

BY: Environmental Matters Committee

AMENDMENTS TO SENATE BILL NO. 623

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “Manufacturer” in line 2 down through “Programs” in line 4 and substitute “Spending Control Program - Medical Care Programs Administration”; in line 9, strike “and to”; in the same line, strike “negotiate certain supplemental rebates”; in line 12, before “establishing” insert “authorizing the Department to negotiate certain supplemental rebates;”; in line 13, after “developing” insert “recommendations for”; strike beginning with the comma in line 20 down through “Committee” in line 22; and strike beginning with “requiring” in line 23 down through “criteria;” in line 25.

On page 2, strike beginning with “prohibiting” in line 1 down through “medications;” in line 2; in line 2, after “Department” insert “to provide a certain reimbursement to pharmacists under certain circumstances, to establish a certain hotline for responding to requests for prior authorization;”; in line 4, after “establish” insert “a”; in line 5, strike “processes” and substitute “process; requiring denials of prior authorization to be approved by an authorized prescriber; prohibiting the Department from establishing prior authorization requirements for certain medications; authorizing the Department to develop and implement certain drug benefit management programs”; and strike beginning with “requiring” in line 9 down through “programs” in line 34 and substitute “requiring that any savings achieved by the Department as a result of drug management and utilization programs be used for certain purposes; declaring the intent of the General Assembly regarding the establishment of a preferred drug list; authorizing the Department to implement certain measures to encourage the use of certain drugs on a preferred drug list; requiring the Department to work with certain representatives in establishing a prior authorization process; requiring the Department to consult with certain representatives to identify and implement certain cost containment measures; prohibiting the Department from taking certain actions; requiring the Department to implement certain cost containment measures under certain circumstances; requiring the Department to submit certain reports on or before certain dates; authorizing the Department of Budget and Management to examine certain methods of aggregating the State’s purchasing power for

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prescription drugs; requiring the Department of Budget and Management to submit a report on or before a certain date; defining certain terms; and generally relating to the prescription drug spending control program in the Department of Health and Mental Hygiene".

On page 3, strike in their entirety lines 1 through 10, inclusive.

AMENDMENT NO. 2

On page 4, in line 19, strike "OR NONPRESCRIPTION"; after line 22, insert:

"(4) "EMERGENCY" INCLUDES A SITUATION IN WHICH EMERGENCY SERVICES, AS DEFINED IN § 19-701(D) OF THIS ARTICLE, ARE PROVIDED.";

in line 27, strike "(5)" and substitute "(6)"; in line 30, strike "(6)" and substitute "(7)"; after line 33, insert:

"(8) "PREFERRED DRUG LIST" MEANS A LIST OF DRUGS NOT SUBJECT TO PRIOR AUTHORIZATION.";

in line 23, strike "(4)" and substitute "(5)"; and strike in their entirety lines 34 through 36, inclusive.

AMENDMENT NO. 3

On page 5, strike in their entirety lines 1 and 2; in line 3, strike "PROGRAM RECIPIENTS ENROLLED IN" and substitute "DRUGS COVERED BY"; strike beginning with the comma in line 5 down through the comma in line 6; strike beginning with the first comma in line 7 down through "PROGRAM" in line 8 and substitute "AND MPAP"; and strike in their entirety lines 15 through 18, inclusive, and substitute:

"(D) THE DEPARTMENT MAY NEGOTIATE SUPPLEMENTAL REBATES FROM MANUFACTURERS FOR THE PROGRAM AND MPAP."

On page 6, strike beginning with the period in line 18 down through "(F)" in line 22 and substitute "(E)"; strike beginning with "MAY" in line 23 down through "SECTION" in line 25 and substitute ", TO THE EXTENT POSSIBLE, MAY ELECT TO RECEIVE THE FOLLOWING PROGRAM BENEFITS THAT OFFSET A MEDICAID OR MPAP EXPENDITURE"; and in line

35, after “COUNSELING;” insert “AND”.

On page 7, strike beginning with “AND” in line 2 down through “ABUSE” in line 3 and substitute “(5)”; in line 3, after “INITIATIVES” insert “TO PREVENT FRAUD AND ABUSE”; in line 4, strike “(5)” and substitute “(6)”; and in line 13, strike “(G)” and substitute “(F)”.

AMENDMENT NO. 4

On page 7, in lines 19, 21, 27, 29, and 31, in each instance, strike “LICENSED MARYLAND”; in lines 20 and 22, in each instance, strike “IN THE STATE” and substitute “LICENSED IN MARYLAND”; in lines 27 and 31, in each instance, after “PHYSICIANS” insert “LICENSED IN MARYLAND”; and in lines 29 and 32, in each instance, after “PHARMACISTS” insert “LICENSED IN MARYLAND”.

AMENDMENT NO. 5

On page 8, in line 20, after the second “THE” insert “CLINICAL EFFICACY OF THE DRUG, INCLUDING”; in line 25, after “PRODUCT;” insert “AND”; and strike beginning with the semicolon in line 28 down through the colon in line 35 and substitute a period.

On page 9, strike in their entirety lines 1 through 17, inclusive; in lines 20 and 23, in each instance, strike “, MPAP, AND STATE PRESCRIPTION DRUG PROGRAM” and substitute “AND MPAP”; and in lines 28 and 37, strike “(H)” and “(I)”, respectively, and substitute “(G)” and “(H)”, respectively.

On page 10, in line 6, strike “SHALL”; in line 7, after “(I)” insert “SHALL”; in line 8, strike “AND”; in line 9, after “(II)” insert “SHALL”; in line 11, strike “TWO” and substitute “FOUR”; in line 12, after “ADMINISTRATION” insert “; AND”

(III) MAY NOT LIMIT OR EXCLUDE COVERAGE OF A DRUG COMMONLY USED IN PEDIATRIC PATIENTS SOLELY ON THE BASIS THAT THE DRUG HAS NOT BEEN TESTED OR APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION FOR PEDIATRIC USE”;

in line 13, strike “(J)” and substitute “(I)”; in line 14, strike “AND (5)” and substitute “(5), AND (6)”; in line 31, strike “AND”; and in line 33, after “(AIDS)” insert “;”

(III) END-STAGE RENAL DISEASE; AND

(IV) ANY OTHER CONDITION OR ILLNESS AS RECOMMENDED BY THE COMMITTEE”.

On page 11, in line 1, after “TO” insert “AND RESOLVES”; in line 5, after “(II)” insert “1.”; in the same line, strike “72-HOUR”; in the same line, after “DRUG” insert “EQUAL TO THE SUPPLY SPECIFIED IN THE PRESCRIPTION, NOT INCLUDING REFILLS.”; in line 7, after “HOURS;” insert “AND

2. THE DEPARTMENT REIMBURSES A PHARMACIST FOR DRUGS DISPENSED IN AN EMERGENCY OR WHEN THE DEPARTMENT DOES NOT PROVIDE A RESPONSE WITHIN 24 HOURS;”;

in line 14, strike “REQUESTS FOR” and substitute “DENIALS OF”; after line 15, insert:

“(4) THE DEPARTMENT SHALL ESTABLISH A 24-HOUR TELEPHONE HOTLINE FOR THE PURPOSE OF RESPONDING TO REQUESTS FOR PRIOR AUTHORIZATION. “;

in line 16, strike “(4)” and substitute “(5)”; after line 22, insert:

“(III) THE DEPARTMENT MAY CONTRACT WITH A THIRD PARTY ADMINISTRATOR TO CONDUCT APPEALS UNDER THIS SECTION.”;

in line 23, strike “(5)” and substitute “(6)”; and in line 28, strike “(K)” and substitute “(J)”.

On page 12, in line 15, strike “(L)” and substitute “(K)”; after line 19, insert:

“(L) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY SAVINGS ACHIEVED BY THE DEPARTMENT AS A RESULT OF DRUG MANAGEMENT AND UTILIZATION PROGRAMS SHALL BE USED AS FOLLOWS:

(1) PRIORITY SHALL BE GIVEN TO THE REIMBURSEMENT OF PROVIDERS FOR THE ENTIRE AMOUNT OF THE PROGRAM FEE FOR OUTPATIENT MENTAL HEALTH TREATMENT FOR DUALY-ELIGIBLE INDIVIDUALS, INCLUDING:

(I) ANY AMOUNT ORDINARILY WITHHELD AS A PSYCHIATRIC EXCLUSION; AND

(II) ANY COPAYMENT NOT COVERED UNDER MEDICARE; AND

(2) ANY ADDITIONAL SAVINGS ACHIEVED SHALL BE USED TO:

(I) OFFSET THE COST OF PRESCRIPTION DRUGS IN THE PROGRAM OR MPAP; OR

(II) FUND THE MARYLAND PHARMACY DISCOUNT PROGRAM AS AUTHORIZED BY CHAPTERS 134 AND 135 OF THE ACTS OF 2001.”;

and strike beginning with “THE” in line 22 down through “MPAP” in line 24 and substitute “:

(1) (I) THE COST CONTAINMENT MEASURES IMPLEMENTED UNDER THIS SECTION;

(II) THEIR EFFECT ON PRESCRIPTION DRUG EXPENDITURES IN THE PROGRAM AND MPAP;

(III) THE AMOUNT OF SAVINGS ACHIEVED THROUGH THE IMPLEMENTATION OF COST CONTAINMENT MEASURES; AND

(IV) THE USES FOR WHICH THE SAVINGS ACHIEVED WERE EXPENDED IN ACCORDANCE WITH SUBSECTION (L) OF THIS SECTION; AND

(2) THE FEDERAL WAIVERS AND PROGRAM PLAN AMENDMENTS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION, INCLUDING:

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(I) THE FEDERAL WAIVERS AND PROGRAM PLAN AMENDMENTS SOUGHT BY THE DEPARTMENT; AND

(II) IF APPLICABLE, AN EXPLANATION AS TO WHY ANY FEDERAL WAIVERS AND PROGRAM PLAN AMENDMENTS IDENTIFIED AS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION WERE NOT SOUGHT BY THE DEPARTMENT”.

AMENDMENT NO. 6

On pages 12 through 17, strike in their entirety the lines beginning with line 25 on page 12 through line 36 on page 17, inclusive, and substitute:

“SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that, in making recommendations for the establishment of a preferred drug list pursuant to this Act, the Pharmaceutical and Therapeutics Committee established under § 15-118.1 of the Health - General Article as enacted by this Act shall:

(1) in addition to the clinical efficacy and cost-effectiveness of a particular drug therapy, consider the impact of a drug therapy’s use on total health care costs, including hospitalization, physician services, and ancillary services;

(2) take into account the needs of program recipients, such as ease of drug therapy administration, rate of compliance with drug therapy instructions, and access to transportation;

(3) make recommendations to the Department of Health and Mental Hygiene on the types of drugs and dosage amounts that should be made available to program recipients on an emergency basis, without the need for prior authorization or in the event prior authorization cannot be readily obtained;

(4) make recommendations to the Department of Health and Mental Hygiene on the duration of a prior authorization approval; and

(5) consistent with the provisions of this Act regarding membership, be comprised of

individuals having experience with the needs of program recipients, including individuals with experience in the following areas:

- (i) pediatrics;
- (ii) geriatrics;
- (iii) long-term care;
- (iv) the State's Medical Assistance Program, including HealthChoice;
- (v) a pharmaceutical and therapeutics committee of a hospital;
- (vi) a pharmaceutical and therapeutics committee of a pharmacy benefit manager;
- (vii) mental health; and
- (viii) emergency medicine.

SECTION 3. AND BE IT FURTHER ENACTED, That the Department of Health and Mental Hygiene may implement measures to encourage the use of medically appropriate generic drugs and those brand name drugs on a preferred drug list, including:

(1) the use of tiered copayments for Medicaid and the Maryland Pharmacy Assistance Program provided that the amounts set for those copayments do not result in an increase in total copayment collections;

(2) the use of differential dispensing fees to pharmacies provided that the amounts set for those dispensing fees remains revenue neutral;

(3) the use of consultation payments to pharmacies, similar to those used in the State Employee Health Benefits Plan, to encourage communication between patients, prescribers, and pharmacists regarding cost-effective drug therapies; and

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(4) the implementation of education programs on the use of preferred drugs for prescribers that participate in the Medicaid and Maryland Pharmacy Assistance Programs.

SECTION 4. AND BE IT FURTHER ENACTED, That the Department of Health and Mental Hygiene, in establishing the prior authorization process required under this Act, shall work with representatives of the pharmaceutical and pharmacy industries, authorized prescribers, and patient advocates to ensure the process is not unduly burdensome on prescribers, pharmacists, or program recipients and participants. It is the intent of the General Assembly that prior authorization not be used as the exclusive tool for compliance with the preferred drug list.

SECTION 5. AND BE IT FURTHER ENACTED, That:

(1) the Department of Health and Mental Hygiene shall consult with representatives of the pharmaceutical and pharmacy industries, authorized prescribers, and patient advocates to identify and implement alternative cost containment measures.

(2) (i) the Department of Health and Mental Hygiene may not implement a reduction in the pharmacy reimbursement rate until October 1, 2002.

(ii) the Department of Health and Mental Hygiene may not increase the total copayment collection from enrollees in the Medicaid program, including enrollees in managed care organizations.

(3) on or before October 1, 2002, if additional cost savings obtained as a result of alternative cost containment measures are not sufficient to ensure that on an annualized basis the pharmacy cost containment assumed in the fiscal 2003 budget will be achieved, the Department of Health and Mental Hygiene shall implement cost containment measures with respect to pharmacy reimbursement in a manner that achieves the level of savings that would have been achieved if the pharmacy reimbursement reduction took effect on July 1, 2002.

(4) on or before October 1, 2002, the Department of Health and Mental Hygiene shall report in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee, the Senate Budget and Taxation Committee, the House Economic Matters Committee,



and the House Environmental Matters Committee on the measures that have been taken to identify and implement alternative cost containment measures and the projected cost savings attributed to these measures.

(5) on or before October 1, 2002, the Department of Health and Mental Hygiene shall report, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee, the Senate Budget and Taxation Committee, the House Economic Matters Committee, and the House Environmental Matters Committee on the pharmacy dispensing fee for the Medicaid and Maryland Pharmacy Assistance Programs. In preparing the report, the Department of Health and Mental Hygiene shall consult with representatives from the community and independent pharmacies. The report may include the following:

(i) an analysis of the dispensing fee structure in other states;

(ii) an analysis of current reports and literature concerning dispensing fees in state prescription drug programs; and

(iii) a review of industry supplied surveys concerning the time and associated costs of dispensing.

SECTION 6. AND BE IT FURTHER ENACTED, That the Department of Budget and Management may examine and implement appropriate methods of aggregating the State's purchasing power for prescription drugs, including participation in a multi-state prescription drug purchasing program, in order to maximize volume discounts on the cost of prescription drugs. On or before December 1, 2002, the Department of Budget and Management shall, in accordance with § 2-1246 of the State Government Article, report to the Senate Finance Committee, the Senate Budget and Taxation Committee, the House Environmental Matters Committee, and the House Economic Matters Committee, on the efforts of the Department of Budget and Management to aggregate the State's purchasing power for prescription drugs and any savings achieved."

On page 17, in line 37, strike "3." and substitute "7.".