
By: **Delegate Rudolph**

Introduced and read first time: February 9, 2004

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Pharmacy Benefits Managers**

3 FOR the purpose of requiring a pharmacy benefits manager to perform in accordance
4 with certain standards of care and in the interest of certain persons entitled to
5 certain health benefits; establishing certain duties and obligations of pharmacy
6 benefits managers; requiring pharmacy benefits managers to provide certain
7 information and certain notice under certain circumstances; authorizing a
8 pharmacy benefits manager to make a certain drug substitution after
9 consultation with the prescribing health care provider; requiring a pharmacy
10 benefits manager to disclose certain information and obtain certain approval
11 prior to a drug substitution; requiring the pharmacy benefits manager to pass
12 on certain payments to certain persons; authorizing the pharmacy benefits
13 manager to designate certain information as confidential and prohibiting the
14 disclosure of the confidential information except under certain circumstances;
15 prohibiting a pharmacy benefits manager from accepting or agreeing to an
16 obligation in a contract with certain persons that is inconsistent with the
17 fiduciary duties imposed by certain laws; providing that an agreement to waive
18 certain provisions is against public policy and void; providing for certain civil
19 penalties; defining certain terms; and generally relating to pharmacy benefits
20 managers.

21 BY adding to

22 Article - Insurance

23 Section 15-10E-01 through 15-10E-05, inclusive, to be under the new subtitle

24 "Subtitle 10E. Pharmacy Benefits Managers"

25 Annotated Code of Maryland

26 (2002 Replacement Volume and 2003 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

28 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Insurance**

2 SUBTITLE 10E. PHARMACY BENEFITS MANAGERS.

3 15-10E-01.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (B) "CARRIER" MEANS:

7 (1) AN INSURER;

8 (2) A NONPROFIT HEALTH SERVICE PLAN;

9 (3) A HEALTH MAINTENANCE ORGANIZATION;

10 (4) A DENTAL PLAN ORGANIZATION; OR

11 (5) ANY OTHER PERSON THAT PROVIDES HEALTH BENEFIT PLANS
12 SUBJECT TO REGULATION BY THE STATE.13 (C) "HEALTH CARE PROVIDER" MEANS A PERSON OR ENTITY LICENSED,
14 CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH OCCUPATIONS
15 ARTICLE OR THE HEALTH - GENERAL ARTICLE TO PROVIDE HEALTH CARE SERVICES.

16 (D) (1) "HEALTH BENEFIT PLAN" MEANS:

17 (I) A HOSPITAL OR MEDICAL POLICY OR CONTRACT, INCLUDING A
18 POLICY OR CONTRACT ISSUED UNDER A MULTIPLE EMPLOYER TRUST OR
19 ASSOCIATION;20 (II) A HOSPITAL OR MEDICAL POLICY OR CONTRACT ISSUED BY A
21 NONPROFIT HEALTH SERVICE PLAN;

22 (III) A HEALTH MAINTENANCE ORGANIZATION CONTRACT; OR

23 (IV) A DENTAL PLAN ORGANIZATION CONTRACT.

24 (2) "HEALTH BENEFIT PLAN" DOES NOT INCLUDE ONE OR MORE, OR ANY
25 COMBINATION OF, THE FOLLOWING:

26 (I) LONG-TERM CARE INSURANCE;

27 (II) DISABILITY INSURANCE;

28 (III) ACCIDENTAL TRAVEL AND ACCIDENTAL DEATH AND
29 DISMEMBERMENT INSURANCE;

30 (IV) CREDIT HEALTH INSURANCE;

1 (V) A HEALTH BENEFIT PLAN ISSUED BY A MANAGED CARE
2 ORGANIZATION, AS DEFINED IN TITLE 15, SUBTITLE 1 OF THE HEALTH - GENERAL
3 ARTICLE;

4 (VI) DISEASE-SPECIFIC INSURANCE; OR

5 (VII) FIXED INDEMNITY INSURANCE.

6 (E) "LABELER" MEANS A PERSON THAT RECEIVES PRESCRIPTION DRUGS
7 FROM A MANUFACTURER OR WHOLESALER AND REPACKAGES THOSE DRUGS FOR
8 LATER RETAIL SALE AND THAT HAS A LABELER CODE FROM THE FEDERAL FOOD
9 AND DRUG ADMINISTRATION UNDER 21 C.F.R., § 270.20 (1999).

10 (F) "MEMBER" MEANS A PERSON ENTITLED TO HEALTH CARE BENEFITS
11 UNDER A POLICY, PLAN, OR CERTIFICATE ISSUED OR DELIVERED IN THE STATE BY A
12 CARRIER.

13 (G) "PHARMACY" HAS THE MEANING STATED IN § 12-101 OF THE HEALTH
14 OCCUPATIONS ARTICLE.

15 (H) "PHARMACY BENEFITS MANAGEMENT" MEANS:

16 (1) THE PROCUREMENT OF PRESCRIPTION DRUGS AT A NEGOTIATED
17 RATE FOR DISPENSATION WITHIN THIS STATE TO MEMBERS;

18 (2) THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG
19 BENEFITS PROVIDED BY A CARRIER FOR THE BENEFIT OF MEMBERS; OR

20 (3) THE ADMINISTRATION OF ANY OF THE FOLLOWING SERVICES:

21 (I) MAIL SERVICE PHARMACY;

22 (II) CLAIMS PROCESSING, RETAIL NETWORK MANAGEMENT, OR
23 PAYMENT OF CLAIMS TO PHARMACIES FOR PRESCRIPTION DRUGS DISPENSED TO
24 MEMBERS;

25 (III) CLINICAL MANAGEMENT, FORMULARY DEVELOPMENT, AND
26 MANAGEMENT SERVICES;

27 (IV) REBATE CONTRACTING AND ADMINISTRATION;

28 (V) THERAPEUTIC INTERVENTION;

29 (VI) GENERIC SUBSTITUTION PROGRAMS; OR

30 (VII) DISEASE MANAGEMENT PROGRAMS.

31 (I) (1) "PHARMACY BENEFITS MANAGER" MEANS A PERSON THAT
32 ADMINISTERS THE PRESCRIPTION DRUG/DEVICE PORTION OF HEALTH INSURANCE
33 PLANS ON BEHALF OF PLAN SPONSORS, INCLUDING SELF-INSURED EMPLOYERS,
34 INSURERS, UNIONS, AND HEALTH MAINTENANCE ORGANIZATIONS.

1 (2) "PHARMACY BENEFITS MANAGER" INCLUDES A PERSON ACTING FOR
2 A PHARMACY BENEFITS MANAGER IN A CONTRACTUAL OR EMPLOYMENT
3 RELATIONSHIP IN THE PERFORMANCE OF PHARMACY BENEFITS MANAGEMENT FOR
4 A CARRIER.

5 15-10E-02.

6 (A) A PHARMACY BENEFITS MANAGER:

7 (1) SHALL PERFORM PHARMACY BENEFITS MANAGEMENT DUTIES WITH
8 CARE, SKILL, PRUDENCE, AND DILIGENCE, AND IN ACCORDANCE WITH THE
9 STANDARDS OF CARE ESTABLISHED BY THE PHARMACY BENEFITS MANAGEMENT
10 INDUSTRY;

11 (2) SHALL DISCHARGE PHARMACY BENEFITS MANAGEMENT DUTIES
12 SOLELY IN THE INTERESTS OF MEMBERS AND FOR THE PRIMARY PURPOSE OF
13 PROVIDING BENEFITS TO MEMBERS AND DEFRAYING REASONABLE COSTS OF
14 ADMINISTERING HEALTH BENEFIT PLANS;

15 (3) SHALL NOTIFY A MEMBER IN WRITING OF ANY ACTIVITY, POLICY, OR
16 PRACTICE OF THE PHARMACY BENEFITS MANAGER THAT DIRECTLY OR INDIRECTLY
17 PRESENTS ANY CONFLICT OF INTEREST WITH THE DUTIES IMPOSED BY THIS
18 SUBSECTION;

19 (4) SHALL PROVIDE TO A CARRIER ALL FINANCIAL AND UTILIZATION
20 INFORMATION REQUESTED BY THE CARRIER RELATING TO THE PROVISION OF
21 BENEFITS TO MEMBERS THROUGH THAT CARRIER AND ALL FINANCIAL AND
22 UTILIZATION INFORMATION RELATING TO SERVICES TO THAT CARRIER;

23 (5) (I) MAY SUBSTITUTE A LOWER PRICED GENERIC DRUG FOR A
24 HIGHER PRICED PRESCRIBED DRUG;

25 (II) MAY NOT SUBSTITUTE A HIGHER PRICED DRUG FOR A LOWER
26 PRICED PRESCRIPTION DRUG;

27 (III) SHALL CONSULT WITH THE PRESCRIBING HEALTH CARE
28 PROVIDER OR THAT PERSON'S AUTHORIZED REPRESENTATIVE WITH REGARD TO THE
29 DISPENSATION TO A MEMBER OF A SUBSTITUTE PRESCRIPTION DRUG FOR A
30 PRESCRIBED DRUG AND SHALL:

31 1. DISCLOSE THE COSTS OF BOTH DRUGS TO THE MEMBER
32 AND THE CARRIER AND ANY BENEFIT OR PAYMENT DIRECTLY OR INDIRECTLY
33 ACCRUING TO THE PHARMACY BENEFITS MANAGER AS A RESULT OF THE
34 SUBSTITUTION; AND

35 2. OBTAIN THE APPROVAL OF THE PRESCRIBING HEALTH
36 CARE PROVIDER OR THAT PERSON'S AUTHORIZED REPRESENTATIVE FOR THE
37 SUBSTITUTION; AND

1 (IV) SHALL TRANSFER IN FULL TO THE CARRIER OR MEMBER ANY
2 BENEFIT OR PAYMENT RECEIVED IN ANY FORM BY THE PHARMACY BENEFITS
3 MANAGER AS A RESULT OF THE PRESCRIPTION DRUG SUBSTITUTION;

4 (6) SHALL PASS ON TO THE CARRIER OR MEMBER ANY PAYMENT OR
5 BENEFIT RECEIVED FOR THE DISPENSATION OF PRESCRIPTION DRUGS BASED ON
6 VOLUME OF SALES WITHIN THE STATE FOR CERTAIN PRESCRIPTION DRUGS OR
7 CLASSES OR BRANDS OF DRUGS; AND

8 (7) SHALL DISCLOSE TO THE CARRIER ALL FINANCIAL TERMS AND
9 ARRANGEMENTS FOR REMUNERATION OF ANY KIND THAT APPLY BETWEEN THE
10 PHARMACY BENEFITS MANAGER AND ANY PRESCRIPTION DRUG MANUFACTURER OR
11 LABELER, INCLUDING FORMULARY MANAGEMENT AND DRUG-SWITCH PROGRAMS,
12 EDUCATION SUPPORT, CLAIMS PROCESSING AND PHARMACY NETWORK FEES THAT
13 ARE CHARGED FROM RETAIL PHARMACIES, AND DATA SALES FEES.

14 (B) (1) A PHARMACY BENEFITS MANAGER PROVIDING INFORMATION
15 UNDER SUBSECTION (A)(4) OF THIS SECTION MAY DESIGNATE THAT INFORMATION
16 AS CONFIDENTIAL.

17 (2) EXCEPT FOR DISCLOSURE MADE IN A COURT FILING, INFORMATION
18 DESIGNATED AS CONFIDENTIAL BY A PHARMACY BENEFITS MANAGER AND
19 PROVIDED TO A CARRIER UNDER SUBSECTION (A)(4) OF THIS SECTION MAY NOT BE
20 DISCLOSED TO ANY PERSON WITHOUT THE CONSENT OF THE PHARMACY BENEFITS
21 MANAGER.

22 15-10E-03.

23 A PHARMACY BENEFITS MANAGER MAY NOT ACCEPT OR AGREE TO AN
24 OBLIGATION IN A CONTRACT WITH A CARRIER, PRESCRIPTION DRUG
25 MANUFACTURER, OR LABELER THAT IS INCONSISTENT WITH THE FIDUCIARY DUTIES
26 IMPOSED BY STATE OR FEDERAL LAW.

27 15-10E-04.

28 ANY AGREEMENT TO WAIVE THE PROVISIONS OF THIS SUBTITLE IS AGAINST
29 PUBLIC POLICY AND VOID.

30 15-10E-05.

31 ANY PERSON WHO VIOLATES A PROVISION UNDER THIS SUBTITLE MAY BE
32 SUBJECT TO AN INJUNCTION AND A CIVIL FINE IN AN AMOUNT NOT TO EXCEED
33 \$10,000 PER VIOLATION, PLUS ANY COSTS OF SUIT, INCLUDING REASONABLE
34 INVESTIGATIVE COSTS, EXPERT FEES, AND ATTORNEY'S FEES.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
36 effect October 1, 2004.