TO OBTAIN OR MAINTAIN ACCREDITATION, CERTIFICATION, OR CREDENTIALING THAT IS INCONSISTENT WITH, MORE STRINGENT THAN, OR IN ADDITION TO STATE REQUIREMENTS FOR LICENSURE OR RELEVANT FEDERAL OR STATE STANDARDS.~~

(2) (I) THIS PARAGRAPH DOES NOT APPLY TO A REQUIREMENT THAT A SPECIALTY PHARMACY OBTAIN NATIONAL CERTIFICATION TO BE CONSIDERED A SPECIALTY PHARMACY IN A PHARMACY BENEFITS MANAGER'S OR PURCHASER'S NETWORK.

(II) FOR PURPOSES OF CREDENTIALING A PHARMACY OR A PHARMACIST AS A CONDITION FOR PARTICIPATING IN A PHARMACY BENEFITS MANAGER'S OR PURCHASER'S NETWORK, THE PHARMACY BENEFITS MANAGER OR PURCHASER MAY NOT:

1. REQUIRE A PHARMACY OR PHARMACIST TO RENEW CREDENTIALING MORE FREQUENTLY THAN ONCE EVERY 3 YEARS; OR

2. CHARGE A PHARMACY OR PHARMACIST A FEE FOR THE INITIAL CREDENTIALING OR RENEWING CREDENTIALING.

(b) (1) A contract or an amendment to a contract between a pharmacy benefits manager, a pharmacy services administration organization, or a group purchasing organization and a pharmacy may not become effective unless:

(i) at least 30 days before the contract or amendment is to become effective, the pharmacy benefits manager, pharmacy services administration organization, or group purchasing organization files the contract or amendment with the Commissioner in the form required by the Commissioner; and

(ii) the Commissioner does not disapprove the filing within 30 days after the contract or amendment is filed.

(2) The Commissioner shall adopt regulations to establish the circumstances under which the Commissioner may disapprove a contract.

~~(C) THE COMMISSIONER MAY USE A CONTRACT FILED UNDER SUBSECTION (B) OF THIS SECTION IN MAKING A DETERMINATION OF WHETHER A PHARMACY BENEFITS MANAGER'S NETWORK IS ADEQUATE AS REQUIRED UNDER § 15-1611.2 OF THIS SUBTITLE.~~

15-1628.2.

(d) (1) If a pharmacy benefits manager denies an appeal and a contracted pharmacy or a designee of the contracted pharmacy files a complaint with the Commissioner, the Commissioner shall:

(i) review the compensation program of the pharmacy benefits manager to ensure that the reimbursement for pharmacy [benefits management] services paid to the pharmacist or a pharmacy complies with this subtitle and the terms of the participating pharmacy contract; and

(ii) based on a determination made by the Commissioner under item (i) of this paragraph, dismiss the appeal or uphold the appeal and order the pharmacy benefits manager to pay the claim or claims in accordance with the Commissioner's findings.

(2) On request, the pharmacy benefits manager shall provide to the Commissioner all mathematical calculations, accounts, records, documents, files, logs, correspondence, or other information necessary to complete the Commissioner's review.

(3) All information and data collected by the Commissioner during a review:

(i) is considered to be confidential and proprietary information; and

(ii) is not subject to disclosure under the Public Information Act.

15-1628.3.

(A) A pharmacy benefits manager or a purchaser may not directly or indirectly charge a contracted pharmacy, or hold a contracted pharmacy responsible for, a fee or performance-based reimbursement related to the adjudication of a claim or an incentive program ~~that is not~~:

~~(1) specifically enumerated by the pharmacy benefits manager or purchaser at the time of claim processing;~~ or

~~(2) reported on the initial remittance advice of an adjudicated claim].~~

~~(B) IF THE AMOUNT REIMBURSED BY A PHARMACY BENEFITS MANAGER OR A PURCHASER FOR A PRESCRIPTION DRUG OR PHARMACY SERVICE IS LESS THAN THE PHARMACY ACQUISITION COST FOR THE SAME PRESCRIPTION DRUG OR PHARMACY SERVICE, THE PHARMACY OR PHARMACIST MAY DECLINE TO DISPENSE THE PRESCRIPTION DRUG OR PROVIDE THE PHARMACY SERVICE TO A BENEFICIARY.~~

(B) A PHARMACY BENEFITS MANAGER OR PURCHASER MAY NOT MAKE OR ALLOW ANY REDUCTION IN PAYMENT FOR PHARMACY SERVICES BY A PHARMACY BENEFITS MANAGER OR PURCHASER OR DIRECTLY OR INDIRECTLY REDUCE A PAYMENT FOR A PHARMACY SERVICE UNDER A RECONCILIATION PROCESS TO AN EFFECTIVE RATE OF REIMBURSEMENT, INCLUDING GENERIC EFFECTIVE RATES, BRAND EFFECTIVE RATES, DIRECT AND INDIRECT REMUNERATION FEES, OR ANY OTHER REDUCTION OR AGGREGATE REDUCTION OF PAYMENTS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after January 1, 2021.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~June 1, 2020~~ January 1, 2021.

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