

# HOUSE BILL 1338

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CF SB 974

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By: **Delegate Kipke**

Introduced and read first time: March 7, 2011

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance – Pharmacy Benefits Managers – Contracts, Disclosures,**  
3 **and Audits**

4 FOR the purpose of requiring each contract between a pharmacy benefits manager  
5 and a pharmacy, pharmacist, or retail pharmacy network or agent of a  
6 pharmacy, pharmacist, or retail pharmacy network to contain at a minimum  
7 certain provisions; requiring a pharmacy benefits manager to disclose certain  
8 information to certain entities at certain times; requiring a pharmacy benefits  
9 manager that, in a certain contract, calculates reimbursement for prescription  
10 drugs and other products and supplies in accordance with a certain formula to  
11 use a certain price in that calculation; requiring a pharmacy benefit manager to  
12 update certain prices at an interval not less than a certain number of business  
13 days and to make certain disclosures about certain prices and a certain  
14 methodology; prohibiting a pharmacy benefits manager that has a certain  
15 management or ownership interest from discriminating or restricting the rights  
16 of a beneficiary or offering certain copayments to a beneficiary; altering the  
17 requirements for an audit conducted by a pharmacy benefits manager of a  
18 pharmacy or pharmacist under contract with the pharmacy benefits manager;  
19 requiring that a copy of a certain final audit report be delivered to a plan  
20 sponsor within certain periods of time under certain circumstances; requiring a  
21 certain recoupment of a certain claims payment to be based only on a certain fee  
22 and not on a certain cost; prohibiting a pharmacy benefits manager and a plan  
23 sponsor from taking certain actions on the basis of certain errors; making  
24 stylistic changes; and generally relating to pharmacy benefits managers.

25 BY repealing and reenacting, with amendments,  
26 Article – Insurance  
27 Section 15–1628 and 15–1629  
28 Annotated Code of Maryland  
29 (2006 Replacement Volume and 2010 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Insurance**

4 15–1628.

5 **(A) THIS SECTION APPLIES TO CONTRACTS BETWEEN:**

6 **(1) A PHARMACY BENEFITS MANAGER; AND**

7 **(2) A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK**  
8 **OR AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK.**

9 **(B) IN ADDITION TO ANY OTHER REQUIREMENTS OF LAW, EACH**  
10 **CONTRACT SUBJECT TO THIS SECTION SHALL CONTAIN, AT A MINIMUM, THE**  
11 **PROVISIONS REQUIRED BY THIS SECTION.**

12 **(C) At the time of entering into a contract [with a pharmacy or a pharmacist]**  
13 **SUBJECT TO THIS SECTION, and at least 30 working days before any [contract]**  
14 **change IN A CONTRACT SUBJECT TO THIS SECTION, a pharmacy benefits manager**  
15 **shall disclose to the [pharmacy or pharmacist] PHARMACY, PHARMACIST, OR**  
16 **RETAIL PHARMACY NETWORK OR AGENT OF THE PHARMACY, PHARMACIST, OR**  
17 **RETAIL PHARMACY NETWORK:**

18 **(1) the applicable terms, conditions, and reimbursement rates;**

19 **(2) the process and procedures for verifying pharmacy benefits and**  
20 **beneficiary eligibility;**

21 **(3) the dispute resolution and audit appeals process; and**

22 **(4) the process and procedures for verifying the prescription drugs**  
23 **included on the formularies used by the pharmacy benefits manager.**

24 **(D) (1) IF IN A CONTRACT SUBJECT TO THIS SECTION A PHARMACY**  
25 **BENEFITS MANAGER CALCULATES REIMBURSEMENT FOR PRESCRIPTION DRUGS**  
26 **AND OTHER PRODUCTS AND SUPPLIES IN ACCORDANCE WITH A FORMULA THAT**  
27 **USES A NATIONALLY RECOGNIZED REFERENCE IN THE PRICING CALCULATION,**  
28 **THE PHARMACY BENEFITS MANAGER SHALL USE THE MOST CURRENT**  
29 **NATIONALLY RECOGNIZED REFERENCE PRICE IN THE ACTUAL OR**  
30 **CONSTRUCTIVE POSSESSION OF THE PHARMACY BENEFITS MANAGER OR AGENT**  
31 **OF THE PHARMACY BENEFITS MANAGER.**

1           **(2) TO COMPLY WITH PARAGRAPH (1) OF THIS SUBSECTION, A**  
2 **PHARMACY BENEFITS MANAGER SHALL:**

3                   **(I) UPDATE THE NATIONALLY RECOGNIZED REFERENCE**  
4 **PRICES USED TO CALCULATE REIMBURSEMENT FOR PRESCRIPTION DRUGS AND**  
5 **OTHER PRODUCTS AND SUPPLIES NOT LESS THAN EVERY 3 BUSINESS DAYS; AND**

6                   **(II) DISCLOSE TO THE PHARMACY OR PHARMACIST THE**  
7 **NATIONALLY RECOGNIZED REFERENCE PRICES AND METHODOLOGY USED TO**  
8 **CALCULATE REIMBURSEMENT FOR PRESCRIPTION DRUGS OR OTHER PRODUCTS**  
9 **AND SUPPLIES.**

10           **(E) A PHARMACY BENEFITS MANAGER THAT HAS A MANAGEMENT OR**  
11 **OWNERSHIP INTEREST IN A PHARMACY, PHARMACIST, OR RETAIL PHARMACY**  
12 **NETWORK OR IS THE AGENT OF A PHARMACY, PHARMACIST, OR RETAIL**  
13 **PHARMACY NETWORK MAY NOT DISCRIMINATE OR RESTRICT THE RIGHTS OF A**  
14 **BENEFICIARY OR OFFER PREFERENTIAL COPAYMENTS TO A BENEFICIARY**  
15 **BASED ON A PHARMACY CLASSIFICATION OF TRADE.**

16 15–1629.

17           (a) This section does not apply to an audit that involves probable or potential  
18 fraud or willful misrepresentation by a pharmacy or pharmacist.

19           (b) A pharmacy benefits manager shall conduct an audit of a pharmacy or  
20 pharmacist under contract with the pharmacy benefits manager in accordance with  
21 this section.

22           (c) A pharmacy benefits manager may not schedule an onsite audit to begin  
23 during the first 5 calendar days of a month unless requested by the pharmacy or  
24 pharmacist.

25           (d) When conducting an audit, a pharmacy benefits manager shall:

26                   (1) if the audit is onsite, provide written notice to the pharmacy or  
27 pharmacist at least 2 weeks before conducting the initial onsite audit for each audit  
28 cycle;

29                   (2) employ the services of a pharmacist if the audit requires the  
30 clinical or professional judgment of a pharmacist;

31                   (3) for purposes of validating the pharmacy record with respect to  
32 orders or refills of a drug that is a controlled dangerous substance, allow the pharmacy  
33 or pharmacist to use hospital or physician records that are:

34                           (i) written; or

1 (ii) transmitted electronically;

2 (4) audit each pharmacy and pharmacist under the same standards  
3 and parameters as other similarly situated pharmacies or pharmacists audited by the  
4 pharmacy benefits manager;

5 **(5) AUDIT THE SAME NUMBER OF CHAIN PHARMACIES AND**  
6 **INDEPENDENT PHARMACIES;**

7 **(6) AUDIT THE SAME NUMBER OF BRAND PRESCRIPTION DRUGS**  
8 **AND GENERIC PRESCRIPTION DRUGS;**

9 ~~[(5)]~~ **(7)** only audit claims submitted or adjudicated within the  
10 2-year period immediately preceding the audit, unless a longer period is permitted  
11 under federal or State law;

12 ~~[(6)]~~ **(8)** deliver the preliminary audit report to the pharmacy or  
13 pharmacist within 120 calendar days after the completion of the audit, with  
14 reasonable extensions allowed;

15 ~~[(7)]~~ **(9)** in accordance with subsection ~~[(g)]~~ **(I)** of this section, allow a  
16 pharmacy or pharmacist to produce documentation to address any discrepancy found  
17 during the audit; and

18 ~~[(8)]~~ **(10)** deliver the final audit report to the pharmacy or pharmacist  
19 **AND A COPY OF THE FINAL AUDIT REPORT TO THE PLAN SPONSOR:**

20 (i) within 6 months after delivery of the preliminary audit  
21 report if the pharmacy or pharmacist does not request an internal appeal under  
22 subsection ~~[(g)]~~ **(I)** of this section; or

23 (ii) within 30 days after the conclusion of the internal appeals  
24 process under subsection ~~[(g)]~~ **(I)** of this section if the pharmacy or pharmacist  
25 requests an internal appeal.

26 (e) A pharmacy benefits manager may not use the accounting practice of  
27 extrapolation to calculate overpayments or underpayments.

28 (f) The recoupment of a claims payment from a pharmacy or pharmacist by  
29 a pharmacy benefits manager shall be based on an actual overpayment or denial of an  
30 audited claim unless the projected overpayment or denial is part of a settlement  
31 agreed to by the pharmacy or pharmacist.

32 **(G) THE RECOUPMENT OF A CLAIMS PAYMENT FROM A PHARMACY OR**  
33 **PHARMACIST BY A PHARMACY BENEFITS MANAGER:**

1           **(1) SHALL BE BASED ONLY ON THE ACTUAL DISPENSING FEE; AND**

2           **(2) MAY NOT INCLUDE THE COST OF THE PRESCRIBED DRUG**  
3 **DISPENSED.**

4           **(H) (1) ON THE BASIS OF A CLERICAL OR RECORD-KEEPING ERROR**  
5 **DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, A PHARMACY BENEFITS**  
6 **MANAGER AND A PLAN SPONSOR MAY NOT:**

7                   **(I) DENY A CLAIM OR SEEK A PENALTY DURING OR AFTER**  
8 **AN AUDIT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR**  
9 **AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK;**

10                   **(II) SEEK RECOUPMENT FROM A PHARMACY, PHARMACIST,**  
11 **OR RETAIL PHARMACY NETWORK OR AN AGENT OF A PHARMACY, PHARMACIST,**  
12 **OR RETAIL PHARMACY NETWORK; OR**

13                   **(III) RECOUP BY SETOFF AGAINST AMOUNTS OWED TO A**  
14 **PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AGENT OF A**  
15 **PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK.**

16           **(2) FOR PURPOSES OF THIS SUBSECTION, A CLERICAL OR**  
17 **RECORD-KEEPING ERROR INCLUDES A TYPOGRAPHICAL ERROR,**  
18 **MATHEMATICAL CALCULATION ERROR, DATA ENTRY ERROR, AND SCRIVENER'S**  
19 **ERROR, INCLUDING PATIENT DATA OMISSIONS AND INCOMPLETE**  
20 **INFORMATION.**

21           **[(g)] (I) (1) A pharmacy benefits manager shall establish an internal**  
22 **appeals process under which a pharmacy or pharmacist may appeal any disputed**  
23 **claim in a preliminary audit report.**

24                   **(2) Under the internal appeals process, a pharmacy benefits manager**  
25 **shall allow a pharmacy or pharmacist to request an internal appeal within 30 working**  
26 **days after receipt of the preliminary audit report, with reasonable extensions allowed.**

27                   **(3) The pharmacy benefits manager shall include in its preliminary**  
28 **audit report a written explanation of the internal appeals process, including the name,**  
29 **address, and telephone number of the person to whom an internal appeal should be**  
30 **addressed.**

31                   **(4) The decision of the pharmacy benefits manager on an appeal of a**  
32 **disputed claim in a preliminary audit report by a pharmacy or pharmacist shall be**  
33 **reflected in the final audit report.**

1                   (5)     The pharmacy benefits manager shall deliver the final audit report  
2 to the pharmacy or pharmacist within 30 calendar days after conclusion of the internal  
3 appeals process.

4                   **[(h)] (J)**     (1)     A pharmacy benefits manager may not recoup by setoff any  
5 moneys for an overpayment or denial of a claim until 30 working days after the date  
6 the final audit report has been delivered to the pharmacy or pharmacist.

7                   (2)     A pharmacy benefits manager shall remit any money due to a  
8 pharmacy or pharmacist as a result of an underpayment of a claim within 30 working  
9 days after the final audit report has been delivered to the pharmacy or pharmacist.

10                  (3)     Notwithstanding the provisions of paragraph (1) of this subsection,  
11 a pharmacy benefits manager may withhold future payments before the date the final  
12 audit report has been delivered to the pharmacy or pharmacist if the identified  
13 discrepancy for all disputed claims in a preliminary audit report for an individual  
14 audit exceeds \$25,000.

15                  **[(i)] (K)**     On request of the Commissioner or the Commissioner's designee, a  
16 pharmacy benefits manager shall provide a copy of its audit procedures or internal  
17 appeals process.

18                  SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2011.