

HB0419/576785/1

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 419

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Weldon” and substitute “Weldon, Benson, and Donoghue”; in line 3, strike “person” and substitute “pharmacy benefits manager”; strike beginning with “the” in line 4 down through “manager” in line 5 and substitute “providing pharmacy benefits management services”; strike beginning with “exempting” in line 5 down through “circumstances;” in line 9; in line 12, strike “applicants” and substitute “pharmacy benefits managers”; strike beginning with “authorizing” in line 16 down through “requirements;” in line 22; strike beginning with “an” in line 22 down through “organization” in line 23 and substitute “a purchaser”; and in line 25, strike “requiring” and substitute “authorizing”.

On page 2, strike beginning with “requiring” in line 2 down through “date;” in line 3 and substitute “authorizing the Commissioner to issue a certain order; authorizing an order of the Commissioner to be served in a certain manner under certain circumstances; providing that a request for a hearing on a certain order does not stay a certain portion of the order; authorizing the Commissioner to file a certain petition in circuit court; authorizing the Commissioner to recover certain fees and costs under certain circumstances;”; strike beginning with “altering” in line 3 down through “requirements;” in line 6; in line 13, strike “15–1613” and substitute “15–1609”; and strike in their entirety lines 22 through 31, inclusive.

AMENDMENT NO. 2

On page 2, after line 38, insert:

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

(Over)

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

On page 3, strike in their entirety lines 1 through 10, inclusive, and substitute:

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

(E) (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 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.”;

in line 11, strike “(C)” and substitute “(F)”; and strike in their entirety lines 13 through 18, inclusive, and substitute:

“(G) (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.

(Over)

(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 ASSOCIATION AS DEFINED IN § 514(B)(6)(A)(II) OF ERISA.”

AMENDMENT NO. 3

On pages 3 and 4, strike in their entirety the lines beginning with line 20 on page 3 through line 11 on page 4, inclusive.

AMENDMENT NO. 4

On page 4, in line 12, strike “PERSON” and substitute “**PHARMACY BENEFITS MANAGER**”; in lines 12 and 13, strike “**BEFORE THE PERSON ACTS AS OR REPRESENTS ITSELF**”; in line 14, strike “**IN THE STATE**” and substitute “**BEFORE PROVIDING PHARMACY BENEFITS MANAGEMENT SERVICES IN THE STATE TO PURCHASERS**”; strike beginning with “**THE**” in line 20 down through “**REGULATION**” in line 22 and substitute “**SUBJECT TO THE PROVISIONS OF § 15-1604 OF THIS SUBTITLE, THE COMMISSIONER SHALL REGISTER EACH PHARMACY BENEFITS MANAGER THAT MEETS THE REQUIREMENTS OF THIS SECTION**”; strike in their entirety lines 23 through 25, inclusive, and substitute:

“15-1603.

(A) A PHARMACY BENEFITS MANAGER REGISTRATION EXPIRES ON THE ANNIVERSARY DATE THAT OCCURS ON THE DATE 2 YEARS FOLLOWING THE DATE THE COMMISSIONER ISSUED THE REGISTRATION, UNLESS IT IS RENEWED AS PROVIDED UNDER THIS SECTION.”

and strike beginning with “**BEFORE**” in line 26 down through “**REGISTRANT**” in line 27 and substitute “**A PHARMACY BENEFITS MANAGER MAY RENEW ITS**

REGISTRATION FOR AN ADDITIONAL 2-YEAR TERM, IF THE PHARMACY BENEFITS MANAGER".

AMENDMENT NO. 5

On page 5, in line 3, after "A" insert "PHARMACY BENEFITS MANAGER"; in line 4, strike "TIMELY IF" and substitute "MADE IN A TIMELY MANNER IF IT IS"; in lines 4 and 5, strike "JUNE 30 OF THE YEAR OF THE RENEWAL" and substitute "THE DATE THE PHARMACY BENEFITS MANAGER'S REGISTRATION EXPIRES"; after line 5, insert:

"(D) SUBJECT TO THE PROVISIONS OF § 15-1604 OF THIS SUBTITLE, THE COMMISSIONER SHALL RENEW THE REGISTRATION OF EACH PHARMACY BENEFITS MANAGER THAT MEETS THE REQUIREMENTS OF THIS SECTION.

15-1604.

(A) SUBJECT TO THE HEARING PROVISIONS OF TITLE 2 OF THIS ARTICLE, THE COMMISSIONER MAY DENY A REGISTRATION TO A PHARMACY BENEFITS MANAGER APPLICANT OR REFUSE TO RENEW, SUSPEND, OR REVOKE THE REGISTRATION OF A PHARMACY BENEFITS MANAGER IF THE PHARMACY BENEFITS MANAGER, OR AN OFFICER, DIRECTOR, OR EMPLOYEE OF THE PHARMACY BENEFITS MANAGER:

(1) MAKES A MATERIAL MISSTATEMENT OR MISREPRESENTATION IN AN APPLICATION FOR REGISTRATION;

(2) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO OBTAIN A REGISTRATION;

(3) IN CONNECTION WITH THE ADMINISTRATION OF PHARMACY BENEFITS MANAGEMENT SERVICES, COMMITS FRAUD OR ENGAGES IN ILLEGAL OR DISHONEST ACTIVITIES; OR

(4) VIOLATES ANY PROVISION OF THIS SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE.

(B) THIS SECTION DOES NOT LIMIT ANY OTHER REGULATORY AUTHORITY OF THE COMMISSIONER UNDER THIS ARTICLE.

15-1605.

A PHARMACY BENEFITS MANAGER MAY NOT SHIP, MAIL, OR DELIVER PRESCRIPTION DRUGS OR DEVICES TO A PERSON IN THE STATE THROUGH A NONRESIDENT PHARMACY UNLESS THE NONRESIDENT PHARMACY HOLDS A PERMIT ISSUED IN ACCORDANCE WITH THE PROVISIONS OF § 12-403 OF THE HEALTH OCCUPATIONS ARTICLE.”;

and strike in their entirety lines 6 through 21, inclusive.

AMENDMENT NO. 6

On pages 5 and 6, strike in their entirety the lines beginning with line 23 on page 5 through line 2 on page 6, inclusive, and substitute:

“(A) WHENEVER THE COMMISSIONER CONSIDERS IT ADVISABLE, THE COMMISSIONER MAY EXAMINE THE AFFAIRS, TRANSACTIONS, ACCOUNTS, AND RECORDS OF A REGISTERED PHARMACY BENEFITS MANAGER.

(B) THE EXAMINATION SHALL BE CONDUCTED IN ACCORDANCE WITH § 2-207 OF THIS ARTICLE.

(C) THE EXPENSE OF THE EXAMINATION SHALL BE PAID IN ACCORDANCE WITH § 2-208 OF THIS ARTICLE.

(D) THE REPORTS OF THE EXAMINATION AND INVESTIGATION SHALL BE ISSUED IN ACCORDANCE WITH § 2-209 OF THIS ARTICLE.”.

AMENDMENT NO. 7

On pages 6 and 7, strike in their entirety the lines beginning with line 4 on page 6 through line 24 on page 7, inclusive, and substitute:

“A PHARMACY BENEFITS MANAGER SHALL MAINTAIN ADEQUATE BOOKS AND RECORDS ABOUT EACH PURCHASER FOR WHICH THE PHARMACY BENEFITS MANAGER PROVIDES PHARMACY BENEFITS MANAGEMENT SERVICES:

(1) IN ACCORDANCE WITH PRUDENT STANDARDS OF RECORD KEEPING;

(2) FOR THE DURATION OF THE AGREEMENT BETWEEN THE PHARMACY BENEFITS MANAGER AND THE PURCHASER; AND

(3) FOR 3 YEARS AFTER THE PHARMACY BENEFITS MANAGER CEASES TO PROVIDE PHARMACY BENEFITS MANAGEMENT SERVICES FOR THE PURCHASER.

15-1608.

(A) IF THE COMMISSIONER DETERMINES THAT A PHARMACY BENEFITS MANAGER HAS VIOLATED ANY PROVISION OF THIS SUBTITLE OR ANY

REGULATION ADOPTED UNDER THIS SUBTITLE, THE COMMISSIONER MAY ISSUE AN ORDER THAT REQUIRES THE PHARMACY BENEFITS MANAGER TO:

(1) CEASE AND DESIST FROM THE IDENTIFIED VIOLATION AND FURTHER SIMILAR VIOLATIONS;

(2) TAKE SPECIFIC AFFIRMATIVE ACTION TO CORRECT THE VIOLATION; OR

(3) MAKE RESTITUTION OF MONEY, PROPERTY, OR OTHER ASSETS TO A PERSON THAT HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE VIOLATION.

(B) (1) AN ORDER OF THE COMMISSIONER ISSUED UNDER THIS SECTION MAY BE SERVED ON A PHARMACY BENEFITS MANAGER THAT IS REGISTERED UNDER THIS SUBTITLE IN THE MANNER PROVIDED IN § 2-204 OF THIS ARTICLE.

(2) AN ORDER OF THE COMMISSIONER ISSUED UNDER THIS SECTION MAY BE SERVED ON A PHARMACY BENEFITS MANAGER THAT IS NOT REGISTERED UNDER THIS SUBTITLE IN THE MANNER PROVIDED IN § 4-206 OR § 4-207 OF THIS ARTICLE FOR SERVICE ON AN UNAUTHORIZED INSURER THAT DOES AN ACT OF INSURANCE BUSINESS IN THE STATE.

(3) A REQUEST FOR A HEARING ON ANY ORDER ISSUED UNDER THIS SECTION DOES NOT STAY THAT PORTION OF THE ORDER THAT REQUIRES THE PHARMACY BENEFITS MANAGER TO CEASE AND DESIST FROM CONDUCT IDENTIFIED IN THE ORDER.

(4) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT OF ANY COUNTY TO ENFORCE AN ORDER ISSUED UNDER THIS SECTION, WHETHER OR NOT A HEARING HAS BEEN REQUESTED OR, IF REQUESTED, WHETHER OR NOT A HEARING HAS BEEN HELD.

(5) IF THE COMMISSIONER PREVAILS IN AN ACTION BROUGHT UNDER THIS SECTION, THE COMMISSIONER MAY RECOVER, FOR THE USE OF THE STATE, REASONABLE ATTORNEY'S FEES AND THE COSTS OF THE ACTION.

(C) IN ADDITION TO ANY OTHER ENFORCEMENT ACTION TAKEN BY THE COMMISSIONER UNDER THIS SECTION, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING \$10,000 FOR EACH VIOLATION OF THIS SUBTITLE.

(D) THIS SECTION DOES NOT LIMIT ANY OTHER REGULATORY AUTHORITY OF THE COMMISSIONER UNDER THIS ARTICLE.

15-1609.

A PURCHASER MAY NOT ENTER INTO AN AGREEMENT WITH A PHARMACY BENEFITS MANAGER THAT HAS NOT REGISTERED WITH THE COMMISSIONER.”

AMENDMENT NO. 8

On pages 7 through 10, strike in their entirety the lines beginning with line 29 on page 7 through line 7 on page 10, inclusive.