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By: **Delegates Pitkin, Benson, R. Baker, Boutin, Bronrott, Burns, Cadden, Conroy, Conway, Cryor, D'Amato, DeCarlo, Dypski, Frush, Gladden, Glassman, Heller, Hubers, James, V. Jones, Malone, Nathan-Pulliam, Parrott, Patterson, Pitkin, Riley, Rosso, Snodgrass, Turner, and Valderrama**

Introduced and read first time: February 7, 2001  
Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Prescription Drug Fair Pricing Act**

3 FOR the purpose of altering income eligibility levels for the Maryland Pharmacy  
4 Assistance Program; altering the scope of benefits available under the Program;  
5 creating the Maryland Prescription Drug Fair Pricing Board and the Maryland  
6 Prescription Drug Fair Pricing Fund; providing for the membership of the  
7 Board, the appointment of the members, their terms, the chairmanship of the  
8 Board, its meetings, its staff, and the compensation of its members; requiring  
9 the Board to annually set certain maximum manufacturer prices for  
10 prescription drugs sold in the State by manufacturers located in the State after  
11 considering certain factors; providing for the setting of certain other prescription  
12 drug prices; requiring that the prices set by the Board be implemented unless  
13 the Board makes certain determinations; providing for the factors to be  
14 considered by the Board; providing that a manufacturer, wholesaler, or retailer  
15 of prescription drugs located in the State who sells prescription drugs in the  
16 State and who charges more than the maximum price allowable under this Act  
17 is guilty of an unfair or deceptive trade practice and subject to certain remedies  
18 and penalties; providing for the appeal of a maximum price set by the Board and  
19 the factors to be considered by the Board in any appeal; providing for the effect  
20 of an appeal and the burden of proof; providing for subsequent appeals;  
21 requiring the Board to conduct certain semi-annual surveys and requiring that  
22 the survey include certain information; requiring that the Board draft a plan of  
23 emergency measures and providing for the implementation of that plan;  
24 providing for certain other duties of the Board, requiring an annual report, and  
25 requiring the Board to work cooperatively with certain State agencies; requiring  
26 health care providers in the State to provide certain information to their  
27 patients; providing for the source of the moneys in the Fund, the administration  
28 of the Fund, and the use of the moneys in the Fund; requiring that  
29 appointments to the Board be made by a certain date; requiring that the  
30 Secretary of Health and Mental Hygiene call the first meeting of the Board by a  
31 certain date; requiring that the Board forward its initial regulations to a certain

1 committee of the General Assembly by a certain date; requiring the Secretary to  
2 conduct a certain investigation; providing for the application of certain  
3 provisions of this Act; and generally relating to the maximum prices of  
4 prescription drugs manufactured and sold in Maryland by certain  
5 manufacturers, wholesalers, and retailers, and to the Maryland Prescription  
6 Drug Fair Pricing Board, and the Maryland Prescription Drug Fair Pricing  
7 Fund.

8 BY repealing and reenacting, with amendments,  
9 Article - Commercial Law  
10 Section 13-301(14)  
11 Annotated Code of Maryland  
12 (2000 Replacement Volume and 2000 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article - Health - General  
15 Section 15-124(a) and (b)  
16 Annotated Code of Maryland  
17 (2000 Replacement Volume)

18 BY adding to  
19 Article - Health - General  
20 Section 15-1A-01 through 15-1A-12 to be under the new subtitle "Subtitle 1A.  
21 Maryland Prescription Drug Fair Pricing Act"  
22 Annotated Code of Maryland  
23 (2000 Replacement Volume)

24 Preamble

25 WHEREAS, Pharmaceutical companies are charging the citizens of Maryland  
26 excessive prices for prescription drugs, denying Marylanders access to medically  
27 necessary health care and thereby threatening their health and safety; and

28 WHEREAS, Marylanders and other Americans pay the highest prices in the  
29 world for prescription drugs, prices that result in extremely high profits for  
30 pharmaceutical companies; and

31 WHEREAS, The lack of affordable access to medically necessary prescription  
32 drugs results in the denial of health care, the likelihood of serious illness and death,  
33 and the inability to lead a life of good health for many Marylanders; and

34 WHEREAS, All Maryland residents are threatened by the possibility that when  
35 they need medically necessary prescription drugs most, they will be unable to afford  
36 their doctor's recommended treatment; and

37 WHEREAS, Many Maryland residents are admitted to or treated at hospitals  
38 each year because they cannot afford the drugs prescribed for them; and

1 WHEREAS, Many other Maryland residents are forced into expensive  
2 institutional care settings because they cannot afford their necessary prescription  
3 drugs; and

4 WHEREAS, Prescription drug costs represent the fastest growing item in health  
5 care and are a driving force in rapidly increasing hospital costs and insurance rates;  
6 and

7 WHEREAS, Excessive pricing for prescription drugs threatens the ability of the  
8 State government to assist with the health care costs of Maryland's citizens,  
9 undermines the financial capacity of Maryland's communities to meet the educational  
10 needs of Maryland's children, hurts the ability of the Maryland business community  
11 to provide health insurance coverage to its workforce, and has a negative effect on the  
12 Maryland economy; now, therefore,

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

15 **Article - Commercial Law**

16 13-301.

17 Unfair or deceptive trade practices include any:

18 (14) Violation of a provision of:

19 (i) This title;

20 (ii) An order of the Attorney General or agreement of a party  
21 relating to unit pricing under Title 14, Subtitle 1 of this article;

22 (iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt  
23 Collection Act;

24 (iv) Title 14, Subtitle 3 of this article, the Maryland Door-to-Door  
25 Sales Act;

26 (v) Title 14, Subtitle 9 of this article, Kosher Products;

27 (vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;

28 (vii) Section 14-1302 of this article;

29 (viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales  
30 Act;

31 (ix) Section 22-415 of the Transportation Article;

32 (x) Title 14, Subtitle 20 of this article;

- 1 (xi) Title 14, Subtitle 15 of this article, the Automotive Warranty  
 2 Enforcement Act;
- 3 (xii) Title 14, Subtitle 21 of this article;
- 4 (xiii) Section 18-107 of the Transportation Article;
- 5 (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone  
 6 Solicitations Act;
- 7 (xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts  
 8 Act;
- 9 (xvi) Title 10, Subtitle 6 of the Real Property Article;
- 10 (xvii) Title 10, Subtitle 8 of the Real Property Article;
- 11 (xviii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;  
 12 [or]
- 13 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door  
 14 Solicitations Act; or
- 15 (XX) TITLE 15, SUBTITLE 1A OF THE HEALTH - GENERAL ARTICLE,  
 16 THE MARYLAND PRESCRIPTION DRUG FAIR PRICING ACT; OR

17 **Article - Health - General**

18 15-124.

19 (a) (1) The Department shall maintain a Maryland Pharmacy Assistance  
 20 Program for low income individuals whose:

21 (i) Assets are not more than 1.5 times the amount of accountable  
 22 resources according to the asset schedule of the Maryland Medical Assistance  
 23 Program; and

24 (ii) [Gross] FAMILY UNIT'S GROSS annual income does not exceed[:

25 1. \$4,600 plus \$500 for each individual over 1 in a family  
 26 unit; and

27 2. An annual increase set by the Secretary under paragraph  
 28 (2)(ii)4 of this subsection] 300 PERCENT OF THE FEDERAL ANNUAL POVERTY LEVEL.

29 (2) (i) 1. In this paragraph the following words have the meanings  
 30 indicated.

31 2. "Income disregard" means the exclusion of up to \$1,000 of  
 32 annual income earned by an individual as a client of a sheltered workshop if the  
 33 individual's sole other income is derived from a Social Security payment.

1   3.         "Sheltered workshop" means a workshop licensed by the  
2 Developmental Disabilities Administration under Title 7, Subtitle 9 of this article.

3   (ii)        For the purpose of paragraph (1) of this subsection, the  
4 Secretary shall:

5   1.         In order to determine eligibility for the Maryland  
6 Pharmacy Assistance Program, deduct any income disregards from the countable  
7 gross income of a FAMILY unit that contains a disabled individual;

8   2.         Define excluded assets; AND

9   3.         Establish a family unit structure[; and

10    4.         Beginning July 1, 1985, increase annually at the time  
11 Social Security benefits are increased, rounded to the next highest even \$50 level, the  
12 income level within which an individual is eligible for benefits under the Maryland  
13 Pharmacy Assistance Program by the larger of:

14    A.         The percentage by which benefits under Title II of the  
15 Social Security Act (42 U.S.C. 401-433) are increased by the federal government due  
16 to cost-of-living changes as that percentage is reported in the Federal Register  
17 pursuant to 42 U.S.C. 415(I)(2)(D) but not to exceed 8 percent; or

18    B.         The dollar amount by which the medical assistance income  
19 schedules are increased by the State].

20       (b)       (1)       (i)         [Reimbursement] EXCEPT AS PROVIDED UNDER PARAGRAPH  
21 (3) OF THIS SUBSECTION, REIMBURSEMENT under the Maryland Pharmacy  
22 Assistance Program shall be limited to maintenance drugs, anti-infectives, and AZT  
23 as specified in regulations to be issued by the Secretary after consultation with the  
24 Maryland Pharmacists Association.

25   (ii)        1.         For any drug on the Program's interchangeable drug list,  
26 the Program shall reimburse providers in an amount not more than it would  
27 reimburse for the drug's generic equivalent, unless the individual's physician states,  
28 in his or her own handwriting, on the face of the prescription, that a specific brand is  
29 "medically necessary" for the particular patient.

30    2.         If an appropriate generic drug is not generally available,  
31 the Department may waive the reimbursement requirement under  
32 sub-subparagraph 1 of this subparagraph.

33   (2)        The reimbursement shall be up to the amount paid for the same  
34 items or services under the pharmacy program of the Maryland Medical Assistance  
35 Program and shall be subject to a copayment of not more than \$5.00 for each covered  
36 item or service.

1 (3) IF SUFFICIENT FUNDS ARE PROVIDED IN THE STATE BUDGET, THE  
2 PROGRAM MAY PROVIDE DRUGS AND MEDICATIONS FOR ADDITIONAL MEDICAL  
3 CONDITIONS.

4 SUBTITLE 1A. MARYLAND PRESCRIPTION DRUG FAIR PRICING ACT.

5 15-1A-01.

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
7 INDICATED.

8 (B) "BOARD" MEANS THE MARYLAND PRESCRIPTION DRUG FAIR PRICING  
9 BOARD CREATED UNDER § 15-1A-03 OF THIS SUBTITLE.

10 (C) "FUND" MEANS THE MARYLAND PRESCRIPTION DRUG FAIR PRICING FUND  
11 CREATED UNDER § 15-1A-11 OF THIS SUBTITLE.

12 15-1A-02.

13 THE PURPOSES OF THIS SUBTITLE ARE:

14 (1) TO IMPLEMENT A PACKAGE OF NONREGULATORY PROGRAMS TO  
15 ACHIEVE THE LEGISLATIVE PURPOSE OF PROVIDING AFFORDABLE ACCESS TO  
16 MEDICALLY NECESSARY PRESCRIPTION DRUGS FOR ALL RESIDENTS OF MARYLAND;  
17 AND

18 (2) IF THESE NONREGULATORY PROGRAMS DO NOT SUCCEED IN  
19 ENSURING THAT PRESCRIPTION DRUGS ARE SOLD IN MARYLAND AT FAIR AND  
20 NONDISCRIMINATORY PRICES, TO IMPLEMENT A FAIR PRICING PROGRAM THAT:

21 (I) PROHIBITS EXCESSIVE AND DISCRIMINATORY PRICING IN  
22 TRANSACTIONS THAT TAKE PLACE IN MARYLAND;

23 (II) IS THE MOST EFFECTIVE AND TIMELY ALTERNATIVE IN  
24 PROVIDING LOWER DRUG PRICES FOR ALL MARYLAND RESIDENTS; AND

25 (III) THEREBY PROTECTS THE HEALTH AND SAFETY OF ALL  
26 MARYLAND RESIDENTS.

27 15-1A-03.

28 (A) THERE IS A MARYLAND PRESCRIPTION DRUG FAIR PRICING BOARD.

29 (B) THE BOARD IS IN THE DEPARTMENT.

30 15-1A-04.

31 (A) THE BOARD IS COMPOSED OF 11 MEMBERS AS FOLLOWS:

32 (1) ONE MEMBER OF THE SENATE OF MARYLAND, APPOINTED BY THE  
33 PRESIDENT OF THE SENATE;

1 (2) ONE MEMBER OF THE HOUSE OF DELEGATES, APPOINTED BY THE  
2 SPEAKER OF THE HOUSE;

3 (3) THREE MEMBERS OF THE PUBLIC, APPOINTED JOINTLY BY THE  
4 PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE, TO REPRESENT EACH  
5 OF THE FOLLOWING INTERESTS:

6 (I) SENIOR RESIDENTS OF THE STATE;

7 (II) RESIDENTS WITH DISABILITIES OF THE STATE; AND

8 (III) LOW-INCOME RESIDENTS OF THE STATE;

9 (4) TWO MEMBERS OF THE MEDICAL COMMUNITY IN THE STATE, ONE OF  
10 WHOM MUST REPRESENT THE NURSING INDUSTRY, APPOINTED JOINTLY BY THE  
11 PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE, TO REPRESENT THE  
12 INTERESTS OF SENIOR RESIDENTS;

13 (5) TWO PHARMACISTS, APPOINTED BY THE GOVERNOR, EACH OF  
14 WHOM:

15 (I) IS LICENSED TO PRACTICE PHARMACY IN THE STATE;

16 (II) IS ENGAGED IN THE PRACTICE OF PHARMACY IN THE STATE;

17 (III) HAS AT LEAST 5 YEARS OF EXPERIENCE IN THE STATE AS A  
18 LICENSED PHARMACIST;

19 (IV) IS A RESIDENT OF THE STATE; AND

20 (V) IS NOT A MEMBER OF THE STATE BOARD OF PHARMACY;

21 (6) THE SECRETARY OR THE SECRETARY'S DESIGNEE, WHO SHALL  
22 SERVE AS AN EX OFFICIO, NONVOTING MEMBER; AND

23 (7) THE CHAIRMAN OF THE MARYLAND HEALTH CARE COMMISSION OR  
24 THE CHAIRMAN'S DESIGNEE, WHO SHALL SERVE AS AN EX OFFICIO, NONVOTING  
25 MEMBER.

26 (B) (1) THE TERM OF AN APPOINTED MEMBER OF THE BOARD IS 3 YEARS.

27 (2) THE TERMS OF APPOINTED MEMBERS ARE STAGGERED AS  
28 REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1,  
29 2001.

30 (3) A MEMBER OF THE BOARD MAY BE REAPPOINTED TO A SECOND  
31 TERM.

32 (4) EXCEPT FOR THE PHARMACIST MEMBERS, IF THE PROFESSION OR  
33 QUALIFICATIONS OF AN APPOINTED BOARD MEMBER CHANGES DURING THE

1 MEMBER'S TERM, THE MEMBER MAY CONTINUE TO SERVE UNTIL THE END OF THAT  
2 TERM.

3 (5) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A  
4 SUCCESSOR IS APPOINTED AND QUALIFIES.

5 (6) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES  
6 ONLY FOR THE REMAINDER OF THAT TERM AND UNTIL A SUCCESSOR IS APPOINTED  
7 AND QUALIFIES.

8 (C) THE MEMBERS OF THE BOARD SHALL ANNUALLY ELECT A CHAIRMAN.

9 (D) THE BOARD SHALL MEET AT LEAST ONCE EACH MONTH AT A PLACE TO BE  
10 DETERMINED BY THE BOARD.

11 (E) A MEMBER OF THE BOARD:

12 (1) MAY NOT RECEIVE COMPENSATION; BUT

13 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE  
14 STANDARD STATE TRAVEL REGULATIONS AS PROVIDED IN THE STATE BUDGET.

15 (F) (1) THE BOARD SHALL APPOINT A DIRECTOR WHO SHALL PERFORM THE  
16 DUTIES DELEGATED BY THE BOARD.

17 (2) IF THE BOARD DETERMINES THAT ADDITIONAL STAFF IS NEEDED,  
18 THE BOARD MAY HIRE THE NECESSARY STAFF AFTER RECEIVING THE APPROVAL OF  
19 AND APPROPRIATE FUNDING AS PROVIDED IN THE STATE BUDGET.

20 15-1A-05.

21 (A) (1) BEGINNING JANUARY 10, 2003, AND ANNUALLY ON THE SAME DATE  
22 THEREAFTER, THE BOARD SHALL ADOPT REGULATIONS ESTABLISHING THE  
23 MAXIMUM MANUFACTURER PRICE FOR PRESCRIPTION DRUGS SOLD IN THE STATE  
24 BY MANUFACTURERS LOCATED IN THE STATE.

25 (2) THE BOARD SHALL ESTABLISH THE PRICE SCHEDULE OF MAXIMUM  
26 MANUFACTURER PRICES FOR PRESCRIPTION DRUGS SOLD IN THE STATE BY  
27 MANUFACTURERS LOCATED IN THE STATE AFTER CONSIDERING:

28 (I) THE PRICES CHARGED FOR PRESCRIPTION DRUGS IN CANADA;

29 (II) THE PRICES LISTED ON THE FEDERAL SUPPLY SCHEDULE FOR  
30 PHARMACEUTICALS AND DRUGS MAINTAINED BY THE UNITED STATES DEPARTMENT  
31 OF VETERANS AFFAIRS; AND

32 (III) ANY OTHER RELEVANT INFORMATION.

33 (3) (I) THE MAXIMUM MANUFACTURER PRICE OF A PRESCRIPTION  
34 DRUG SOLD BY A MANUFACTURER LOCATED IN THE STATE MAY NOT EXCEED THE  
35 MANUFACTURER PRICE IN CANADA FOR THAT DRUG.



1 (II) IF A PRESCRIPTION DRUG IS NOT SOLD IN CANADA, THE  
2 MAXIMUM MANUFACTURER PRICE OF A PRESCRIPTION DRUG SOLD BY A  
3 MANUFACTURER LOCATED IN THE STATE MAY NOT EXCEED THE MAXIMUM PRICE IN  
4 CANADA FOR ALL OTHER PRESCRIPTION DRUGS WITHIN THE SAME CLASSIFICATION  
5 OF DRUGS.

6 (B) (1) THE MAXIMUM WHOLESALE PRICE FOR A PRESCRIPTION DRUG SOLD  
7 IN THE STATE BY A WHOLESALER LOCATED IN THE STATE IS THE MAXIMUM  
8 MANUFACTURER PRICE ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION,  
9 PLUS:

10 (I) THE REASONABLE AND CUSTOMARY COST OF DOING BUSINESS,  
11 AS DETERMINED BY THE WHOLESALER; AND

12 (II) THE REASONABLE AND CUSTOMARY PROFIT MARKUP BY THE  
13 WHOLESALER, AS DETERMINED BY THE WHOLESALER.

14 (2) (I) A WHOLESALE PRICE ESTABLISHED UNDER THIS SUBSECTION  
15 MAY NOT BE SET AT A LEVEL THAT CONSTITUTES AN UNFAIR OR DECEPTIVE ACT OR  
16 PRACTICE.

17 (II) THE ATTORNEY GENERAL SHALL DETERMINE WHETHER A  
18 WHOLESALE PRICE IS SET AT A LEVEL THAT CONSTITUTES AN UNFAIR OR  
19 DECEPTIVE ACT OR PRACTICE, ON A CASE BY CASE BASIS, AFTER REVIEW OF A  
20 COMPLAINT.

21 (C) (1) THE MAXIMUM RETAIL PRICE FOR A PRESCRIPTION DRUG SOLD IN  
22 THE STATE BY A RETAILER LOCATED IN THE STATE IS THE MAXIMUM WHOLESALE  
23 PRICE ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION, PLUS:

24 (I) THE REASONABLE AND CUSTOMARY COST OF DOING BUSINESS,  
25 AS DETERMINED BY THE RETAILER; AND

26 (II) THE REASONABLE AND CUSTOMARY PROFIT MARKUP BY THE  
27 WHOLESALER, AS DETERMINED BY THE RETAILER.

28 (2) (I) A RETAIL PRICE ESTABLISHED UNDER THIS SUBSECTION MAY  
29 NOT BE SET AT A LEVEL THAT CONSTITUTES AN UNFAIR OR DECEPTIVE ACT OR  
30 PRACTICE.

31 (II) THE ATTORNEY GENERAL SHALL DETERMINE WHETHER A  
32 RETAIL PRICE IS SET AT A LEVEL THAT CONSTITUTES AN UNFAIR OR DECEPTIVE ACT  
33 OR PRACTICE, ON A CASE BY CASE BASIS, AFTER REVIEW OF A COMPLAINT.

34 (D) (1) THE MAXIMUM PRICES FOR PRESCRIPTION DRUGS ESTABLISHED  
35 UNDER THIS SECTION SHALL TAKE EFFECT ON OCTOBER 1 OF THE SAME YEAR IN  
36 WHICH THE PRICES ARE ADOPTED BY THE BOARD, UNLESS BY SEPTEMBER 1 OF THAT  
37 SAME YEAR THE BOARD DETERMINES, AFTER A PUBLIC HEARING AND A PUBLIC  
38 VOTE, NOTICE OF THE RESULTS OF WHICH IS PUBLISHED IN THE MARYLAND  
39 REGISTER, THAT:

1 (I) PRESCRIPTION DRUG PRICES ARE LESS THAN OR EQUAL TO  
2 THE MAXIMUM PRICES SET UNDER THIS SECTION; OR

3 (II) ALTERNATIVE, NONREGULATORY MECHANISMS HAVE BEEN  
4 IMPLEMENTED TO ENSURE THAT PRESCRIPTION DRUGS ARE SOLD IN THIS STATE AT  
5 PRICES THAT DO NOT EXCEED THE MAXIMUM PRICES ESTABLISHED UNDER THIS  
6 SECTION.

7 (2) IN MAKING A DETERMINATION UNDER THIS SUBSECTION, THE  
8 BOARD SHALL CONSIDER THE EFFECT OF NONREGULATORY INITIATIVES  
9 UNDERTAKEN BY THE STATE AND OTHER FACTORS, INCLUDING:

10 (I) THE EFFECT ON PRESCRIPTION DRUG PRICES OF THE  
11 SHORT-TERM PRESCRIPTION DRUG SUBSIDY PLAN FOR MEDICARE PLUS CHOICE  
12 ELIGIBLE INDIVIDUALS LIVING IN MEDICALLY UNDERSERVED COUNTIES AND  
13 PORTIONS OF COUNTIES OPERATED UNDER SUBTITLE 6 OF THIS TITLE;

14 (II) THE EFFECT ON PRESCRIPTION DRUG PRICES OF THE  
15 IMPLEMENTATION OF THE INFORMATION ASSISTANCE PROGRAM FOR INELIGIBLE  
16 MARYLAND PHARMACY ASSISTANCE PROGRAM APPLICANTS DEVELOPED BY THE  
17 SECRETARY UNDER § 15-124(E) OF THIS TITLE;

18 (III) THE EFFECT ON PRESCRIPTION DRUG PRICES OF THE  
19 PHARMACY BENEFITS OFFERED UNDER THE MARYLAND COMPREHENSIVE  
20 STANDARD HEALTH BENEFIT PLAN ADOPTED BY THE MARYLAND HEALTH CARE  
21 COMMISSION AND OFFERED TO SMALL EMPLOYERS UNDER TITLE 15, SUBTITLE 12 OF  
22 THE INSURANCE ARTICLE;

23 (IV) THE EFFECT ON PRESCRIPTION DRUG PRICES OF PATIENT  
24 ACCESS TO PHARMACEUTICAL MANUFACTURER PATIENT ASSISTANCE PROGRAMS;

25 (V) THE EFFECT ON PRESCRIPTION DRUG PRICES OF ANY  
26 REGIONAL STRATEGIES AND REGIONAL PURCHASING ALLIANCES IMPLEMENTED IN  
27 THE STATE;

28 (VI) THE FINDINGS OF ANY RELEVANT STUDIES BY THE MARYLAND  
29 HEALTH CARE COMMISSION OR THE DEPARTMENT ON THE COST AND AVAILABILITY  
30 TO MARYLAND RESIDENTS OF PRESCRIPTION DRUGS; AND

31 (VII) THE FINDINGS OF ANY RELEVANT STUDIES BY THE MARYLAND  
32 INSURANCE ADMINISTRATION OR ANY PRIVATE INSURER OR INSURANCE GROUP ON  
33 THE COST AND AVAILABILITY TO MARYLAND RESIDENTS OF INSURANCE COVERAGE  
34 FOR PRESCRIPTION DRUGS.

35 (E) A MANUFACTURER, WHOLESALER, OR RETAILER LOCATED IN THE STATE  
36 THAT SELLS PRESCRIPTION DRUGS IN THE STATE THAT CHARGES MORE THAN THE  
37 MAXIMUM PRICE SET UNDER THIS SECTION HAS ENGAGED IN AN UNFAIR OR  
38 DECEPTIVE TRADE PRACTICE UNDER TITLE 13, SUBTITLE 3 OF THE COMMERCIAL  
39 LAW ARTICLE AND, ON CONVICTION, IS SUBJECT TO THE REMEDIES AND PENALTIES  
40 PROVIDED UNDER TITLE 13, SUBTITLE 4 OF THE COMMERCIAL LAW ARTICLE.

1 15-1A-06.

2 (A) (1) A MANUFACTURER OF PRESCRIPTION DRUGS LOCATED IN THE  
3 STATE THAT SELLS PRESCRIPTION DRUGS IN THE STATE MAY APPEAL THE MAXIMUM  
4 PRICE OF A PRESCRIPTION DRUG ESTABLISHED UNDER § 15-1A-05 OF THIS SUBTITLE  
5 TO THE BOARD.

6 (2) A MANUFACTURER THAT APPEALS THE MAXIMUM PRICE BEARS THE  
7 BURDEN OF PROOF IN DEMONSTRATING THE NEED FOR AN EXEMPTION.

8 (3) THE FILING OF AN APPEAL DOES NOT DELAY THE IMPLEMENTATION  
9 OR EFFECTIVE DATES OF MAXIMUM PRICES IMPOSED BY THE BOARD.

10 (B) NOTWITHSTANDING ANY LAW PROTECTING THE MANUFACTURER FROM  
11 HAVING TO DISCLOSE THE INFORMATION, A MANUFACTURER OF PRESCRIPTION  
12 DRUGS THAT APPEALS A PRICE SET BY THE BOARD SHALL FULLY DISCLOSE TO THE  
13 BOARD ANY INFORMATION REGARDING THE PRODUCTION COSTS OF THE DRUG OR  
14 OTHER INFORMATION REQUESTED BY THE BOARD THAT IS RELEVANT TO THE  
15 APPEAL.

16 (C) THE FACTORS THAT THE BOARD MAY CONSIDER IN AN APPEAL INCLUDE:

17 (1) CIRCUMSTANCES WHICH HAVE CHANGED SINCE THE PRICE  
18 SCHEDULE WAS ADOPTED BY THE BOARD;

19 (2) THE REASONABLE COSTS OF PRODUCTION, DISTRIBUTION,  
20 MARKETING, AND RESEARCH;

21 (3) THE PROFIT THROUGH SALE AND THE PRICE CHARGED IN OTHER  
22 MARKETS FOR THE PRESCRIPTION DRUG;

23 (4) THE AVAILABILITY OF THE PRESCRIPTION DRUG, HOW ESSENTIAL  
24 THE DRUG IS TO THE HEALTH OF THE STATE'S CITIZENS, OR ANY OTHER FACTOR  
25 RELATED TO THE HEALTH AND SAFETY OF THE STATE'S RESIDENTS; AND

26 (5) ANY OTHER RELEVANT INFORMATION.

27 (D) IN ADDITION TO GRANTING AN EXEMPTION FROM THE PRICE SCHEDULE  
28 ON APPEAL BY A MANUFACTURER, THE BOARD MAY GRANT AN EXEMPTION ON ITS  
29 OWN INITIATIVE.

30 (E) A RULING BY THE BOARD ON AN APPEAL MAY BE APPEALED IN  
31 ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

32 15-1A-07.

33 (A) TO ASSIST IN THE DEVELOPMENT OF MAXIMUM DRUG PRICES AND THE  
34 DETERMINATIONS REQUIRED UNDER § 15-1A-05 OF THIS SUBTITLE, THE BOARD  
35 SHALL CONDUCT A SURVEY OF PRESCRIPTION DRUG PRICES ON OR BEFORE  
36 JANUARY 1 AND JULY 1 OF EACH YEAR.

1 (B) THE SURVEY SHALL INCLUDE THE FOLLOWING INFORMATION:

2 (1) CURRENT MANUFACTURER MAXIMUM PRICES OF PRESCRIPTION  
3 DRUGS SOLD IN THE STATE, AS SET BY THE BOARD UNDER THIS SUBTITLE;

4 (2) CURRENT WHOLESALE AND RETAIL MAXIMUM PRICES OF  
5 PRESCRIPTION DRUGS SOLD IN THE STATE, AS DETERMINED BY WHOLESALER AND  
6 RETAILER MARKUP;

7 (3) MANUFACTURER, WHOLESALE, AND RETAIL MAXIMUM PRICES FOR  
8 PRESCRIPTION DRUGS SOLD IN THE STATE FOR THE PREVIOUS 5 YEARS AT 6-MONTH  
9 INTERVALS;

10 (4) THE FEDERAL SUPPLY SCHEDULE FOR PHARMACEUTICALS AND  
11 DRUGS MAINTAINED BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS;

12 (5) ANY DRUG FORMULARY MAINTAINED BY THE CANADIAN  
13 GOVERNMENT OR ANY OF IT PROVINCES;

14 (6) CURRENT DATA REGARDING THE PRICES OF DRUGS OFFERED  
15 UNDER THE SHORT-TERM PRESCRIPTION DRUG SUBSIDY PLAN FOR MEDICARE PLUS  
16 CHOICE ELIGIBLE INDIVIDUALS LIVING IN MEDICALLY UNDERSERVED COUNTIES  
17 AND PORTIONS OF COUNTIES OPERATED UNDER SUBTITLE 6 OF THIS TITLE;

18 (7) CURRENT DATA REGARDING THE PRICES OF PRESCRIPTION DRUGS  
19 OFFERED UNDER THE MARYLAND COMPREHENSIVE STANDARD HEALTH BENEFIT  
20 PLAN ADOPTED BY THE MARYLAND HEALTH CARE COMMISSION AND OFFERED TO  
21 SMALL EMPLOYERS UNDER TITLE 15, SUBTITLE 12 OF THE INSURANCE ARTICLE; AND

22 (8) ANY OTHER INFORMATION CONCERNING PRESCRIPTION DRUG  
23 PRICES IN THE STATE OR NATION THAT THE BOARD CONSIDERS APPROPRIATE TO  
24 SURVEY.

25 (C) (1) WITHIN ONE MONTH OF COMPILING THE RESULTS OF A SURVEY  
26 PERFORMED UNDER THIS SECTION, THE BOARD SHALL REPORT THE RESULTS TO  
27 THE GOVERNOR, THE SECRETARY, THE MARYLAND HEALTH CARE COMMISSION, AND,  
28 SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE APPROPRIATE  
29 STANDING COMMITTEES OF THE GENERAL ASSEMBLY.

30 (2) THE BOARD SHALL MAINTAIN A PUBLICLY ACCESSIBLE SITE ON THE  
31 INTERNET AND SHALL POST THE RESULTS OF EACH SURVEY CONDUCTED UNDER  
32 THIS SECTION WITHIN ONE MONTH OF REPORTING THE RESULTS TO THE GOVERNOR  
33 AND THE GENERAL ASSEMBLY.

34 (D) THE BOARD SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

35 15-1A-08.

36 (A) THE BOARD SHALL DRAFT A PLAN THAT INCLUDES EMERGENCY  
37 MEASURES TO BE IMPLEMENTED BY THE GOVERNOR IF THE BOARD DETERMINES

1 THAT THERE IS A SEVERE SHORTAGE OF, OR LOSS OF ACCESS TO, PRESCRIPTION  
2 DRUGS IN THE STATE THAT THREATENS OR ENDANGERS THE HEALTH OR WELFARE  
3 OF THE PUBLIC.

4 (B) IF, AFTER A SURVEY CONDUCTED UNDER § 10-1A-07 OF THIS SUBTITLE,  
5 THE BOARD DETERMINES THAT EMERGENCY MEASURES MUST BE IMPLEMENTED,  
6 THE BOARD SHALL PROVIDE THE GOVERNOR WITH THE PLAN AND PETITION THE  
7 GOVERNOR TO IMPLEMENT THE EMERGENCY MEASURES.

8 15-1A-09.

9 (A) IN CARRYING OUT ITS DUTIES UNDER THIS SUBTITLE, THE BOARD MAY:

10 (1) COLLECT FROM ANY MANUFACTURER, WHOLESALER, OR RETAILER  
11 OF PRESCRIPTION DRUGS LOCATED IN THIS STATE, FOR DRUGS SOLD IN THIS STATE,  
12 ANY INFORMATION NECESSARY TO CARRY OUT THE BOARD'S DUTIES UNDER THIS  
13 SUBTITLE, INCLUDING ANY DATA, STATISTICS, SCHEDULES, OR INFORMATION;

14 (2) EXAMINE ANY BOOKS, ACCOUNTS, AND DOCUMENTS OF ANY  
15 MANUFACTURER, WHOLESALER, OR RETAILER OF PRESCRIPTION DRUGS LOCATED IN  
16 THIS STATE FOR DRUGS SOLD IN THIS STATE;

17 (3) SUBPOENA WITNESSES AND DOCUMENTS AND EXAMINE THOSE  
18 SUBPOENAED WITNESSES AND DOCUMENTS ON ALL MATTERS OVER WHICH THE  
19 BOARD HAS JURISDICTION;

20 (4) ADOPT REGULATIONS IN ADDITION TO THOSE REQUIRED UNDER §  
21 15-1A-07(D) OF THIS SUBTITLE, INCLUDING REGULATIONS DESIGNATING  
22 INFORMATION COLLECTED BY THE BOARD AS PUBLIC INFORMATION OR AS  
23 PROPRIETARY INFORMATION THAT MAY NOT BE DISCLOSED TO ANY PERSON OTHER  
24 THAN THE BOARD OR ITS STAFF, OR TO THE ATTORNEY GENERAL FOR LAW  
25 ENFORCEMENT PURPOSES;

26 (5) ENTER INTO AGREEMENTS WITH OTHER STATES AND WITH THE  
27 CANADIAN GOVERNMENT OR ANY OF ITS PROVINCES FOR THE PURPOSE OF  
28 MAINTAINING FAIR AND UNIFORM PRESCRIPTION DRUG PRICES AND ENSURING  
29 MAXIMUM ACCESS TO AFFORDABLE PRESCRIPTION DRUGS; AND

30 (6) EXPLORE REGIONAL STRATEGIES AND PURCHASING ALLIANCES TO  
31 BENEFIT THE PEOPLE OF THE STATE.

32 (B) THE BOARD SHALL REPORT ANNUALLY TO THE GOVERNOR, THE  
33 DEPARTMENT, THE MARYLAND HEALTH CARE COMMISSION, AND, SUBJECT TO §  
34 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE APPROPRIATE STANDING  
35 COMMITTEES OF THE GENERAL ASSEMBLY ON:

36 (1) THE RESULTS OF ANY EFFORTS TO DEVELOP REGIONAL STRATEGIES  
37 AND PURCHASING ALLIANCES; AND

1 (2) ANY RECOMMENDATIONS FOR ENTERING INTO REGIONAL  
2 STRATEGIES AND PURCHASING ALLIANCES.

3 (C) IN PERFORMING ITS DUTIES UNDER THIS SUBTITLE, THE BOARD SHALL  
4 WORK COOPERATIVELY WITH THE DEPARTMENT, THE STATE BOARD OF PHARMACY,  
5 THE MARYLAND HEALTH CARE COMMISSION, AND THE MARYLAND INSURANCE  
6 ADMINISTRATION.

7 15-1A-10.

8 EACH HEALTH CARE PROVIDER LICENSED BY THE STATE SHALL EXAMINE THE  
9 APPLICABILITY OF PHARMACEUTICAL MANUFACTURER PATIENT ASSISTANCE  
10 PROGRAMS AND PRESCRIPTION DRUG ASSISTANCE PROGRAMS PROVIDED BY THE  
11 STATE TO EACH PATIENT OF THE HEALTH CARE PROVIDER AND, IF THOSE  
12 PROGRAMS WOULD BE OF ASSISTANCE TO THE PATIENT, PROVIDE THE APPROPRIATE  
13 INFORMATION TO THE PATIENT TO INCREASE THE PATIENT'S ACCESS TO  
14 REASONABLY PRICED PRESCRIPTION DRUGS AND LOWER THE COST OF THE  
15 PATIENT'S PRESCRIBED DRUGS.

16 15-1A-11.

17 (A) (1) THERE IS A MARYLAND PRESCRIPTION DRUG FAIR PRICING FUND IN  
18 THE DEPARTMENT.

19 (2) THE MONEYS IN THE FUND ARE USED TO SUPPLEMENT THE  
20 FUNDING LEVELS OF:

21 (I) THE MARYLAND PHARMACY ASSISTANCE PROGRAM; AND

22 (II) THE SHORT-TERM PRESCRIPTION DRUG SUBSIDY PLAN FOR  
23 MEDICARE PLUS CHOICE ELIGIBLE INDIVIDUALS LIVING IN MEDICALLY  
24 UNDERSERVED COUNTIES AND PORTIONS OF COUNTIES OPERATED UNDER  
25 SUBTITLE 6 OF THIS TITLE.

26 (B) THE FUND IS A NONLAPSING, REVOLVING FUND.

27 (C) ON OR BEFORE FEBRUARY 1 OF EACH YEAR, THE DEPARTMENT OF  
28 MANAGEMENT AND BUDGET SHALL FORWARD TO THE SECRETARY, FOR PLACEMENT  
29 IN THE FUND, AN AMOUNT EQUAL TO ANY SAVINGS THAT ARE REALIZED AS A  
30 RESULT OF THE IMPLEMENTATION OF THIS SUBTITLE DUE TO A DECREASE IN THE  
31 COSTS OF THE PRESCRIPTION DRUG INSURANCE PLAN PROVIDED TO STATE  
32 EMPLOYEES AND RETIREES.

33 (D) ON OR BEFORE MAY 1 OF EACH YEAR, THE SECRETARY SHALL DISTRIBUTE  
34 THE MONEYS IN THE FUND TO THE MARYLAND PHARMACY ASSISTANCE PROGRAM  
35 AND THE SHORT-TERM PRESCRIPTION DRUG SUBSIDY PLAN AS THE GOVERNOR AND  
36 THE SECRETARY DETERMINES THOSE MONEYS ARE NEEDED.

1 15-1A-12.

2 THIS SUBTITLE SHALL BE KNOWN AS THE MARYLAND PRESCRIPTION DRUG  
3 FAIR PRICING ACT.

4 SECTION 2. AND BE IT FURTHER ENACTED, That the initial appointments  
5 to the Maryland Prescription Drug Fair Pricing Board under § 15-1A-04 of the  
6 Health - General Article, as enacted by this Act, shall be made not later than October  
7 15, 2001. The Secretary of Health and Mental Hygiene shall call the first meeting of  
8 the Board not later than November 1, 2001.

9 SECTION 3. AND BE IT FURTHER ENACTED, That the terms of the initial  
10 appointed members of the Maryland Prescription Drug Fair Pricing Board who are  
11 not members of the General Assembly shall expire as follows:

- 12 (1) two members in 2002;
- 13 (2) two members in 2003; and
- 14 (3) three members in 2004.

15 SECTION 4. AND BE IT FURTHER ENACTED, That the Maryland  
16 Prescription Drug Fair Pricing Board shall submit its initial proposed regulations to  
17 the Joint Committee on Administrative, Executive, and Legislative Review, including  
18 its regulations establishing the initial schedule of prices for prescription drugs, by the  
19 emergency process provided under § 10-111(b) of the State Government Article, not  
20 later than September 1, 2002.

21 SECTION 5. AND BE IT FURTHER ENACTED, That the Secretary of Health  
22 and Mental Hygiene shall:

- 23 (1) investigate the ability of the federally qualified health centers  
24 authorized under 42 U.S.C. § 1395x(aa) to obtain lower priced prescription drugs  
25 under § 340B of the federal Public Health Service Act;
- 26 (2) investigate any barriers under State or federal law to obtaining lower  
27 cost drugs through that act; and
- 28 (3) report its findings by January 1, 2002 to the Maryland Prescription  
29 Drug Fair Pricing Board, the Governor, and, subject to § 2-1246 of the State  
30 Government Article, to the General Assembly.

31 SECTION 6. AND BE IT FURTHER ENACTED, That the provisions of this Act  
32 establishing maximum prices for prescription drugs do not apply to prices set under  
33 legally binding contracts entered into before October 1, 2001.

34 SECTION 7. AND BE IT FURTHER ENACTED, That this Act shall take effect  
35 October 1, 2001.