

SENATE BILL 676

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2003 Regular Session
3lr2428
CF HB 363

By: **Senator Gladden**
Introduced and read first time: February 13, 2003
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Assistance Program - Prior Authorization - Mental**
3 **Health Drugs**

4 FOR the purpose of prohibiting the Department of Health and Mental Hygiene from
5 establishing, within certain pharmacy assistance programs in the Maryland
6 Medical Assistance Program, prior authorization requirements or restrictions on
7 coverage for certain drugs used to treat mental illness and brain disorders;
8 providing for the application of this Act; requiring the Department to consider
9 the implementation of certain programs on psychiatric drug costs; making
10 certain stylistic changes; and generally relating to the Maryland Medical
11 Assistance Program and drugs for mental illness and brain disorders.

12 BY repealing and reenacting, without amendments,
13 Article - Health - General
14 Section 15-101(a) and (i)
15 Annotated Code of Maryland
16 (2000 Replacement Volume and 2002 Supplement)

17 BY adding to
18 Article - Health - General
19 Section 15-118.1
20 Annotated Code of Maryland
21 (2000 Replacement Volume and 2002 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article - Health - General
24 Section 15-124 and 15-124.1
25 Annotated Code of Maryland
26 (2000 Replacement Volume and 2002 Supplement)

1 Preamble

2 WHEREAS, Unrestricted access to psychiatric medications is critical to the
3 successful treatment of mental illnesses and brain disorders; and

4 WHEREAS, The implementation of preferred drug lists, formularies, and prior
5 authorization programs in other states has been documented to result in a
6 deterioration of patient care and increased psychiatric hospitalization; and

7 WHEREAS, A cost containment program that results in increased
8 hospitalization will not save money for the State of Maryland but simply transfer
9 costs to other areas of the State budget; and

10 WHEREAS, The human costs of restricting access to psychiatric medications
11 far exceed the potential financial savings to the State of Maryland; and

12 WHEREAS, Legislation introduced during the 2002 Session of the Maryland
13 General Assembly prohibiting the Department of Health and Mental Hygiene from
14 establishing prior authorization requirements or restricting coverage for medications
15 used to treat mental illnesses and brain disorders in the Maryland Medical Assistance
16 Program passed the Maryland House of Delegates and the Senate of Maryland; now,
17 therefore,

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

20 **Article - Health - General**

21 15-101.

22 (a) In this title the following words have the meanings indicated.

23 (i) "Program" means the Maryland Medical Assistance Program.

24 15-118.1.

25 (A) (1) THIS SECTION DOES NOT APPLY TO DRUGS COVERED BY MANAGED
26 CARE ORGANIZATIONS UNDER § 15-103 OF THIS SUBTITLE.

27 (2) THIS SECTION APPLIES TO THE MARYLAND PHARMACY ASSISTANCE
28 PROGRAM DEVELOPED UNDER § 15-124 OF THIS SUBTITLE, THE MARYLAND
29 PHARMACY DISCOUNT PROGRAM DEVELOPED UNDER § 15-124.1 OF THIS SUBTITLE,
30 AND ANY OTHER PHARMACY ASSISTANCE PROGRAM DEVELOPED BY THE
31 DEPARTMENT.

32 (B) THE DEPARTMENT MAY NOT ESTABLISH PRIOR AUTHORIZATION
33 REQUIREMENTS OR RESTRICT COVERAGE FOR DRUGS USED TO TREAT MENTAL
34 ILLNESS AND BRAIN DISORDERS, INCLUDING:

35 (1) ATYPICAL ANTIPSYCHOTIC MEDICATIONS;

- 1 (2) CONVENTIONAL ANTIPSYCHOTIC MEDICATIONS;
2 (3) ACTIVE SEROTONIN RE-UPTAKE INHIBITORS;
3 (4) ATYPICAL ANTIDEPRESSANTS; AND
4 (5) DRUGS TO TREAT EPILEPSY AND OTHER CENTRAL NERVOUS SYSTEM
5 BRAIN DISORDERS.

6 (C) THE DEPARTMENT SHALL CONSIDER:

7 (1) IMPLEMENTATION OF A QUALITY IMPROVEMENT PROGRAM ON
8 PSYCHIATRIC DRUG COSTS THAT ADDRESSES POLYPHARMACY AND PRESCRIBING
9 PATTERNS; AND

10 (2) PHYSICIAN EDUCATION INITIATIVES ON PSYCHIATRIC DRUG COSTS,
11 INCLUDING AN ANNUAL CIRCULATION OF A DRUG PRICING LIST TO PHYSICIANS
12 PARTICIPATING IN THE PROGRAM.

13 15-124.

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

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

19 (ii) Gross annual income does not exceed:

20 1. \$4,600 plus \$500 for each individual over 1 in a family
21 unit; and

22 2. An annual increase set by the Secretary under paragraph
23 (2)(ii)4 of this subsection.

24 (2) (i) 1. In this paragraph the following words have the meanings
25 indicated.

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

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

31 (ii) For the purpose of paragraph (1) of this subsection, the
32 Secretary shall:

- 1 1. In order to determine eligibility for the Maryland
2 Pharmacy Assistance Program, deduct any income disregards from the countable
3 gross income of a unit that contains a disabled individual;
- 4 2. Define excluded assets;
- 5 3. Establish a family unit structure; and
- 6 4. Beginning July 1, 1985, increase annually at the time
7 Social Security benefits are increased, rounded to the next highest even \$50 level, the
8 income level within which an individual is eligible for benefits under the Maryland
9 Pharmacy Assistance Program by the larger of:
- 10 A. The percentage by which benefits under Title II of the
11 Social Security Act (42 U.S.C. 401-433) are increased by the federal government due
12 to cost-of-living changes as that percentage is reported in the Federal Register
13 pursuant to 42 U.S.C. 415(I)(2)(D) but not to exceed 8 percent; or
- 14 B. The dollar amount by which the medical assistance income
15 schedules are increased by the State.
- 16 (b) (1) (i) Reimbursement under the Maryland Pharmacy Assistance
17 Program may be limited to maintenance drugs, anti-infectives, and AZT as specified
18 in regulations to be issued by the Secretary after consultation with the Maryland
19 Pharmacists Association.
- 20 (ii) 1. For any drug on the Program's interchangeable drug list,
21 the Program shall reimburse providers in an amount not more than it would
22 reimburse for the drug's generic equivalent, unless the individual's physician states,
23 in his or her own handwriting, on the face of the prescription, that a specific brand is
24 "medically necessary" for the particular patient.
- 25 2. If an appropriate generic drug is not generally available,
26 the Department may waive the reimbursement requirement under
27 sub-subparagraph 1 of this subparagraph.
- 28 (2) The reimbursement shall be up to the amount paid for the same
29 items or services under the pharmacy program of the Maryland Medical Assistance
30 Program and shall be subject to a copayment of not more than \$5.00 for each covered
31 item or service.
- 32 (c) (1) Except as provided under paragraph (4) of this subsection and unless
33 the change is made by an emergency regulation, the Maryland Pharmacy Assistance
34 Program shall notify all pharmacies under contract with the Program in writing of
35 changes in the Pharmaceutical Benefit Program rules or requirements at least 30
36 days before the change is effective.
- 37 (2) Changes that require 30 days' advance written notice under
38 paragraph (1) of this subsection are:

1 (i) Exclusion of coverage for classes of drugs as specified by
2 contract;

3 (ii) Changes in prior or preauthorization procedures; and

4 (iii) Selection of new prescription claims processors.

5 (3) If the Maryland Pharmacy Assistance Program fails to provide
6 advance notice as required under paragraph (1) of this subsection, it shall honor and
7 pay in full any claim under the Program rules or requirements that existed before the
8 change for 30 days after the postmarked date of the notice.

9 (4) Notwithstanding any other provision of law, the notice requirements
10 of this subsection do not apply to the addition of new generic drugs authorized under
11 § 12-504 of the Health Occupations Article.

12 (d) (1) The Secretary shall adopt rules and regulations that authorize the
13 denial, restriction, or termination of eligibility for recipients who have abused
14 benefits under the Maryland Pharmacy Assistance Program.

15 (2) As a condition of participation, the Department may require
16 Maryland Pharmacy Assistance Program participants to apply for eligibility in the
17 Maryland Medical Assistance Program within 60 days of notification to do so by the
18 Department.

19 (3) The rules and regulations shall require that the recipient be given
20 notice and an opportunity for a hearing before eligibility may be denied, restricted, or
21 terminated under this subsection.

22 (E) PRIOR AUTHORIZATION PROCEDURES OR RESTRICTIONS ON COVERAGE
23 DEVELOPED FOR THE MARYLAND PHARMACY ASSISTANCE PROGRAM SHALL BE
24 DEVELOPED IN ACCORDANCE WITH § 15-118.1 OF THIS SUBTITLE.

25 [(e)] (F) The Secretary shall develop a program, in consultation with
26 appropriate agencies, that will provide information to ineligible Maryland Pharmacy
27 Assistance Program applicants regarding other programs that they may be eligible
28 for including the Maryland Medbank Program established under § 15-124.2 of this
29 subtitle and the short-term prescription drug subsidy plan established under Subtitle
30 6 of this title.

31 15-124.1.

32 (a) (1) In this section the following words have the meanings indicated:

33 (2) "Enrollee" means an individual who is enrolled in the Maryland
34 Pharmacy Discount Program.

35 (3) "Program" means the Maryland Pharmacy Discount Program
36 established under this section.

1 (b) There is a Maryland Pharmacy Discount Program within the Maryland
2 Medical Assistance Program.

3 (c) The purpose of the Program is to improve the health status of Medicare
4 beneficiaries who lack prescription drug coverage by providing access to lower cost,
5 medically necessary, prescription drugs.

6 (d) The Program shall be administered and operated by the Department as
7 permitted by federal law or waiver.

8 (e) (1) The Program shall be open to Medicare beneficiaries who lack other
9 public or private prescription drug coverage.

10 (2) Notwithstanding paragraph (1) of this subsection, enrollment in the
11 Maryland Medbank Program established under § 15-124.2 of this subtitle or the
12 Maryland Pharmacy Assistance Program established under § 15-124 of this subtitle
13 does not disqualify an individual from being eligible for the Program.

14 (f) (1) Subject to subsection (g) of this section, an enrollee may purchase
15 medically necessary prescription drugs that are covered under the Maryland Medical
16 Assistance Program from any pharmacy that participates in the Maryland Medical
17 Assistance Program at a price that is based on the price paid by the Maryland
18 Medical Assistance Program, minus the aggregate value of any federally mandated
19 manufacturers' rebates.

20 (2) Subject to subsection (g) of this section, and to the extent authorized
21 under federal waiver, an enrollee whose annual household income is at or below 175
22 [percent] % of the federal poverty guidelines may receive a discount subsidized by the
23 Department that is equal to 35 [percent] % of the price paid by the Maryland Medical
24 Assistance Program for each medically necessary prescription drug purchased under
25 the Program.

26 (g) The Department may establish mechanisms to:

27 (1) Recover the administrative costs of the Program;

28 (2) Reimburse participating pharmacies in an amount equal to the
29 Maryland Medical Assistance price, minus the copayment paid by the enrollee for
30 each prescription filled under the Program; and

31 (3) Allow participating pharmacies to collect a \$1 processing fee, in
32 addition to any authorized dispensing fee, for each prescription filled for an enrollee
33 under the Program.

34 (H) PRIOR AUTHORIZATION PROCEDURES OR RESTRICTIONS ON COVERAGE
35 DEVELOPED FOR THE PROGRAM SHALL BE DEVELOPED IN ACCORDANCE WITH §
36 15-118.1 OF THIS SUBTITLE.

37 [(h)] (I) The Secretary shall adopt regulations to implement the Program.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2003.