

HOUSE BILL 243

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By: **Delegates Benson, Costa, Elliott, Kipke, Krebs, and Rudolph**

Introduced and read first time: January 23, 2008

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Pharmacy Benefits Managers – Choice of Pharmacy**

3 FOR the purpose of prohibiting a pharmacy benefits manager from establishing the
4 amount of a certain reimbursement on a certain basis; prohibiting a pharmacy
5 benefits manager from imposing a certain copayment, deductible, limit on
6 quantity, or other condition under certain circumstances; requiring an
7 insurance policy or contract or a pharmacy benefits manager to allow an
8 insured or certificate holder to obtain pharmaceutical benefits from the
9 pharmacy or pharmacist of the insured or certificate holder's choice within any
10 pharmacy network; exempting certain managed care organizations from certain
11 provisions of this Act; requiring a pharmacy benefits manager to allow a
12 beneficiary to obtain covered pharmacy services from a certain pharmacy
13 provider and allow a certain pharmacy that can meet certain conditions to
14 provide certain services; requiring certain disclosures to comply with certain
15 privacy standards; providing certain penalties; altering the definition of a
16 "nonresident pharmacy" to include a pharmacy benefits manager under certain
17 provisions of law; requiring a nonresident pharmacy to meet certain
18 requirements; defining certain terms; and generally relating to regulation of
19 pharmacy benefits managers.

20 BY repealing and reenacting, with amendments,

21 Article – Insurance

22 Section 15–805

23 Annotated Code of Maryland

24 (2006 Replacement Volume and 2007 Supplement)

25 BY adding to

26 Article – Insurance

27 Section 15–1601 to be under the new subtitle "Subtitle 16. Pharmacy Benefits
28 Managers"

29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2006 Replacement Volume and 2007 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – Health Occupations
4 Section 12–101(m) and 12–403(e) and (f)
5 Annotated Code of Maryland
6 (2005 Replacement Volume and 2007 Supplement)

7 BY repealing and reenacting, without amendments,
8 Article – Health Occupations
9 Section 12–403(a), (b)(17), (d), and (g)
10 Annotated Code of Maryland
11 (2005 Replacement Volume and 2007 Supplement)

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

14 **Article – Insurance**

15 15–805.

16 (a) (1) In this section the following words have the meanings indicated.

17 (2) “Authorized prescriber” means a licensed dentist, licensed
18 physician, or licensed podiatrist who is authorized under the Health Occupations
19 Article to prescribe a pharmaceutical product.

20 (3) “Pharmaceutical product” means a drug or medicine that may be
21 prescribed by an authorized prescriber.

22 (4) **“PHARMACY BENEFITS MANAGER” HAS THE MEANING STATED**
23 **IN § 15–1601 OF THIS TITLE.**

24 (b) This section does not apply to a policy or contract that is issued to an
25 employer under a collective bargaining agreement.

26 (c) (1) This subsection applies to:

27 (I) each policy or contract that is issued or delivered in the
28 State to an employer or individual by an insurer or nonprofit health service plan and
29 that provides group or individual hospital, medical, or surgical benefits; **AND**

30 (II) **EACH PHARMACY BENEFITS MANAGER THAT PROVIDES**
31 **SERVICES, INCLUDING SERVICES PROVIDED AS AN AGENT OR CONTRACTOR,**
32 **UNDER A POLICY OR CONTRACT UNDER ITEM (I) OF THIS PARAGRAPH.**

1 (2) A policy [or], contract, **OR PHARMACY BENEFITS MANAGER**
2 subject to this subsection that provides reimbursement for a pharmaceutical product
3 prescribed by an authorized prescriber may not establish the amount of
4 reimbursement to the insured or the insured's beneficiary, including copayments and
5 deductibles, based on the identity, practicing specialty, or occupation of the authorized
6 prescriber.

7 (d) (1) This subsection applies to:

8 (I) each individual or group policy or contract that is issued or
9 delivered in the State to an employer or individual by an insurer or nonprofit health
10 service plan and that provides benefits for pharmaceutical products; **AND**

11 (II) **EACH PHARMACY BENEFITS MANAGER THAT PROVIDES**
12 **SERVICES, INCLUDING SERVICES PROVIDED AS AN AGENT OR CONTRACTOR,**
13 **UNDER A POLICY OR CONTRACT UNDER ITEM (I) OF THIS PARAGRAPH.**

14 (2) A policy [or], contract, **OR PHARMACY BENEFITS MANAGER**
15 subject to this subsection may not impose a copayment, deductible, **LIMIT ON**
16 **QUANTITY**, or other condition on an insured or certificate holder who uses the services
17 of a community pharmacy that is not imposed when the insured or certificate holder
18 uses the services of a mail order pharmacy, if the benefits are provided under the same
19 program, policy, or contract.

20 (e) (1) **THIS SUBSECTION APPLIES TO:**

21 (I) **EACH INDIVIDUAL OR GROUP POLICY OR CONTRACT**
22 **THAT IS ISSUED OR DELIVERED IN THE STATE TO AN EMPLOYER OR INDIVIDUAL**
23 **BY AN INSURER AND THAT PROVIDES BENEFITS FOR PHARMACEUTICAL**
24 **PRODUCTS; AND**

25 (II) **EACH PHARMACY BENEFITS MANAGER THAT PROVIDES**
26 **SERVICES, INCLUDING SERVICES PROVIDED AS AN AGENT OR CONTRACTOR,**
27 **UNDER A POLICY OR CONTRACT UNDER ITEM (I) OF THIS PARAGRAPH.**

28 (2) **A POLICY, CONTRACT, OR PHARMACY BENEFITS MANAGER**
29 **SUBJECT TO THIS SUBSECTION SHALL ALLOW AN INSURED OR CERTIFICATE**
30 **HOLDER TO SELECT THE PHARMACY OR PHARMACIST OF THE INSURED OR**
31 **CERTIFICATE HOLDER'S CHOICE FOR PHARMACEUTICAL BENEFITS WITHIN ANY**
32 **PHARMACY NETWORK ESTABLISHED UNDER OR BY THE POLICY, CONTRACT, OR**
33 **PHARMACY BENEFITS MANAGER.**

34 **SUBTITLE 16. PHARMACY BENEFITS MANAGERS.**

35 **15-1601.**

1 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
2 MEANINGS INDICATED.

3 (2) “BENEFICIARY” MEANS AN INDIVIDUAL ON WHOSE BEHALF A
4 PURCHASER ENTERS INTO AN AGREEMENT WITH A PHARMACY BENEFITS
5 MANAGER.

6 (3) (I) “PHARMACY BENEFITS MANAGEMENT SERVICES”
7 MEANS THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG
8 BENEFITS.

9 (II) “PHARMACY BENEFITS MANAGEMENT SERVICES”
10 INCLUDES:

11 1. PROCUREMENT OF PRESCRIPTION DRUGS AT A
12 NEGOTIATED RATE FOR DISPENSATION WITHIN THE STATE;

13 2. PROCESSING OF PRESCRIPTION DRUG CLAIMS;

14 3. ADMINISTRATION OF PAYMENTS RELATED TO
15 PRESCRIPTION DRUG CLAIMS; AND

16 4. NEGOTIATING OR ENTERING INTO CONTRACTUAL
17 ARRANGEMENTS WITH PHARMACY PROVIDERS.

18 (4) “PHARMACY BENEFITS MANAGER” MEANS A PERSON THAT
19 PERFORMS PHARMACY BENEFITS MANAGEMENT SERVICES.

20 (5) “PHARMACY PROVIDER” MEANS A PHARMACY OR A
21 PHARMACIST.

22 (B) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO A MANAGED
23 CARE ORGANIZATION AUTHORIZED BY TITLE 15, SUBTITLE 1 OF THE HEALTH –
24 GENERAL ARTICLE.

25 (C) A PHARMACY BENEFITS MANAGER:

26 (1) SHALL ALLOW A BENEFICIARY TO OBTAIN COVERED
27 PHARMACY SERVICES FROM THE PHARMACY PROVIDER OF THE BENEFICIARY’S
28 CHOICE WITHIN THE PHARMACY BENEFITS MANAGER’S NETWORK;

1 **(2) SHALL ALLOW A RETAIL OR INSTITUTIONAL PHARMACY THAT**
2 **CAN MEET THE SAME TERMS AND CONDITIONS AS A MAIL ORDER PHARMACY TO**
3 **PROVIDE THE SAME SERVICES PROVIDED BY A MAIL ORDER PHARMACY; AND**

4 **(3) MAY NOT:**

5 **(I) REQUIRE A BENEFICIARY TO OBTAIN PHARMACY**
6 **SERVICES FROM A MAIL ORDER PHARMACY IF A RETAIL OR INSTITUTIONAL**
7 **PHARMACY CAN MEET THE SAME TERMS AND CONDITIONS AS THE MAIL ORDER**
8 **PHARMACY;**

9 **(II) USE ANY FINANCIAL OR OTHER DISINCENTIVES,**
10 **PENALTIES, OR OTHER MEANS TO INFLUENCE, COERCE, OR STEER**
11 **BENEFICIARIES AWAY FROM A RETAIL OR INSTITUTIONAL PHARMACY THAT CAN**
12 **MEET THE SAME TERMS AND CONDITIONS AS A MAIL ORDER PHARMACY; OR**

13 **(III) LIMIT THE QUANTITY OF DRUGS THAT A BENEFICIARY**
14 **MAY OBTAIN AT ANY ONE TIME FROM ANY TYPE OF PHARMACY PROVIDER,**
15 **UNLESS THE LIMIT IS APPLIED UNIFORMLY TO ALL PHARMACY PROVIDERS**
16 **THAT ARE WITHIN THE PHARMACY BENEFITS MANAGER’S NETWORK, UNDER**
17 **CONTRACT, OR OTHERWISE AUTHORIZED TO PROVIDE PHARMACY SERVICES TO**
18 **BENEFICIARIES.**

19 **(D) ON OR BEFORE APRIL 1, 2009, THE COMMISSIONER SHALL ADOPT**
20 **REGULATIONS TO IMPLEMENT THIS SECTION.**

21 **(E) (1) THE COMMISSIONER MAY ASSESS A CIVIL PENALTY NOT**
22 **EXCEEDING \$10,000 FOR EACH VIOLATION OF THIS SECTION.**

23 **(2) IN ADDITION TO OR INSTEAD OF ASSESSING A CIVIL PENALTY,**
24 **THE COMMISSIONER MAY REQUIRE THE PHARMACY BENEFITS MANAGER TO**
25 **MAKE RESTITUTION TO ANY PERSON WHO HAS SUFFERED FINANCIAL INJURY**
26 **BECAUSE OF THE VIOLATION OF THIS SECTION.**

27 **Article – Health Occupations**

28 12–101.

29 (m) **(1) “Nonresident pharmacy” means a pharmacy located outside this**
30 **State that, in the normal course of business, as determined by the Board, ships, mails,**
31 **or delivers drugs or devices to a person in this State pursuant to a prescription.**

32 **(2) “NONRESIDENT PHARMACY” INCLUDES A PHARMACY**
33 **BENEFITS MANAGER, LOCATED WITHIN OR OUTSIDE THIS STATE, THAT IS**
34 **REGULATED UNDER TITLE 15, SUBTITLE 16 OF THE INSURANCE ARTICLE, IF**

1 **THE PHARMACY BENEFITS MANAGER SHIPS, MAILS, OR DELIVERS DRUGS OR**
2 **DEVICES TO A PERSON IN THIS STATE PURSUANT TO A PRESCRIPTION.**

3 12-403.

4 (a) This section does not require a nonresident pharmacy to violate the laws
5 or regulations of the state in which it is located.

6 (b) Except as otherwise provided in this section, a pharmacy for which a
7 pharmacy permit has been issued under this title:

8 (17) With regard to a prescription drug that is delivered in this State by
9 the United States mail, a common carrier, or a delivery service and is not personally
10 hand delivered directly to a patient or to the agent of the patient at the residence of
11 the patient or at another location designated by the patient, shall:

12 (i) Provide a general written notice in each shipment of a
13 prescription drug that alerts a consumer that, under certain circumstances, a
14 medication's effectiveness may be affected by exposure to extremes of heat, cold, or
15 humidity; and

16 (ii) Provide a specific written notice in each shipment of a
17 prescription drug that provides a consumer with a toll-free or local consumer access
18 telephone number accessible during regular hours of operation, which is designed to
19 respond to consumer questions pertaining to medications;

20 (d) A nonresident pharmacy shall hold a pharmacy permit issued by the
21 Board.

22 (e) (1) In order to obtain a pharmacy permit from the Board, a
23 nonresident pharmacy, **TO THE EXTENT APPLICABLE**, shall:

24 (i) Submit an application to the Board on the form that the
25 Board requires;

26 (ii) Pay to the Board an application fee set by the Board;

27 (iii) Submit a copy of the most recent inspection report resulting
28 from an inspection conducted by the regulatory or licensing agency of the state in
29 which the nonresident pharmacy is located; and

30 (iv) On the required permit application, identify the name and
31 current address of an agent located in this State officially designated to accept service
32 of process.

33 (2) A nonresident pharmacy shall report a change in the name or
34 address of the resident agent in writing to the Board 30 days prior to the change.

1 (f) A nonresident pharmacy, **TO THE EXTENT APPLICABLE**, shall:

2 (1) Comply with the laws of the state in which it is located;

3 (2) On an annual basis and within 30 days after a change of office,
4 corporate officer, or pharmacist, disclose to the Board the location, names, and titles of
5 all principal corporate officers and all pharmacists who are dispensing prescriptions
6 for drugs or devices to persons in this State;

7 (3) Comply with all lawful directions and requests for information
8 from the regulatory or licensing agency of the state in which it is located and all
9 requests for information made by the Board pursuant to this section;

10 (4) Maintain at all times a valid, unexpired permit to conduct a
11 pharmacy in compliance with the laws of the state in which it is located;

12 (5) Maintain its records of prescription drugs or devices dispensed to
13 patients in this State so that the records are readily retrievable;

14 (6) During its regular hours of operation, but not less than 6 days a
15 week, and for a minimum of 40 hours per week, provide toll-free telephone service to
16 facilitate communication between patients in this State and a pharmacist who has
17 access to the patient's prescription records;

18 (7) Disclose its toll-free telephone number on a label affixed to each
19 container of drugs or devices;

20 (8) Comply with the laws of this State relating to the confidentiality of
21 prescription records if there are no laws relating to the confidentiality of prescription
22 records in the state in which the nonresident pharmacy is located; [and]

23 (9) Comply with the requirements of subsection (b)(17) of this section;

24 **AND**

25 **(10) REQUIRE EACH EMPLOYEE OR CONTRACTOR TO BE LICENSED**
26 **TO PRACTICE PHARMACY IF THE EMPLOYEE OR CONTRACTOR PRACTICES**
27 **PHARMACY FOR OR ON BEHALF OF THE NONRESIDENT PHARMACY.**

28 (g) Subject to the hearing provisions of § 12-411 of this subtitle, if a
29 pharmacy or a nonresident pharmacy is operated in violation of this section, the Board
30 may suspend the applicable pharmacy permit until the pharmacy complies with this
31 section.

32 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
33 **October 1, 2008.**