

SB0724/607974/1

BY: Finance Committee

AMENDMENTS TO SENATE BILL 724
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Transparency” and substitute “Disclosures”; strike beginning with “requiring” in line 3 down through “date;” in line 12 and substitute “requiring certain pharmacy benefits managers to provide certain information and offer to provide a certain report to a certain purchaser before entering into a contract with the purchaser under certain circumstances; requiring a pharmacy benefits manager to provide certain reports to a certain purchaser under certain circumstances; providing that this Act does not diminish the authority of the Office of the Attorney General or the Maryland Insurance Commissioner to obtain and use certain information in certain proceedings; making certain provisions of law applicable to health maintenance organizations;”; and in line 16, strike “15–1609” and substitute “15–1605”.

AMENDMENT NO. 2

On pages 2 through 9, strike in their entirety the lines beginning with line 2 on page 2 through line 9 on page 9, inclusive, and substitute:

“15–1601.

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

(B) “BENEFICIARY” MEANS AN INDIVIDUAL WHO RECEIVES PRESCRIPTION DRUG COVERAGE OR BENEFITS FROM A PURCHASER.

(C) “ERISA” HAS THE MEANING STATED IN § 8-301 OF THIS ARTICLE.

(Over)

(D) (1) “MANUFACTURER PAYMENTS” MEANS ANY COMPENSATION OR REMUNERATION A PHARMACY BENEFITS MANAGER RECEIVES FROM OR ON BEHALF OF A PHARMACEUTICAL MANUFACTURER.

(2) “MANUFACTURER PAYMENTS” INCLUDES:

(I) PAYMENTS RECEIVED IN ACCORDANCE WITH AGREEMENTS WITH PHARMACEUTICAL MANUFACTURERS FOR FORMULARY PLACEMENT AND, IF APPLICABLE, DRUG UTILIZATION;

(II) REBATES, REGARDLESS OF HOW CATEGORIZED;

(III) MARKET SHARE INCENTIVES;

(IV) COMMISSIONS;

(V) FEES UNDER PRODUCTS AND SERVICES AGREEMENTS;

(VI) ANY FEES RECEIVED FOR THE SALE OF UTILIZATION DATA TO A PHARMACEUTICAL MANUFACTURER; AND

(VII) ADMINISTRATIVE OR MANAGEMENT FEES.

(3) “MANUFACTURER PAYMENTS” DOES NOT INCLUDE PURCHASE DISCOUNTS BASED ON INVOICED PURCHASE TERMS.

(E) “NONPROFIT HEALTH MAINTENANCE ORGANIZATION” HAS THE MEANING STATED IN § 6-121(A) OF THIS ARTICLE.

(F) (1) “PHARMACY BENEFITS MANAGEMENT SERVICES” MEANS:

(I) THE PROCUREMENT OF PRESCRIPTION DRUGS AT A NEGOTIATED RATE FOR DISPENSATION WITHIN THE STATE TO BENEFICIARIES;

(II) THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG COVERAGE PROVIDED BY A PURCHASER FOR BENEFICIARIES; AND

(III) ANY OF THE FOLLOWING SERVICES PROVIDED WITH REGARD TO THE ADMINISTRATION OF PRESCRIPTION DRUG COVERAGE:

1. MAIL SERVICE PHARMACY;
2. CLAIMS PROCESSING, RETAIL NETWORK MANAGEMENT, AND PAYMENT OF CLAIMS TO PHARMACIES FOR PRESCRIPTION DRUGS DISPENSED TO BENEFICIARIES;
3. CLINICAL FORMULARY DEVELOPMENT AND MANAGEMENT SERVICES;
4. REBATE CONTRACTING AND ADMINISTRATION;
5. PATIENT COMPLIANCE, THERAPEUTIC INTERVENTION, AND GENERIC SUBSTITUTION PROGRAMS; OR
6. DISEASE MANAGEMENT PROGRAMS.

(2) "PHARMACY BENEFITS MANAGEMENT SERVICES" DOES NOT INCLUDE ANY SERVICE PROVIDED BY A NONPROFIT HEALTH MAINTENANCE

(Over)

ORGANIZATION THAT OPERATES AS A GROUP MODEL, PROVIDED THAT THE SERVICE:

(I) IS PROVIDED SOLELY TO A MEMBER OF THE NONPROFIT HEALTH MAINTENANCE ORGANIZATION; AND

(II) IS FURNISHED THROUGH THE INTERNAL PHARMACY OPERATIONS OF THE NONPROFIT HEALTH MAINTENANCE ORGANIZATION.

(G) "PHARMACY BENEFITS MANAGER" MEANS A PERSON THAT PERFORMS PHARMACY BENEFITS MANAGEMENT SERVICES.

(H) "PROPRIETARY INFORMATION" MEANS:

(1) A TRADE SECRET;

(2) CONFIDENTIAL COMMERCIAL INFORMATION; OR

(3) CONFIDENTIAL FINANCIAL INFORMATION.

(I) (1) "PURCHASER" MEANS THE STATE EMPLOYEE AND RETIREE HEALTH AND WELFARE BENEFITS PROGRAM, AN INSURER, A NONPROFIT HEALTH SERVICE PLAN, OR A HEALTH MAINTENANCE ORGANIZATION THAT:

(I) PROVIDES PRESCRIPTION DRUG COVERAGE OR BENEFITS IN THE STATE; AND

(II) ENTERS INTO AN AGREEMENT WITH A PHARMACY BENEFITS MANAGER FOR THE PROVISION OF PHARMACY BENEFITS MANAGEMENT SERVICES.

(2) “PURCHASER” DOES NOT INCLUDE A PERSON THAT PROVIDES PRESCRIPTION DRUG COVERAGE OR BENEFITS THROUGH PLANS SUBJECT TO ERISA AND DOES NOT PROVIDE PRESCRIPTION DRUG COVERAGE OR BENEFITS THROUGH INSURANCE, UNLESS THE PERSON IS A MULTIPLE EMPLOYER WELFARE ARRANGEMENT AS DEFINED IN § 514(B)(6)(A)(II) OF ERISA.

(J) “REBATE SHARING CONTRACT” MEANS A CONTRACT BETWEEN A PHARMACY BENEFITS MANAGER AND A PURCHASER UNDER WHICH THE PHARMACY BENEFITS MANAGER AGREES TO SHARE MANUFACTURER PAYMENTS WITH THE PURCHASER.

(K) “TRADE SECRET” HAS THE MEANING STATED IN § 11-1201 OF THE COMMERCIAL LAW ARTICLE.

15-1602.

THE PROVISIONS OF §§ 15-1603 THROUGH 15-1606 OF THIS SUBTITLE DO NOT APPLY TO A PHARMACY BENEFITS MANAGER WHEN PROVIDING PHARMACY BENEFITS MANAGEMENT SERVICES TO A PURCHASER THAT IS AFFILIATED WITH THE PHARMACY BENEFITS MANAGER THROUGH COMMON OWNERSHIP WITHIN AN INSURANCE HOLDING COMPANY.

15-1603.

(A) BEFORE ENTERING INTO A CONTRACT WITH A PURCHASER, A PHARMACY BENEFITS MANAGER:

(1) AS APPLICABLE, SHALL INFORM THE PURCHASER THAT THE PHARMACY BENEFITS MANAGER MAY:

(Over)

(I) SOLICIT AND RECEIVE MANUFACTURER PAYMENTS;

(II) PASS THROUGH OR RETAIN THE MANUFACTURER PAYMENTS DEPENDING ON THE CONTRACT TERMS WITH A PURCHASER;

(III) SELL AGGREGATE UTILIZATION INFORMATION; AND

(IV) SHARE AGGREGATE UTILIZATION INFORMATION WITH OTHER ENTITIES; AND

(2) SHALL OFFER TO PROVIDE TO THE PURCHASER A REPORT THAT CONTAINS THE:

(I) NET REVENUE OF THE PHARMACY BENEFITS MANAGER FROM SALES OF PRESCRIPTION DRUGS TO PURCHASERS MADE THROUGH THE PHARMACY BENEFITS MANAGER'S NETWORK OF CONTRACTUALLY AFFILIATED RETAIL PHARMACIES OR THROUGH THE PHARMACY BENEFITS MANAGER'S MAIL ORDER PHARMACIES, WITH RESPECT TO THE PHARMACY BENEFITS MANAGER'S ENTIRE CLIENT BASE OF PURCHASERS; AND

(II) AMOUNT OF ALL MANUFACTURER PAYMENTS EARNED BY THE PHARMACY BENEFITS MANAGER.

(B) (1) IF A PURCHASER REQUESTS THE INFORMATION DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION, A PHARMACY BENEFITS MANAGER SHALL PROVIDE THE INFORMATION BEFORE ENTERING INTO A CONTRACT WITH THE PURCHASER.

(2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION, IF A PHARMACY BENEFITS MANAGER REQUIRES A NONDISCLOSURE AGREEMENT UNDER WHICH A PURCHASER AGREES THAT THE INFORMATION DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION IS PROPRIETARY INFORMATION, THE PHARMACY BENEFITS MANAGER MAY NOT BE REQUIRED TO PROVIDE THE INFORMATION UNTIL THE PURCHASER HAS SIGNED THE NONDISCLOSURE AGREEMENT.

15-1604.

(A) IF A PURCHASER HAS A REBATE SHARING CONTRACT, A PHARMACY BENEFITS MANAGER SHALL OFFER TO PROVIDE THE PURCHASER A REPORT FOR EACH FISCAL QUARTER AND EACH FISCAL YEAR THAT CONTAINS THE AMOUNT OF THE:

(1) NET REVENUE OF THE PHARMACY BENEFITS MANAGER FROM SALES OF PRESCRIPTION DRUGS TO PURCHASERS MADE THROUGH THE PHARMACY BENEFITS MANAGER'S NETWORK OF CONTRACTUALLY AFFILIATED RETAIL PHARMACIES OR THROUGH THE PHARMACY BENEFITS MANAGER'S MAIL ORDER PHARMACIES, WITH RESPECT TO THE PHARMACY BENEFITS MANAGER'S ENTIRE CLIENT BASE OF PURCHASERS;

(2) TOTAL PRESCRIPTION DRUG EXPENDITURES APPLICABLE TO THE PURCHASER;

(3) TOTAL MANUFACTURER PAYMENTS EARNED BY THE PHARMACY BENEFITS MANAGER DURING THE APPLICABLE REPORTING PERIOD;
AND

(Over)

(4) TOTAL REBATES APPLICABLE TO THE PURCHASER DURING THE APPLICABLE REPORTING PERIOD.

(B) IF THE EXACT AMOUNT OF EACH ITEM TO BE REPORTED UNDER SUBSECTION (A) OF THIS SECTION IS NOT KNOWN BY THE PHARMACY BENEFITS MANAGER AT THE TIME OF ITS REPORT, THE PHARMACY BENEFITS MANAGER SHALL OFFER TO PROVIDE:

(1) ITS CURRENT BEST ESTIMATE OF THE AMOUNT OF EACH ITEM;
AND

(2) AN UPDATED REPORT CONTAINING THE EXACT AMOUNT OF EACH ITEM IMMEDIATELY AFTER IT BECOMES AVAILABLE.

(C) (1) A PHARMACY BENEFITS MANAGER SHALL PROVIDE THE INFORMATION DESCRIBED IN SUBSECTIONS (A) AND (B) OF THIS SECTION IF REQUESTED BY THE PURCHASER.

(2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION, IF A PHARMACY BENEFITS MANAGER REQUIRES A NONDISCLOSURE AGREEMENT UNDER WHICH A PURCHASER AGREES THAT THE INFORMATION IN SUBSECTIONS (A) AND (B) OF THIS SECTION IS PROPRIETARY INFORMATION, THE PHARMACY BENEFITS MANAGER MAY NOT BE REQUIRED TO PROVIDE THE INFORMATION UNTIL THE PURCHASER HAS SIGNED THE NONDISCLOSURE AGREEMENT.

15-1605.

THIS SUBTITLE DOES NOT DIMINISH THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL OR THE COMMISSIONER TO OBTAIN INFORMATION

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RELATING TO A PHARMACY BENEFITS MANAGER AND USE THE INFORMATION IN ANY PROCEEDING.”.