

SENATE BILL 1019

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By: **Senator A. Washington**

Introduced and read first time: February 2, 2024

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Benefit Plans – Prescription Drugs – Rebates and Calculation of Cost**
3 **Sharing Requirements**

4 FOR the purpose of requiring that the calculation of an enrollee’s contribution to a cost
5 sharing requirement for a prescription drug be based on the list price of the drug
6 reduced by at least a certain percentage; prohibiting the disclosure of certain
7 information concerning rebates; and generally relating to rebates and the calculation
8 of cost sharing requirements for prescription drugs.

9 BY adding to

10 Article – Insurance
11 Section 15–118.1 and 15–1611.3
12 Annotated Code of Maryland
13 (2017 Replacement Volume and 2023 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – Insurance
16 Section 15–1601
17 Annotated Code of Maryland
18 (2017 Replacement Volume and 2023 Supplement)

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

21 **Article – Insurance**

22 **15–118.1.**

23 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
24 **INDICATED.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(2) “CARRIER” MEANS AN ENTITY SUBJECT TO THE JURISDICTION OF**
2 **THE COMMISSIONER THAT CONTRACTS, OR OFFERS TO CONTRACT, TO PROVIDE,**
3 **DELIVER, ARRANGE FOR, PAY FOR, OR REIMBURSE ANY OF THE COSTS OF HEALTH**
4 **CARE SERVICES UNDER A HEALTH BENEFIT PLAN IN THE STATE.**

5 **(3) “COST SHARING” MEANS ANY COPAYMENT, COINSURANCE,**
6 **DEDUCTIBLE, OR OTHER SIMILAR CHARGE REQUIRED OF AN ENROLLEE FOR A**
7 **HEALTH CARE SERVICE COVERED BY A HEALTH BENEFIT PLAN, INCLUDING A**
8 **PRESCRIPTION DRUG, AND PAID BY OR ON BEHALF OF THE ENROLLEE.**

9 **(4) “ENROLLEE” MEANS AN INDIVIDUAL ENTITLED TO PAYMENT FOR**
10 **HEALTH CARE SERVICES FROM AN ADMINISTRATOR OR A CARRIER.**

11 **(5) (I) “HEALTH BENEFIT PLAN” MEANS A POLICY, A CONTRACT, A**
12 **CERTIFICATION, OR AN AGREEMENT OFFERED OR ISSUED BY AN ADMINISTRATOR**
13 **OR A CARRIER TO PROVIDE, DELIVER, ARRANGE FOR, PAY FOR, OR REIMBURSE ANY**
14 **OF THE COSTS OF HEALTH CARE SERVICES.**

15 **(II) “HEALTH BENEFIT PLAN” DOES NOT INCLUDE:**

16 1. **A LOCAL GOVERNMENT HEALTH PLAN; OR**

17 2. **THE STATE EMPLOYEE AND RETIREE HEALTH AND**
18 **WELFARE BENEFITS PROGRAM.**

19 **(6) “HEALTH CARE SERVICE” MEANS AN ITEM OR SERVICE PROVIDED**
20 **TO AN INDIVIDUAL FOR THE PURPOSE OF PREVENTING, ALLEVIATING, CURING, OR**
21 **HEALING HUMAN ILLNESS, INJURY, OR PHYSICAL DISABILITY.**

22 **(7) “PROPRIETARY INFORMATION” HAS THE MEANING STATED IN §**
23 **15-1601 OF THIS TITLE.**

24 **(8) (I) “REBATE” MEANS A NEGOTIATED PRICE CONCESSION**
25 **PROVIDED TO A CARRIER OR PHARMACY BENEFITS MANAGER BY:**

26 1. **A MANUFACTURER;**

27 2. **A DISPENSING PHARMACY; OR**

28 3. **ANOTHER PARTY TO THE DISPENSING OR**
29 **ADMINISTRATION OF A PRESCRIPTION DRUG.**

1 (II) "REBATE" INCLUDES:

2 1. A PRICE PROTECTION REBATE THAT MAY ACCRUE
3 DIRECTLY OR INDIRECTLY TO THE CARRIER, OR OTHER PARTY ON BEHALF OF THE
4 CARRIER, IF THE WHOLESALE ACQUISITION COST OF A DRUG INCREASES ABOVE A
5 SPECIFIED THRESHOLD;

6 2. A PERFORMANCE-BASED PRICE CONCESSION THAT
7 MAY ACCRUE DIRECTLY OR INDIRECTLY TO THE CARRIER, OR OTHER PARTY ON
8 BEHALF OF THE CARRIER, INCLUDING A PHARMACY BENEFITS MANAGER, DURING
9 THE COVERAGE YEAR; AND

10 3. ANY OTHER NEGOTIATED PRICE CONCESSIONS, FEES,
11 OR OTHER ADMINISTRATIVE COSTS THAT:

12 A. ARE PASSED THROUGH, OR ARE REASONABLY
13 ANTICIPATED TO BE PASSED THROUGH, TO THE CARRIER, OR OTHER PARTY ON
14 BEHALF OF THE CARRIER, INCLUDING A PHARMACY BENEFITS MANAGER; AND

15 B. REDUCE THE CARRIER'S REIMBURSEMENT FOR A
16 PRESCRIPTION DRUG.

17 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
18 CALCULATION OF AN ENROLLEE'S CONTRIBUTION TO AN APPLICABLE COST
19 SHARING REQUIREMENT FOR A PRESCRIPTION DRUG SHALL BE BASED ON THE LIST
20 PRICE OF THE PRESCRIPTION DRUG REDUCED BY AT LEAST 85% OF THE
21 REASONABLE ESTIMATED TOTAL AMOUNT OF REBATES RECEIVED, OR EXPECTED TO
22 BE RECEIVED, BY THE CARRIER OR PHARMACY BENEFITS MANAGER FOR THE
23 DISPENSING OR ADMINISTRATION OF THE PRESCRIPTION DRUG.

24 (2) (i) THE CONTRIBUTION SHALL BE CALCULATED AT THE POINT
25 OF SALE.

26 (ii) THE CARRIER OR PHARMACY BENEFITS MANAGER MAY
27 REDUCE THE LIST PRICE OF A PRESCRIPTION DRUG BY MORE THAN 85% OF THE
28 REASONABLE ESTIMATED TOTAL AMOUNT OF REBATES RECEIVED, OR EXPECTED TO
29 BE RECEIVED, FOR THE DISPENSING OR ADMINISTRATION OF THE PRESCRIPTION
30 DRUG.

31 (C) IN ADDITION TO ANY OTHER ENFORCEMENT ACTION TAKEN BY THE
32 COMMISSIONER UNDER THIS ARTICLE, THE COMMISSIONER MAY IMPOSE A CIVIL
33 PENALTY NOT EXCEEDING \$10,000 FOR EACH VIOLATION OF THIS SECTION.

1 **(D) (1) IN COMPLYING WITH THE PROVISIONS OF THIS SECTION, A**
2 **CARRIER MAY NOT PUBLISH OR OTHERWISE MAKE PUBLIC INFORMATION**
3 **REGARDING THE ACTUAL AMOUNT OF REBATES A CARRIER RECEIVES:**

4 **(I) ON A PRESCRIPTION DRUG OR THERAPEUTIC CLASS OF**
5 **PRESCRIPTION DRUGS;**

6 **(II) FROM A MANUFACTURER; OR**

7 **(III) UNDER A CONTRACT WITH A SPECIFIC PHARMACY.**

8 **(2) INFORMATION DESCRIBED UNDER PARAGRAPH (1) OF THIS**
9 **SUBSECTION:**

10 **(I) IS PROPRIETARY INFORMATION; AND**

11 **(II) IS NOT SUBJECT TO DISCLOSURE UNDER THE PUBLIC**
12 **INFORMATION ACT.**

13 **(E) A CARRIER SHALL REQUIRE AN AGENT OR A THIRD PARTY THAT**
14 **PERFORMS HEALTH CARE-RELATED OR ADMINISTRATIVE SERVICES ON BEHALF OF**
15 **THE CARRIER TO COMPLY WITH SUBSECTION (D) OF THIS SECTION.**

16 15-1601.

17 (a) In this subtitle the following words have the meanings indicated.

18 (b) “Agent” means a pharmacy, a pharmacist, a mail order pharmacy, or a
19 nonresident pharmacy acting on behalf or at the direction of a pharmacy benefits manager.

20 (c) “Beneficiary” means an individual who receives prescription drug coverage or
21 benefits from a purchaser.

22 (d) (1) [“Carrier”] **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE,**
23 **“CARRIER”** means the State Employee and Retiree Health and Welfare Benefits Program,
24 an insurer, a nonprofit health service plan, or a health maintenance organization that:

25 (i) provides prescription drug coverage or benefits in the State; and

26 (ii) enters into an agreement with a pharmacy benefits manager for
27 the provision of pharmacy benefits management services.

28 (2) “Carrier” does not include a person that provides prescription drug
29 coverage or benefits through plans subject to ERISA and does not provide prescription drug

1 coverage or benefits through insurance, unless the person is a multiple employer welfare
2 arrangement as defined in § 514(b)(6)(a)(ii) of ERISA.

3 (e) “Compensation program” means a program, policy, or process through which
4 sources and pricing information are used by a pharmacy benefits manager to determine the
5 terms of payment as stated in a participating pharmacy contract.

6 (f) “Contracted pharmacy” means a pharmacy that participates in the network of
7 a pharmacy benefits manager through a contract with:

8 (1) the pharmacy benefits manager; or

9 (2) a pharmacy services administration organization or a group purchasing
10 organization.

11 **(G) “COST SHARING” MEANS ANY COPAYMENT, COINSURANCE,**
12 **DEDUCTIBLE, OR OTHER SIMILAR CHARGE REQUIRED OF A BENEFICIARY FOR A**
13 **HEALTH CARE SERVICE COVERED BY A HEALTH BENEFIT PLAN, INCLUDING A**
14 **PRESCRIPTION DRUG, AND PAID BY OR ON BEHALF OF THE BENEFICIARY.**

15 **[(g)] (H)** “ERISA” has the meaning stated in § 8–301 of this article.

16 **[(h)] (I)** “Formulary” means a list of prescription drugs used by a purchaser.

17 **[(i)] (J)** (1) “Manufacturer payments” means any compensation or
18 remuneration a pharmacy benefits manager receives from or on behalf of a pharmaceutical
19 manufacturer.

20 (2) “Manufacturer payments” includes:

21 (i) payments received in accordance with agreements with
22 pharmaceutical manufacturers for formulary placement and, if applicable, drug utilization;

23 (ii) rebates, regardless of how categorized;

24 (iii) market share incentives;

25 (iv) commissions;

26 (v) fees under products and services agreements;

27 (vi) any fees received for the sale of utilization data to a
28 pharmaceutical manufacturer; and

29 (vii) administrative or management fees.

1 (3) “Manufacturer payments” does not include purchase discounts based on
2 invoiced purchase terms.

3 [(j)] (K) “Nonprofit health maintenance organization” has the meaning stated
4 in § 6–121(a) of this article.

5 [(k)] (L) “Nonresident pharmacy” has the meaning stated in § 12–403 of the
6 Health Occupations Article.

7 [(l)] (M) “Participating pharmacy contract” means a contract filed with the
8 Commissioner in accordance with § 15–1628(b) of this subtitle.

9 [(m)] (N) “Pharmacist” has the meaning stated in § 12–101 of the Health
10 Occupations Article.

11 [(n)] (O) “Pharmacy” has the meaning stated in § 12–101 of the Health
12 Occupations Article.

13 [(o)] (P) “Pharmacy and therapeutics committee” means a committee
14 established by a pharmacy benefits manager to:

15 (1) objectively appraise and evaluate prescription drugs; and

16 (2) make recommendations to a purchaser regarding the selection of drugs
17 for the purchaser’s formulary.

18 [(p)] (Q) (1) “Pharmacy benefits management services” means:

19 (i) the [procurement of prescription drugs at a negotiated rate for
20 dispensation within the State to beneficiaries] **NEGOTIATION OF THE PRICE OF**
21 **PRESCRIPTION DRUGS, INCLUDING THE NEGOTIATING AND CONTRACTING FOR**
22 **DIRECT AND INDIRECT REBATES, DISCOUNTS, OR OTHER PRICE CONCESSIONS;**

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

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

27 1. mail service pharmacy;

28 2. claims processing, retail network management, and
29 payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;

30 3. clinical formulary development and management services;

- 1 4. rebate contracting and administration;
- 2 5. patient compliance, therapeutic intervention, and generic
3 substitution programs; **[or]**
- 4 6. disease management programs;
- 5 **7. DRUG UTILIZATION REVIEW; OR**
- 6 **8. ADJUDICATION OF APPEALS OR GRIEVANCES**
7 **RELATED TO A PRESCRIPTION DRUG BENEFIT;**

8 **(IV) THE PERFORMANCE OF ADMINISTRATIVE, MANAGERIAL,**
9 **CLINICAL, PRICING, FINANCIAL, REIMBURSEMENT, DATA ADMINISTRATION OR**
10 **REPORTING, OR BILLING SERVICES; AND**

11 **(V) OTHER SERVICES DEFINED BY THE COMMISSIONER IN**
12 **REGULATION.**

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

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

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

20 **[(q)] (R)** “Pharmacy benefits manager” means:

21 **(1)** a person that **[performs]**, **IN ACCORDANCE WITH A WRITTEN**
22 **AGREEMENT WITH A PURCHASER, EITHER DIRECTLY OR INDIRECTLY PROVIDES ONE**
23 **OR MORE** pharmacy benefits management services; **OR**

24 **(2)** **AN AGENT OR OTHER PROXY OR REPRESENTATIVE, CONTRACTOR,**
25 **INTERMEDIARY, AFFILIATE, SUBSIDIARY, OR RELATED ENTITY OF A PERSON THAT**
26 **FACILITATES, PROVIDES, DIRECTS, OR OVERSEES THE PROVISION OF PHARMACY**
27 **BENEFITS MANAGEMENT SERVICES.**

28 **[(r)] (S)** “Proprietary information” means:

29 (1) a trade secret;

30 (2) confidential commercial information; or

1 (3) confidential financial information.

2 **[(s)] (T)** “Purchaser” means a person that offers a plan or program in the State,
3 including the State Employee and Retiree Health and Welfare Benefits Program, that:

4 (1) provides prescription drug coverage or benefits in the State; and

5 (2) enters into an agreement with a pharmacy benefits manager for the
6 provision of pharmacy benefits management services.

7 **(U) (1) “REBATE” MEANS A NEGOTIATED PRICE CONCESSION PROVIDED**
8 **TO A CARRIER OR PHARMACY BENEFITS MANAGER BY:**

9 **(I) A MANUFACTURER;**

10 **(II) A DISPENSING PHARMACY; OR**

11 **(III) ANOTHER PARTY TO THE DISPENSING OR ADMINISTRATION**
12 **OF A PRESCRIPTION DRUG.**

13 **(2) “REBATE” INCLUDES:**

14 **(I) A PRICE PROTECTION REBATE THAT MAY ACCRUE**
15 **DIRECTLY OR INDIRECTLY TO THE CARRIER, OR OTHER PARTY ON BEHALF OF THE**
16 **CARRIER, IF THE WHOLESALE ACQUISITION COST OF A DRUG INCREASES ABOVE A**
17 **SPECIFIED THRESHOLD;**

18 **(II) A PERFORMANCE-BASED PRICE CONCESSION THAT MAY**
19 **ACCRUE DIRECTLY OR INDIRECTLY TO THE CARRIER, OR OTHER PARTY ON BEHALF**
20 **OF THE CARRIER, INCLUDING A PHARMACY BENEFITS MANAGER, DURING THE**
21 **COVERAGE YEAR; AND**

22 **(III) ANY OTHER NEGOTIATED PRICE CONCESSIONS, FEES, OR**
23 **OTHER ADMINISTRATIVE COSTS THAT:**

24 **1. ARE PASSED THROUGH, OR ARE REASONABLY**
25 **ANTICIPATED TO BE PASSED THROUGH, TO THE CARRIER, OR OTHER PARTY ON**
26 **BEHALF OF THE CARRIER, INCLUDING A PHARMACY BENEFITS MANAGER; AND**

27 **2. REDUCE THE CARRIER’S REIMBURSEMENT FOR A**
28 **PRESCRIPTION DRUG.**

1 [(t)] (V) “Rebate sharing contract” means a contract between a pharmacy
2 benefits manager and a purchaser under which the pharmacy benefits manager agrees to
3 share manufacturer payments with the purchaser.

4 [(u)] (W) (1) “Therapeutic interchange” means any change from one
5 prescription drug to another.

6 (2) “Therapeutic interchange” does not include:

7 (i) a change initiated pursuant to a drug utilization review;

8 (ii) a change initiated for patient safety reasons;

9 (iii) a change required due to market unavailability of the currently
10 prescribed drug;

11 (iv) a change from a brand name drug to a generic drug in accordance
12 with § 12–504 of the Health Occupations Article; or

13 (v) a change required for coverage reasons because the originally
14 prescribed drug is not covered by the beneficiary’s formulary or plan.

15 [(v)] (X) “Therapeutic interchange solicitation” means any communication by a
16 pharmacy benefits manager for the purpose of requesting a therapeutic interchange.

17 [(w)] (Y) “Trade secret” has the meaning stated in § 11–1201 of the Commercial
18 Law Article.

19 **15–1611.3.**

20 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
21 **INDICATED.**

22 (2) **“CARRIER” MEANS AN ENTITY SUBJECT TO THE JURISDICTION OF**
23 **THE COMMISSIONER THAT CONTRACTS, OR OFFERS TO CONTRACT, TO PROVIDE,**
24 **DELIVER, ARRANGE FOR, PAY FOR, OR REIMBURSE ANY OF THE COSTS OF HEALTH**
25 **CARE SERVICES UNDER A HEALTH BENEFIT PLAN IN THE STATE.**

26 (3) (I) **“HEALTH BENEFIT PLAN” MEANS A POLICY, CONTRACT,**
27 **CERTIFICATION, OR AGREEMENT OFFERED OR ISSUED BY AN ADMINISTRATOR OR A**
28 **CARRIER TO PROVIDE, DELIVER, ARRANGE FOR, PAY FOR, OR REIMBURSE ANY OF**
29 **THE COSTS OF HEALTH CARE SERVICES.**

30 (II) **“HEALTH BENEFIT PLAN” DOES NOT INCLUDE:**

1 1. A LOCAL GOVERNMENT HEALTH PLAN; OR

2 2. THE STATE EMPLOYEE AND RETIREE HEALTH AND
3 WELFARE BENEFITS PROGRAM.

4 (b) THIS SECTION APPLIES ONLY TO A PHARMACY BENEFITS MANAGER
5 THAT PROVIDES PHARMACY BENEFITS MANAGEMENT SERVICES ON BEHALF OF A
6 CARRIER.

7 (c) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
8 CALCULATION OF AN ENROLLEE'S CONTRIBUTION TO AN APPLICABLE COST
9 SHARING REQUIREMENT FOR A PRESCRIPTION DRUG SHALL BE BASED ON THE LIST
10 PRICE OF THE PRESCRIPTION DRUG REDUCED BY AT LEAST 85% OF THE TOTAL
11 AMOUNT OF REBATES RECEIVED OR EXPECTED TO BE RECEIVED BY THE CARRIER
12 OR PHARMACY BENEFITS MANAGER, FOR THE DISPENSING OR ADMINISTRATION OF
13 THE PRESCRIPTION DRUG.

14 (2) (i) THE CONTRIBUTION SHALL BE CALCULATED AT THE POINT
15 OF SALE.

16 (ii) THE CARRIER OR PHARMACY BENEFITS MANAGER MAY
17 REDUCE THE LIST PRICE OF A PRESCRIPTION DRUG BY MORE THAN 85% OF THE
18 REASONABLE ESTIMATED TOTAL AMOUNT OF REBATES RECEIVED, OR EXPECTED TO
19 BE RECEIVED, FOR THE DISPENSING OR ADMINISTRATION OF THE PRESCRIPTION
20 DRUG.

21 (d) IN ADDITION TO ANY OTHER ENFORCEMENT ACTION TAKEN BY THE
22 COMMISSIONER UNDER THIS ARTICLE, THE COMMISSIONER MAY IMPOSE A CIVIL
23 PENALTY NOT EXCEEDING \$10,000 FOR EACH VIOLATION OF THIS SECTION.

24 (e) (1) IN COMPLYING WITH THE PROVISIONS OF THIS SECTION, A
25 CARRIER MAY NOT PUBLISH OR OTHERWISE MAKE PUBLIC INFORMATION
26 REGARDING THE ACTUAL AMOUNT OF REBATES A CARRIER RECEIVES:

27 (i) ON A PRESCRIPTION DRUG OR THERAPEUTIC CLASS OF
28 PRESCRIPTION DRUGS;

29 (ii) FROM A MANUFACTURER; OR

30 (iii) UNDER A CONTRACT WITH A SPECIFIC PHARMACY.

31 (2) THE INFORMATION DESCRIBED UNDER PARAGRAPH (1) OF THIS
32 SUBSECTION:

1 **(I) IS PROPRIETARY INFORMATION; AND**

2 **(II) IS NOT SUBJECT TO DISCLOSURE UNDER THE PUBLIC**
3 **INFORMATION ACT.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
5 policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or
6 after January 1, 2025.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 January 1, 2025.