

CHAPTER 206

(House Bill 120)

AN ACT concerning

Pharmacy Benefits Managers - ~~Transparency~~ Disclosures

FOR the purpose of ~~requiring a pharmacy benefits manager to disclose in writing certain information to a prospective purchaser and a purchaser; specifying the manner in which certain disclosures must be provided; providing that a pharmacy benefits manager need not make certain disclosures unless and until the prospective purchaser or the purchaser agrees in writing to maintain certain information as confidential; providing that certain agreements may include certain remedies and certain persons; requiring a contract executed by a pharmacy benefits manager for the provision of pharmacy benefits management services to include certain items; requiring the Commissioner to adopt certain regulations on or before a certain date; 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; authorizing the Commissioner to assess a certain penalty or require certain restitution under certain circumstances; making certain provisions of law applicable to health maintenance organizations; defining certain terms; and generally relating to regulation of pharmacy benefits managers.~~ 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; defining certain terms; and generally relating to regulation of pharmacy benefits managers.

BY adding to

Article – Insurance

Section 15–1601 through ~~15–1609 15–1606~~ 15–1605 to be under the new subtitle “Subtitle 16. Pharmacy Benefits Managers”

Annotated Code of Maryland

(2006 Replacement Volume and 2007 Supplement)

BY adding to

Article – Health – General

Section 19–706(ppp)

Annotated Code of Maryland

(2005 Replacement Volume and 2007 Supplement)

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

Article - Insurance

SUBTITLE 16. PHARMACY BENEFITS MANAGERS.

~~15-1601.~~

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

~~(B) "BENEFICIARY" MEANS AN INDIVIDUAL ON WHOSE BEHALF A PURCHASER ENTERS INTO AN AGREEMENT WITH A PHARMACY BENEFITS MANAGER.~~

~~(C) "LABELER" MEANS A PERSON THAT:~~

~~(1) RECEIVES PRESCRIPTION DRUGS FROM A MANUFACTURER OR WHOLESALER AND REPACKAGES THOSE DRUGS FOR LATER RETAIL SALE; AND~~

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

~~(D) (1) "PHARMACY BENEFITS MANAGEMENT SERVICES" MEANS THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS.~~

~~(2) "PHARMACY BENEFITS MANAGEMENT SERVICES" INCLUDES:~~

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

~~(II) PROCESSING OF PRESCRIPTION DRUG CLAIMS;~~

~~(III) ADMINISTRATION OF PAYMENTS RELATED TO PRESCRIPTION DRUG CLAIMS; AND~~

~~(IV) NEGOTIATING OR ENTERING INTO CONTRACTUAL ARRANGEMENTS WITH PHARMACY PROVIDERS.~~

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

~~(F) "PROSPECTIVE PURCHASER" MEANS A PERSON TO WHICH A PHARMACY BENEFITS MANAGER OFFERS TO PROVIDE PHARMACY BENEFITS MANAGEMENT SERVICES.~~

~~(G) (1) "PURCHASER" MEANS A PERSON THAT ENTERS INTO AN AGREEMENT WITH A PHARMACY BENEFITS MANAGER FOR THE PROVISION OF PHARMACY BENEFITS MANAGEMENT SERVICES.~~

~~(2) "PURCHASER" INCLUDES THE STATE.~~

~~(H) "TRADE SECRET" HAS THE MEANING STATED IN § 11-1201 OF THE COMMERCIAL LAW ARTICLE.~~

~~15-1602.~~

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

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

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

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

~~15-1603.~~

~~(A) A PHARMACY BENEFITS MANAGER SHALL DISCLOSE TO A PROSPECTIVE PURCHASER IN WRITING:~~

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

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

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

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

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

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

~~(I) THE DRUG NAME AND STRENGTH;~~

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

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

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

~~(1) IN THE AGGREGATE;~~

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

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

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

~~15-1604.~~

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

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

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

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

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

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

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

~~(I) THE DRUG NAME AND STRENGTH;~~

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

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

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

~~(I) THE PRESCRIPTION NUMBER;~~

~~(II) THE DATE THE PRESCRIPTION WAS PROCESSED BY THE PHARMACY BENEFITS MANAGER;~~

~~(III) THE NATIONAL DRUG CODE NUMBER;~~

~~(IV) THE BENEFICIARY'S NAME; AND~~

~~(V) THE PRICE PAID TO THE RETAIL PHARMACY AND THE AMOUNT BILLED TO THE PURCHASER.~~

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

~~(1) IN THE AGGREGATE;~~

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

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

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

~~15-1605.~~

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

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

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

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

~~(C) PROPRIETARY INFORMATION INCLUDES:~~

~~(1) TRADE SECRETS; AND~~

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

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

~~15-1606.~~

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

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

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

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

~~(4) ANY ADMINISTRATIVE OR OTHER FEES:~~

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

~~(H) COLLECTED BY THE PHARMACY BENEFITS MANAGER ON BEHALF OF THE PURCHASER;~~

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

~~(II) WHO WILL CONDUCT THE AUDIT; AND~~

~~(III) WHO WILL PAY FOR THE AUDIT;~~

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

~~(7) THE PROCESS FOR THE DEVELOPMENT OF FORMULARIES, NOTIFICATION OF CHANGES TO FORMULARIES, AND APPROVAL OF CHANGES BY THE PURCHASER; AND~~

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

~~(I) THE PRESCRIPTION NUMBER;~~

~~(II) THE DATE THE PRESCRIPTION DRUG WAS PROCESSED BY THE PHARMACY BENEFITS MANAGER;~~

~~(III) THE NATIONAL DRUG CODE NUMBER;~~

~~(IV) THE BENEFICIARY'S NAME; AND~~

~~(V) THE PRICE PAID TO THE RETAIL PHARMACY AND THE AMOUNT BILLED TO THE PURCHASER.~~

~~15-1607.~~

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

~~15-1608.~~

~~ON OR BEFORE APRIL 1, 2009, THE COMMISSIONER SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE.~~

~~15-1609.~~

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.

(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 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:

(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

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

~~15-1606.~~

~~(A) THE COMMISSIONER MAY ASSESS A CIVIL PENALTY NOT EXCEEDING \$10,000 FOR EACH VIOLATION OF THIS SUBTITLE.~~

~~(B) IN ADDITION TO OR INSTEAD OF ASSESSING A CIVIL PENALTY, THE COMMISSIONER MAY REQUIRE THE PHARMACY BENEFITS MANAGER TO MAKE RESTITUTION TO ANY PERSON WHO HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE VIOLATION OF THIS SUBTITLE.~~

Article - Health - General

19-706.

(PPP) THE PROVISIONS OF TITLE 15, SUBTITLE 16 OF THE INSURANCE ARTICLE APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

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

Approved by the Governor, April 24, 2008.