

Chapter 569

(House Bill 1338)

AN ACT concerning

Health Insurance – Pharmacy Benefits Managers – ~~Contracts, Disclosures,~~ ~~and Audits~~ Claims

FOR the purpose of ~~requiring each contract between a pharmacy benefits manager and a pharmacy, pharmacist, or retail pharmacy network or agent of a pharmacy, pharmacist, or retail pharmacy network to contain at a minimum certain provisions; requiring a pharmacy benefits manager to disclose certain information to certain entities at certain times; requiring a pharmacy benefits manager that, in a certain contract, calculates reimbursement for prescription drugs and other products and supplies in accordance with a certain formula to use a certain price in that calculation; requiring a pharmacy benefit manager to update certain prices at an interval not less than a certain number of business days and to make certain disclosures about certain prices and a certain methodology; prohibiting a pharmacy benefits manager that has a certain management or ownership interest from discriminating or restricting the rights of a beneficiary or offering certain copayments to a beneficiary; altering the requirements for an audit conducted by a pharmacy benefits manager of a pharmacy or pharmacist under contract with the pharmacy benefits manager; requiring that a copy of a certain final audit report be delivered to a plan sponsor within certain periods of time under certain circumstances; requiring a certain recoupment of a certain claims payment to be based only on a certain fee and not on a certain cost; prohibiting a pharmacy benefits manager and a plan sponsor from taking certain actions on the basis of certain errors; making stylistic changes providing that certain errors may not constitute fraud or grounds for recoupment of specified claims payments under specified circumstances; specifying that certain claims remain subject to recoupment of overpayment or payment of any discovered underpayment by a pharmacy benefits manager; defining a certain term; and generally relating to pharmacy benefits managers.~~

BY repealing and reenacting, with amendments,
 Article – Insurance
 Section ~~15-1628~~ and 15-1629
 Annotated Code of Maryland
 (2006 Replacement Volume and 2010 Supplement)

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

Article – Insurance

~~15-1628.~~

~~(A) THIS SECTION APPLIES TO CONTRACTS BETWEEN:~~

~~(1) A PHARMACY BENEFITS MANAGER; AND~~

~~(2) A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK OR AN AGENT OF A PHARMACY, PHARMACIST, OR RETAIL PHARMACY NETWORK.~~

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

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

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

~~(2) the process and procedures for verifying pharmacy benefits and beneficiary eligibility;~~

~~(3) the dispute resolution and audit appeals process; and~~

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

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

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

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

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

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

15-1629.

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

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

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

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

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

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

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

(i) written; or

(ii) transmitted electronically;

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

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

~~(6) AUDIT THE SAME NUMBER OF BRAND PRESCRIPTION DRUGS AND GENERIC PRESCRIPTION DRUGS;~~

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

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

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

~~(8)~~ (10) deliver the final audit report to the pharmacy or pharmacist ~~AND A COPY OF THE FINAL AUDIT REPORT TO THE PLAN SPONSOR.~~

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

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

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

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

~~(G) THE RECOUPMENT OF A CLAIMS PAYMENT FROM A PHARMACY OR PHARMACIST BY A PHARMACY BENEFITS MANAGER;~~

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

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

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

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

~~(II) SEEK RECOUPMENT FROM A PHARMACY, PHARMACIST,
OR RETAIL PHARMACY NETWORK OR AN AGENT OF A PHARMACY, PHARMACIST,
OR RETAIL PHARMACY NETWORK; OR~~

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

~~(2) FOR PURPOSES OF THIS SUBSECTION, A CLERICAL OR
RECORD KEEPING ERROR INCLUDES A TYPOGRAPHICAL ERROR,
MATHEMATICAL CALCULATION ERROR, DATA ENTRY ERROR, AND SCRIVENER'S
ERROR, INCLUDING PATIENT DATA OMISSIONS AND INCOMPLETE
INFORMATION.~~

(G) (1) IN THIS SUBSECTION, "OVERPAYMENT" MEANS A PAYMENT BY
THE PHARMACY BENEFITS MANAGER TO A PHARMACY OR PHARMACIST THAT IS
GREATER THAN THE RATE OR TERMS SPECIFIED IN THE CONTRACT BETWEEN
THE PHARMACY OR PHARMACIST AND THE PHARMACY BENEFITS MANAGER AT
THE TIME THAT THE PAYMENT IS MADE.

(2) A CLERICAL ERROR, RECORD-KEEPING ERROR,
TYPOGRAPHICAL ERROR, OR SCRIVENER'S ERROR IN A REQUIRED DOCUMENT
OR RECORD MAY NOT CONSTITUTE FRAUD OR GROUNDS FOR RECOUPMENT OF A
CLAIMS PAYMENT FROM A PHARMACY OR PHARMACIST BY A PHARMACY
BENEFITS MANAGER IF THE PRESCRIPTION WAS OTHERWISE LEGALLY
DISPENSED AND THE CLAIM WAS OTHERWISE MATERIALLY CORRECT.

(3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION,
CLAIMS REMAIN SUBJECT TO RECOUPMENT OF OVERPAYMENT OR PAYMENT OF
ANY DISCOVERED UNDERPAYMENT BY THE PHARMACY BENEFITS MANAGER.

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 19, 2011.