

SENATE BILL 724

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8lr2052
CF HB 120

By: **Senators Klausmeier and Della**

Introduced and read first time: February 1, 2008

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Pharmacy Benefits Managers – Transparency**

3 FOR the purpose of requiring a pharmacy benefits manager to disclose in writing
4 certain information to a prospective purchaser and a purchaser; specifying the
5 manner in which certain disclosures must be provided; providing that a
6 pharmacy benefits manager need not make certain disclosures unless and until
7 the prospective purchaser or the purchaser agrees in writing to maintain
8 certain information as confidential; providing that certain agreements may
9 include certain remedies and certain persons; requiring a contract executed by a
10 pharmacy benefits manager for the provision of pharmacy benefits management
11 services to include certain items; requiring the Commissioner to adopt certain
12 regulations on or before a certain date; defining certain terms; and generally
13 relating to regulation of pharmacy benefits managers.

14 BY adding to

15 Article – Insurance

16 Section 15–1601 through 15–1609 to be under the new subtitle “Subtitle 16.
17 Pharmacy Benefits Managers”

18 Annotated Code of Maryland

19 (2006 Replacement Volume and 2007 Supplement)

20 BY adding to

21 Article – Health – General

22 Section 19–706(ppp)

23 Annotated Code of Maryland

24 (2005 Replacement Volume and 2007 Supplement)

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

27 **Article – Insurance**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **SUBTITLE 16. PHARMACY BENEFITS MANAGERS.**

2 **15-1601.**

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

5 (B) **“BENEFICIARY” MEANS AN INDIVIDUAL ON WHOSE BEHALF A**
6 **PURCHASER ENTERS INTO AN AGREEMENT WITH A PHARMACY BENEFITS**
7 **MANAGER.**

8 (C) **“LABELER” MEANS A PERSON THAT:**

9 (1) **RECEIVES PRESCRIPTION DRUGS FROM A MANUFACTURER OR**
10 **WHOLESALE AND REPACKAGES THOSE DRUGS FOR LATER RETAIL SALE; AND**

11 (2) **HAS A LABELER CODE FROM THE U.S. FOOD AND DRUG**
12 **ADMINISTRATION UNDER 21 CFR § 207.20.**

13 (D) (1) **“PHARMACY BENEFITS MANAGEMENT SERVICES” MEANS THE**
14 **ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS.**

15 (2) **“PHARMACY BENEFITS MANAGEMENT SERVICES” INCLUDES:**

16 (I) **PROCUREMENT OF PRESCRIPTION DRUGS AT A**
17 **NEGOTIATED RATE FOR DISPENSATION WITHIN THE STATE;**

18 (II) **PROCESSING OF PRESCRIPTION DRUG CLAIMS;**

19 (III) **ADMINISTRATION OF PAYMENTS RELATED TO**
20 **PRESCRIPTION DRUG CLAIMS; AND**

21 (IV) **NEGOTIATING OR ENTERING INTO CONTRACTUAL**
22 **ARRANGEMENTS WITH PHARMACY PROVIDERS.**

23 (E) **“PHARMACY BENEFITS MANAGER” MEANS A PERSON THAT**
24 **PERFORMS PHARMACY BENEFITS MANAGEMENT SERVICES.**

25 (F) **“PROSPECTIVE PURCHASER” MEANS A PERSON TO WHICH A**
26 **PHARMACY BENEFITS MANAGER OFFERS TO PROVIDE PHARMACY BENEFITS**
27 **MANAGEMENT SERVICES.**

1 (G) (1) **“PURCHASER” MEANS A PERSON THAT ENTERS INTO AN**
2 **AGREEMENT WITH A PHARMACY BENEFITS MANAGER FOR THE PROVISION OF**
3 **PHARMACY BENEFITS MANAGEMENT SERVICES.**

4 (2) **“PURCHASER” INCLUDES THE STATE.**

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

7 **15-1602.**

8 (A) **THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO A MANAGED**
9 **CARE ORGANIZATION AUTHORIZED BY TITLE 15, SUBTITLE 1 OF THE HEALTH –**
10 **GENERAL ARTICLE.**

11 (B) **THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO AN INSURER,**
12 **NONPROFIT HEALTH SERVICE PLAN, OR HEALTH MAINTENANCE ORGANIZATION,**
13 **OR AN AFFILIATE, SUBSIDIARY, OR OTHER RELATED ENTITY OF AN INSURER,**
14 **NONPROFIT HEALTH SERVICE PLAN, OR HEALTH MAINTENANCE ORGANIZATION**
15 **ACTING OR REPRESENTING ITSELF AS A PHARMACY BENEFITS MANAGER IF:**

16 (1) **THE INSURER, NONPROFIT HEALTH SERVICE PLAN, OR**
17 **HEALTH MAINTENANCE ORGANIZATION OR THE AFFILIATE, SUBSIDIARY, OR**
18 **OTHER RELATED ENTITY OF THE INSURER, NONPROFIT HEALTH SERVICE PLAN,**
19 **OR HEALTH MAINTENANCE ORGANIZATION DIRECTLY OFFERS OR PROVIDES**
20 **PHARMACY BENEFITS MANAGEMENT SERVICES; AND**

21 (2) **THE PHARMACY BENEFITS MANAGEMENT SERVICES ARE**
22 **OFFERED OR PROVIDED ONLY TO ENROLLEES, SUBSCRIBERS, OR INSUREDS**
23 **WHO ALSO ARE COVERED BY HEALTH BENEFITS OFFERED OR PROVIDED BY THE**
24 **INSURER, NONPROFIT HEALTH SERVICE PLAN, OR HEALTH MAINTENANCE**
25 **ORGANIZATION.**

26 **15-1603.**

27 (A) **A PHARMACY BENEFITS MANAGER SHALL DISCLOSE TO A**
28 **PROSPECTIVE PURCHASER IN WRITING:**

29 (1) **THE AMOUNT OF ALL REBATES, ADMINISTRATIVE FEES,**
30 **DETAILING PAYMENTS, EDUCATIONAL PAYMENTS, AND OTHER RETROSPECTIVE**
31 **DISCOUNTS THAT THE PHARMACY BENEFITS MANAGER ESTIMATES IT WOULD**
32 **RECEIVE, DIRECTLY OR INDIRECTLY, FROM PHARMACEUTICAL**
33 **MANUFACTURERS OR LABELERS IN CONNECTION WITH PRESCRIPTION DRUG**

1 BENEFITS SPECIFIC TO THE PROSPECTIVE PURCHASER, IF THE PROSPECTIVE
2 PURCHASER WERE TO CONTRACT WITH THE PHARMACY BENEFITS MANAGER;

3 (2) THE NATURE, TYPE, AND AMOUNT OF ALL OTHER REVENUE
4 THAT THE PHARMACY BENEFITS MANAGER ESTIMATES IT WOULD RECEIVE,
5 DIRECTLY OR INDIRECTLY, FROM PHARMACEUTICAL MANUFACTURERS OR
6 LABELERS IN CONNECTION WITH PRESCRIPTION DRUG BENEFITS SPECIFIC TO
7 THE PROSPECTIVE PURCHASER, IF THE PROSPECTIVE PURCHASER WERE TO
8 CONTRACT WITH THE PHARMACY BENEFITS MANAGER;

9 (3) ANY ADMINISTRATIVE OR OTHER FEES THAT WOULD BE
10 CHARGED BY THE PHARMACY BENEFITS MANAGER TO THE PROSPECTIVE
11 PURCHASER;

12 (4) ANY ARRANGEMENTS WITH PRESCRIBING PROVIDERS,
13 MEDICAL GROUPS, INDIVIDUAL PRACTICE ASSOCIATIONS, PHARMACY
14 PROVIDERS, OR OTHER PERSONS THAT ARE ASSOCIATED WITH ACTIVITIES OF
15 THE PHARMACY BENEFITS MANAGER TO ENCOURAGE FORMULARY COMPLIANCE
16 OR OTHERWISE MANAGE PRESCRIPTION DRUG BENEFITS; AND

17 (5) A LIST OF ANY DRUGS THAT THE PHARMACY BENEFITS
18 MANAGER, DIRECTLY OR INDIRECTLY, REPACKAGED AND ASSIGNED NEW OR
19 DIFFERENT NATIONAL DRUG CODE NUMBERS INCLUDING, FOR EACH DRUG ON
20 THE LIST:

21 (I) THE DRUG NAME AND STRENGTH;

22 (II) THE ORIGINAL NATIONAL DRUG CODE NUMBER AND
23 THE NEW NATIONAL DRUG CODE NUMBER; AND

24 (III) THE ORIGINAL PRICE AND THE NEW PRICE.

25 (B) THE DISCLOSURE REQUIRED UNDER SUBSECTION (A)(1) OF THIS
26 SECTION SHALL BE PROVIDED:

27 (1) IN THE AGGREGATE;

28 (2) FOR EACH THERAPEUTIC CLASS OF DRUGS ON A LIST OF
29 SPECIFIED THERAPEUTIC CLASSES; AND

30 (3) FOR FIVE INDIVIDUAL PRESCRIBED DRUGS IN EACH
31 THERAPEUTIC CLASS OF DRUGS AS REQUESTED BY THE PURCHASER.

32 (C) A THERAPEUTIC CLASS SHALL INCLUDE AT LEAST TWO DRUGS.

1 **15-1604.**

2 (A) AT LEAST QUARTERLY, A PHARMACY BENEFITS MANAGER SHALL
3 DISCLOSE TO A PURCHASER IN WRITING:

4 (1) THE AMOUNT OF ALL REBATES, ADMINISTRATIVE FEES,
5 DETAILING PAYMENTS, EDUCATIONAL PAYMENTS, AND OTHER RETROSPECTIVE
6 DISCOUNTS THAT THE PHARMACY BENEFITS MANAGER RECEIVES, DIRECTLY OR
7 INDIRECTLY, FROM PHARMACEUTICAL MANUFACTURERS OR LABELERS IN
8 CONNECTION WITH PRESCRIPTION DRUG BENEFITS SPECIFIC TO THE
9 PURCHASER;

10 (2) THE NATURE, TYPE, AND AMOUNT OF ALL OTHER REVENUE
11 THAT THE PHARMACY BENEFITS MANAGER RECEIVES, DIRECTLY OR
12 INDIRECTLY, FROM PHARMACEUTICAL MANUFACTURERS OR LABELERS IN
13 CONNECTION WITH PRESCRIPTION DRUG BENEFITS SPECIFIC TO THE
14 PURCHASER;

15 (3) ANY PRESCRIPTION DRUG UTILIZATION INFORMATION
16 RELATED TO UTILIZATION BY THE PURCHASER'S BENEFICIARIES OR
17 AGGREGATE UTILIZATION DATA THAT IS NOT SPECIFIC TO AN INDIVIDUAL
18 BENEFICIARY, PRESCRIBER, OR PURCHASER;

19 (4) ANY ADMINISTRATIVE OR OTHER FEES CHARGED BY THE
20 PHARMACY BENEFITS MANAGER TO THE PURCHASER;

21 (5) ANY ARRANGEMENTS WITH PRESCRIBING PROVIDERS,
22 MEDICAL GROUPS, INDIVIDUAL PRACTICE ASSOCIATIONS, PHARMACY
23 PROVIDERS, OR OTHER PERSONS THAT ARE ASSOCIATED WITH ACTIVITIES OF
24 THE PHARMACY BENEFITS MANAGER TO ENCOURAGE FORMULARY COMPLIANCE
25 OR OTHERWISE MANAGE PRESCRIPTION DRUG BENEFITS;

26 (6) A LIST OF ANY DRUGS THAT THE PHARMACY BENEFITS
27 MANAGER, DIRECTLY OR INDIRECTLY, REPACKAGED AND ASSIGNED NEW OR
28 DIFFERENT NATIONAL DRUG CODE NUMBERS INCLUDING, FOR EACH DRUG ON
29 THE LIST:

30 (I) THE DRUG NAME AND STRENGTH;

31 (II) THE ORIGINAL NATIONAL DRUG CODE NUMBER AND
32 THE NEW NATIONAL DRUG CODE NUMBER; AND

33 (III) THE ORIGINAL PRICE AND THE NEW PRICE; AND

1 **(7) A LIST OF PRESCRIPTIONS FOR WHICH THERE WAS A**
2 **DIFFERENCE BETWEEN THE PRICE PAID TO A RETAIL PHARMACY AND THE**
3 **AMOUNT THAT WAS BILLED TO THE PURCHASER INCLUDING, FOR EACH**
4 **PRESCRIPTION:**

5 **(I) THE PRESCRIPTION NUMBER;**

6 **(II) THE DATE THE PRESCRIPTION WAS PROCESSED BY THE**
7 **PHARMACY BENEFITS MANAGER;**

8 **(III) THE NATIONAL DRUG CODE NUMBER;**

9 **(IV) THE BENEFICIARY'S NAME; AND**

10 **(V) THE PRICE PAID TO THE RETAIL PHARMACY AND THE**
11 **AMOUNT BILLED TO THE PURCHASER.**

12 **(B) THE DISCLOSURE REQUIRED UNDER SUBSECTION (A)(1) OF THIS**
13 **SECTION SHALL BE PROVIDED:**

14 **(1) IN THE AGGREGATE;**

15 **(2) FOR EACH THERAPEUTIC CLASS OF DRUGS ON A LIST OF**
16 **SPECIFIED THERAPEUTIC CLASSES; AND**

17 **(3) FOR FIVE INDIVIDUAL PRESCRIBED DRUGS IN EACH**
18 **THERAPEUTIC CLASS OF DRUGS AS REQUESTED BY THE PURCHASER.**

19 **(C) A THERAPEUTIC CLASS SHALL INCLUDE AT LEAST TWO DRUGS.**

20 **15-1605.**

21 **(A) EXCEPT FOR UTILIZATION INFORMATION, AND EXCEPT AS**
22 **PROVIDED IN SUBSECTION (D) OF THIS SECTION, A PHARMACY BENEFITS**
23 **MANAGER NEED NOT MAKE THE DISCLOSURES REQUIRED UNDER §§ 15-1603**
24 **AND 15-1604 OF THIS SUBTITLE UNLESS AND UNTIL THE PROSPECTIVE**
25 **PURCHASER OR THE PURCHASER AGREES IN WRITING TO MAINTAIN AS**
26 **CONFIDENTIAL ANY PROPRIETARY INFORMATION DISCLOSED BY THE**
27 **PHARMACY BENEFITS MANAGER.**

28 **(B) THE AGREEMENT UNDER SUBSECTION (A) OF THIS SECTION MAY:**

1 (1) PROVIDE FOR EQUITABLE AND LEGAL REMEDIES IN THE
2 EVENT OF A VIOLATION OF THE AGREEMENT; AND

3 (2) INCLUDE PERSONS WITH WHICH THE PROSPECTIVE
4 PURCHASER OR PURCHASER CONTRACTS TO PROVIDE CONSULTING SERVICES
5 RELATING TO PHARMACY BENEFITS MANAGEMENT SERVICES.

6 (C) PROPRIETARY INFORMATION INCLUDES:

7 (1) TRADE SECRETS; AND

8 (2) INFORMATION ABOUT PRICING, COSTS, REVENUES, TAXES,
9 MARKET SHARE, NEGOTIATING STRATEGIES, CUSTOMERS, AND PERSONNEL
10 HELD BY A PHARMACY BENEFITS MANAGER AND USED FOR ITS BUSINESS
11 PURPOSES.

12 (D) THIS SECTION DOES NOT DIMINISH THE AUTHORITY OF THE OFFICE
13 OF THE ATTORNEY GENERAL OR THE COMMISSIONER TO OBTAIN INFORMATION
14 AND USE THE INFORMATION IN ANY PROCEEDING.

15 **15-1606.**

16 A CONTRACT EXECUTED BY A PHARMACY BENEFITS MANAGER FOR THE
17 PROVISION OF PHARMACY BENEFITS MANAGEMENT SERVICES SHALL INCLUDE:

18 (1) THE AMOUNT OF THE TOTAL REVENUES, REBATES, AND
19 DISCOUNTS IDENTIFIED IN §§ 15-1603 AND 15-1604 OF THIS SUBTITLE THAT
20 WILL BE PASSED ON TO THE PURCHASER;

21 (2) THE MAXIMUM ALLOWABLE COST AND AVERAGE WHOLESALE
22 PRICE RESOURCES USED TO DETERMINE THE PRICE PAID TO A PHARMACY AND
23 BILLED TO THE PURCHASER;

24 (3) THE CONDITIONS UNDER WHICH BENEFICIARY UTILIZATION
25 DATA MAY BE DISCLOSED OR SOLD BY THE PHARMACY BENEFITS MANAGER TO
26 ANY PERSON OTHER THAN THE PURCHASER;

27 (4) ANY ADMINISTRATIVE OR OTHER FEES:

28 (I) CHARGED BY THE PHARMACY BENEFITS MANAGER TO
29 THE PURCHASER; OR

30 (II) COLLECTED BY THE PHARMACY BENEFITS MANAGER ON
31 BEHALF OF THE PURCHASER;

1 **(5) (I) THE CONDITIONS UNDER WHICH AN AUDIT WILL BE**
2 **CONDUCTED OF THE CONTRACT FOR PHARMACY BENEFITS MANAGEMENT**
3 **SERVICES;**

4 **(II) WHO WILL CONDUCT THE AUDIT; AND**

5 **(III) WHO WILL PAY FOR THE AUDIT;**

6 **(6) ANY REVENUES, REBATES, OR DISCOUNTS RECEIVED,**
7 **DIRECTLY OR INDIRECTLY, BY THE PHARMACY BENEFITS MANAGER FROM**
8 **PERSONS OTHER THAN PHARMACEUTICAL MANUFACTURERS AND LABELERS**
9 **THAT ARE SPECIFIC TO THE PHARMACY BENEFITS MANAGEMENT SERVICES TO**
10 **BE PROVIDED TO THE PURCHASER;**

11 **(7) THE PROCESS FOR THE DEVELOPMENT OF FORMULARIES,**
12 **NOTIFICATION OF CHANGES TO FORMULARIES, AND APPROVAL OF CHANGES BY**
13 **THE PURCHASER; AND**

14 **(8) AN AGREEMENT TO PROVIDE TO THE PURCHASER A LIST OF**
15 **PRESCRIPTIONS FOR WHICH THERE WAS A DIFFERENCE BETWEEN THE PRICE**
16 **PAID TO A RETAIL PHARMACY AND THE AMOUNT THAT WILL BE OR WAS BILLED**
17 **TO THE PURCHASER INCLUDING, FOR EACH PRESCRIPTION:**

18 **(I) THE PRESCRIPTION NUMBER;**

19 **(II) THE DATE THE PRESCRIPTION DRUG WAS PROCESSED**
20 **BY THE PHARMACY BENEFITS MANAGER;**

21 **(III) THE NATIONAL DRUG CODE NUMBER;**

22 **(IV) THE BENEFICIARY'S NAME; AND**

23 **(V) THE PRICE PAID TO THE RETAIL PHARMACY AND THE**
24 **AMOUNT BILLED TO THE PURCHASER.**

25 **15-1607.**

26 **ALL DISCLOSURES MADE UNDER THIS SUBTITLE SHALL COMPLY WITH**
27 **THE PRIVACY STANDARDS OF THE FEDERAL HEALTH INSURANCE PORTABILITY**
28 **AND ACCOUNTABILITY ACT.**

29 **15-1608.**

