

# SENATE BILL 903

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CF HB 838

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By: **Senator Astle**

Introduced and read first time: February 8, 2012

Assigned to: Rules

Re-referred to: Finance, February 10, 2012

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 22, 2012

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health Insurance – Pharmacy Benefits Managers – Audits and**  
3 **Reimbursement of Pharmacies or Pharmacists**

4 FOR the purpose of altering certain requirements a pharmacy benefits manager must  
5 comply with when conducting an audit of a pharmacy or pharmacist; prohibiting  
6 a pharmacy benefits manager from disrupting the provision of services to the  
7 customers of a pharmacy during an audit; prohibiting a pharmacy benefits  
8 manager from taking certain actions relating to an audit of a pharmacy or  
9 pharmacist, with a certain exception; prohibiting a pharmacy benefits manager  
10 from recouping by setoff certain money until certain conditions are fulfilled;  
11 providing for a certain appeal, under certain circumstances; ~~requiring~~  
12 authorizing the Maryland Insurance Commissioner to adopt regulations ~~that~~  
13 standardize regarding certain documentation and a certain process; prohibiting  
14 a pharmacy benefits manager from retroactively denying or modifying  
15 reimbursement to a pharmacy or a pharmacist for a certain approved claim,  
16 with certain exceptions; ~~requiring a pharmacy benefits manager to reimburse a~~  
17 ~~pharmacy or pharmacist for a certain quantity of a prescription drug to meet a~~  
18 ~~certain day's supply; limiting the amount of reimbursement that a pharmacy~~  
19 ~~benefits manager may recoup, require to be repaid, or setoff under certain~~  
20 ~~circumstances~~; and generally relating to pharmacy benefits managers and  
21 audits and reimbursement of pharmacies and pharmacists.

22 BY repealing and reenacting, with amendments,  
23 Article – Insurance

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 15–1629  
2 Annotated Code of Maryland  
3 (2011 Replacement Volume)

4 BY adding to  
5 Article – Insurance  
6 Section 15–1631  
7 Annotated Code of Maryland  
8 (2011 Replacement Volume)

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

11 **Article – Insurance**

12 15–1629.

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

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

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

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

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

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

27 **(3) PERMIT ITS AUDITORS TO ENTER THE PRESCRIPTION AREA OF**  
28 **A PHARMACY ONLY WHEN ACCOMPANIED BY OR AUTHORIZED BY A MEMBER OF**  
29 **THE PHARMACY STAFF;**

30 **(4) ALLOW A PHARMACIST OR PHARMACY TO USE ANY**  
31 **PRESCRIPTION, OR AUTHORIZED CHANGE TO A PRESCRIPTION, THAT MEETS**  
32 **THE REQUIREMENTS OF COMAR 10.34.20.02 TO VALIDATE CLAIMS SUBMITTED**  
33 **FOR REIMBURSEMENT FOR DISPENSING OF ORIGINAL AND REFILL**  
34 **PRESCRIPTIONS;**

1           **[(3)] (5)** for purposes of validating the pharmacy record with respect  
2 to orders or refills of a drug [that is a controlled dangerous substance], allow the  
3 pharmacy or pharmacist to use [hospital or physician] records **OF A HOSPITAL OR A**  
4 **PHYSICIAN OR OTHER PRESCRIBER AUTHORIZED BY LAW** that are:

5           (i) written; or

6           (ii) transmitted electronically **OR BY ANY OTHER MEANS OF**  
7 **COMMUNICATION AUTHORIZED BY CONTRACT BETWEEN THE PHARMACY AND**  
8 **THE PHARMACY BENEFITS MANAGER;**

9           **[(4)] (6)** audit each pharmacy and pharmacist under the same  
10 standards and parameters as other similarly situated pharmacies or pharmacists  
11 audited by the pharmacy benefits manager;

12           **[(5)] (7)** only audit claims submitted or adjudicated within the  
13 2-year period immediately preceding the audit, unless a longer period is permitted  
14 under federal or State law;

15           ~~**(8) REQUEST ADDITIONAL INFORMATION ON PARTICULAR**~~  
16 ~~**PRESCRIPTIONS ONLY IN PERSON OR BY CERTIFIED MAIL;**~~

17           **[(6)] ~~(9)~~ (8)** deliver the preliminary audit report to the pharmacy  
18 or pharmacist within 120 calendar days after the completion of the audit, with  
19 reasonable extensions allowed;

20           **[(7)] ~~(10)~~ (9)** in accordance with subsection **[(h)] (I)** of this section,  
21 allow a pharmacy or pharmacist to produce documentation to address any discrepancy  
22 found during the audit; and

23           **[(8)] ~~(11)~~ (10)** deliver the final audit report to the pharmacy or  
24 pharmacist:

25           (i) within 6 months after delivery of the preliminary audit  
26 report if the pharmacy or pharmacist does not request an internal appeal under  
27 subsection **[(h)] (I)** of this section; or

28           (ii) within 30 days after the conclusion of the internal appeals  
29 process under subsection **[(h)] (I)** of this section if the pharmacy or pharmacist  
30 requests an internal appeal.

31           **(E) DURING AN AUDIT, A PHARMACY BENEFITS MANAGER MAY NOT**  
32 **DISRUPT THE PROVISION OF SERVICES TO THE CUSTOMERS OF A PHARMACY.**

1            [(e)] (F)    (1)    A pharmacy benefits manager may not:

2                    ~~(1)~~    (I)    use the accounting practice of extrapolation to calculate  
3 overpayments or underpayments; OR

4                    ~~(2)~~    ~~REQUEST INFORMATION ON PRESCRIPTIONS THAT:~~

5                            ~~(I)~~    ~~HAVE BEEN AUDITED PREVIOUSLY; OR~~

6                            ~~(II)~~    ~~HAVE BEEN APPROVED BY PRIOR AUTHORIZATION,~~  
7 ~~UNLESS THE PRESCRIPTION HAS BEEN CHANGED;~~

8                    ~~(3)~~    ~~AUDIT MORE THAN 250 PRESCRIPTIONS AT A SINGLE~~  
9 ~~PHARMACY DURING ANY 6 MONTH PERIOD;~~

10                    ~~(4)~~    (II)    EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
11 SUBSECTION:

12                            1.    SHARE INFORMATION FROM AN AUDIT WITH  
13 ANOTHER PHARMACY BENEFITS MANAGER; OR

14                    ~~(5)~~            2.    USE INFORMATION FROM AN AUDIT CONDUCTED  
15 BY ANOTHER PHARMACY BENEFITS MANAGER; ~~OR.~~

16                    (2)    PARAGRAPH (1)(II) OF THIS SUBSECTION DOES NOT APPLY TO  
17 THE SHARING OF INFORMATION:

18                            (I)    REQUIRED BY FEDERAL OR STATE LAW;

19                            (II)    IN CONNECTION WITH AN ACQUISITION OR MERGER  
20 INVOLVING THE PHARMACY BENEFITS MANAGER; OR

21                            (III)    AT THE PAYOR'S REQUEST OR UNDER THE TERMS OF  
22 THE AGREEMENT BETWEEN THE PHARMACY BENEFITS MANAGER AND THE  
23 PAYOR.

24                    ~~(6)~~    ~~PAY FOR AUDITING SERVICES BASED ON A PERCENTAGE OF~~  
25 ~~THE AMOUNT RECOVERED IN AN AUDIT.~~

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

1           **[(g)] (H)**     (1)     In this subsection, “overpayment” means a payment by the  
2 pharmacy benefits manager to a pharmacy or pharmacist that is greater than the rate  
3 or terms specified in the contract between the pharmacy or pharmacist and the  
4 pharmacy benefits manager at the time that the payment is made.

5           (2)     A clerical error, record-keeping error, typographical error, or  
6 scrivener’s error in a required document or record may not constitute fraud or grounds  
7 for recoupment of a claims payment from a pharmacy or pharmacist by a pharmacy  
8 benefits manager if the prescription was otherwise legally dispensed and the claim  
9 was otherwise materially correct.

10           (3)     Notwithstanding paragraph (2) of this subsection, claims remain  
11 subject to recoupment of overpayment or payment of any discovered underpayment by  
12 the pharmacy benefits manager.

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

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

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

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

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

29           **[(i)] (J)**     (1)     A pharmacy benefits manager may not recoup by setoff any  
30 moneys for an overpayment or denial of a claim until:

31                           **(I)     THE PHARMACY OR PHARMACIST HAS AN OPPORTUNITY**  
32 **TO REVIEW THE PHARMACY BENEFITS MANAGER’S FINDINGS; AND**

33                           **(II)    IF THE PHARMACY OR PHARMACIST CONCURS WITH THE**  
34 **PHARMACY BENEFITS MANAGER’S FINDINGS OF OVERPAYMENT OR DENIAL, 30**  
35 **working days HAVE ELAPSED** after the date the final audit report has been delivered  
36 to the pharmacy or pharmacist.

1           **(2) IF THE PHARMACY OR PHARMACIST DOES NOT CONCUR WITH**  
 2 **THE PHARMACY BENEFITS MANAGER'S FINDINGS OF OVERPAYMENT OR DENIAL:**

3           ~~**(I) THE PHARMACY OR PHARMACIST MAY APPEAL THE**~~  
 4 ~~**FINDINGS; AND**~~

5           ~~**(H),**~~ **THE PHARMACY BENEFITS MANAGER MAY NOT RECOUP**  
 6 **BY SETOFF ANY MONEY PENDING THE OUTCOME OF ~~THE~~ AN APPEAL UNDER**  
 7 **SUBSECTION (I) OF THIS SECTION.**

8           **[(2)] (3)** A pharmacy benefits manager shall remit any money due to  
 9 a pharmacy or pharmacist as a result of an underpayment of a claim within 30  
 10 working days after the final audit report has been delivered to the pharmacy or  
 11 pharmacist.

12           **[(3)] (4)** Notwithstanding the provisions of paragraph (1) of this  
 13 subsection, a pharmacy benefits manager may withhold future payments before the  
 14 date the final audit report has been delivered to the pharmacy or pharmacist if the  
 15 identified discrepancy for all disputed claims in a preliminary audit report for an  
 16 individual audit exceeds \$25,000.

17           **[(j)] (k) (1) THE COMMISSIONER ~~SHALL~~ MAY ADOPT REGULATIONS**  
 18 ~~**THAT STANDARDIZE REGARDING:**~~

19           **(I) THE DOCUMENTATION THAT MAY BE REQUESTED**  
 20 **DURING AN AUDIT; AND**

21           **(II) THE PROCESS A PHARMACY BENEFITS MANAGER MAY**  
 22 **USE TO CONDUCT AN AUDIT.**

23           **(2)** On request of the Commissioner or the Commissioner's designee, a  
 24 pharmacy benefits manager shall provide a copy of its audit procedures or internal  
 25 appeals process.

26 **15-1631.**

27           ~~**(A)**~~ **EXCEPT FOR AN OVERPAYMENT AS DEFINED IN § 15-1629(H) OF**  
 28 **THIS SUBTITLE, IF A CLAIM HAS BEEN APPROVED BY A PHARMACY BENEFITS**  
 29 **MANAGER THROUGH ADJUDICATION, THE PHARMACY BENEFITS MANAGER MAY**  
 30 **NOT RETROACTIVELY DENY OR MODIFY REIMBURSEMENT TO A PHARMACY OR**  
 31 **PHARMACIST FOR THE APPROVED CLAIM UNLESS:**

32           **(1) THE CLAIM WAS FRAUDULENT;**

1           (2) THE PHARMACY OR PHARMACIST HAD BEEN REIMBURSED FOR  
2 THE CLAIM PREVIOUSLY; ~~OR~~

3           (3) THE SERVICES REIMBURSED WERE NOT RENDERED BY THE  
4 PHARMACY OR PHARMACIST; OR

5           (4) SUBJECT TO § 15-1629(H)(2) OF THIS PART, THE CLAIM  
6 OTHERWISE CAUSED MONETARY LOSS TO THE PHARMACY BENEFITS MANAGER,  
7 PROVIDED THAT THE PHARMACY BENEFITS MANAGER ALLOWED THE  
8 PHARMACY A REASONABLE OPPORTUNITY TO REMEDY THE CAUSE OF THE  
9 MONETARY LOSS.

10          ~~(B) (1) A PHARMACY BENEFITS MANAGER SHALL REIMBURSE A~~  
11 ~~PHARMACY OR PHARMACIST FOR THE FULL QUANTITY OF THE SMALLEST~~  
12 ~~AVAILABLE COMMERCIAL PACKAGE OF A PRESCRIPTION DRUG THAT CONTAINS~~  
13 ~~THE TOTAL AMOUNT OF THE PRESCRIPTION DRUG REQUIRED TO BE DISPENSED~~  
14 ~~TO MEET THE DAY'S SUPPLY ORDERED BY THE PRESCRIBER, EVEN IF THE FULL~~  
15 ~~QUANTITY OF THE COMMERCIAL PACKAGE EXCEEDS THE MAXIMUM DAY'S~~  
16 ~~SUPPLY ALLOWED UNDER THE CONTRACT BETWEEN THE~~  
17 ~~PHARMACY BENEFITS MANAGER AND THE PHARMACY OR PHARMACIST.~~

18          ~~(2) (i) A PHARMACY BENEFITS MANAGER SHALL DETERMINE A~~  
19 ~~DAY'S SUPPLY ACCORDING TO THE HIGHEST DAILY TOTAL DOSE THAT MAY BE~~  
20 ~~UTILIZED BY A PATIENT ACCORDING TO THE PRESCRIPTION.~~

21          ~~(ii) FOR PRESCRIPTIONS HAVING A TITRATED DOSE~~  
22 ~~SCHEDULE, THE SCHEDULE SHALL BE USED TO DETERMINE THE DAY'S SUPPLY.~~

23          ~~(3) IF THE ACTUAL QUANTITY OF A PRESCRIPTION DRUG~~  
24 ~~DISPENSED ON A VALID PRESCRIPTION EXCEEDS THE ALLOWABLE MAXIMUM~~  
25 ~~DAY'S SUPPLY SPECIFIED IN THE CONTRACT BETWEEN A PHARMACY BENEFITS~~  
26 ~~MANAGER AND A PHARMACY OR PHARMACIST, THE AMOUNT ALLOWED TO BE~~  
27 ~~RECOUPED, REPAID, OR SETOFF AGAINST FUTURE REIMBURSEMENT BY THE~~  
28 ~~PHARMACY BENEFITS MANAGER SHALL BE LIMITED TO AN AMOUNT THAT IS~~  
29 ~~CALCULATED BASED ON:~~

30          ~~(i) THE QUANTITY OF THE PRESCRIPTION DRUG~~  
31 ~~DISPENSED THAT EXCEEDS THE ALLOWED DAY'S SUPPLY QUANTITY; AND~~

32          ~~(ii) THE COST OF THE PRESCRIPTION DRUG ON THE CLAIM.~~

33           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
34 October 1, 2012.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.