

SENATE BILL 507

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4lr2152

By: **Senators Feldman and Astle**

Introduced and read first time: January 29, 2014

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation – Reimbursement for Repackaged and Relabeled**
3 **Drugs – Fee Schedule and Requirements**

4 FOR the purpose of requiring the Workers' Compensation Commission to adopt in
5 regulation a pharmaceutical fee schedule applicable to repackaged and
6 relabeled drugs; providing for the setting of reimbursement rates for certain
7 drugs; requiring the Commission to impose a certain fine on an employer or its
8 insurer under certain circumstances; requiring that a certain bill submitted to
9 an employer or its insurer for reimbursement of certain drugs contain certain
10 information; requiring, except under certain circumstances, an employer or its
11 insurer to reimburse a provider for certain drugs at the rate in the
12 pharmaceutical fee schedule; defining a certain term; making a conforming
13 change; and generally relating to the reimbursement for repackaged and
14 relabeled drugs under workers' compensation.

15 BY repealing and reenacting, with amendments,
16 Article – Labor and Employment
17 Section 9–663 and 9–664
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2013 Supplement)

20 BY adding to
21 Article – Labor and Employment
22 Section 9–665
23 Annotated Code of Maryland
24 (2008 Replacement Volume and 2013 Supplement)

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

27 **Article – Labor and Employment**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 9–663.

2 (a) (1) The Commission shall adopt regulations setting standards for the
3 assessment of fines under § 9–664 of this Part IX of this subtitle.

4 (2) The Commission may adopt regulations about:

5 (i) the provision of medicine and medical, nursing, and hospital
6 services to a covered employee;

7 (ii) payment for the medicine and services; and

8 (iii) the exercise by the Chairman of the Commission of the
9 powers granted under § 9–662 of this subtitle.

10 (b) (1) The Commission may regulate fees and other charges for medical
11 services or treatment under this subtitle.

12 (2) Each fee or other charge for medical service or treatment under
13 this subtitle is limited to the amount that prevails in the same community for similar
14 treatment of an injured individual with a standard of living that is comparable to that
15 of the covered employee.

16 (3) At least once every 2 years, the Commission shall:

17 (i) review its guide of medical and surgical fees for
18 completeness and reasonableness; and

19 (ii) make appropriate revisions to the guide of medical and
20 surgical fees.

21 **(C) (1) IN THIS SUBSECTION, “AVERAGE WHOLESAL PRICE” MEANS**
22 **THE AVERAGE WHOLESAL PRICE OF A DRUG THAT:**

23 **(I) IS ESTABLISHED BY THE ORIGINAL MANUFACTURER OF**
24 **THE DRUG AS IDENTIFIED BY A DRUG’S NATIONAL DRUG CODE; AND**

25 **(II) IS PUBLISHED IN THE MEDI-SPAN MASTER DRUG**
26 **DATABASE AS OF THE DATE THE DRUG IS DISPENSED.**

27 **(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE**
28 **COMMISSION SHALL ADOPT IN REGULATION A PHARMACEUTICAL FEE**
29 **SCHEDULE APPLICABLE TO REPACKAGED AND RELABELED PRESCRIPTION**
30 **DRUGS.**

1 **(3) THE PHARMACEUTICAL FEE SCHEDULE ADOPTED UNDER**
2 **PARAGRAPH (2) OF THIS SUBSECTION SHALL:**

3 **(I) FOR BRAND-NAME AND GENERIC EQUIVALENT**
4 **REPACKAGED OR RELABELED PRESCRIPTION DRUGS, SET THE**
5 **REIMBURSEMENT RATE AT 130% OF THE AVERAGE WHOLESALE PRICE OF THE**
6 **DRUG PLUS A DISPENSING FEE OF \$12; AND**

7 **(II) FOR BRAND-NAME REPACKAGED OR RELABELED**
8 **PRESCRIPTION DRUGS WITHOUT GENERIC EQUIVALENTS THAT ARE DISPENSED**
9 **IN LIEU OF DRUGS THAT ARE CONTROLLED DANGEROUS SUBSTANCES, AS**
10 **DEFINED IN § 5-403 OR § 5-404 OF THE CRIMINAL LAW ARTICLE, SET THE**
11 **REIMBURSEMENT RATE AT 150% OF THE AVERAGE WHOLESALE PRICE PLUS A**
12 **DISPENSING FEE OF \$12.**

13 9-664.

14 (a) (1) **(I)** If the Commission finds that the employer or its insurer has
15 failed, without good cause, to pay for treatment or services required by § 9-660 of this
16 Part IX of this subtitle within 45 days after the Commission, by order, finally approves
17 the fee or charge for the treatment or services, the Commission may impose a fine on
18 the employer or insurer, not exceeding 20% of the amount of the approved fee or
19 charge.

20 **(II) IF THE COMMISSION FINDS THAT THE EMPLOYER OR**
21 **ITS INSURER HAS FAILED, WITHOUT GOOD CAUSE, TO PAY FOR DRUGS AS**
22 **REQUIRED BY § 9-660 OF THIS SUBTITLE WITHIN 45 DAYS AFTER THE**
23 **COMMISSION, BY ORDER, FINALLY APPROVES THE FEE FOR THE DRUGS, THE**
24 **COMMISSION SHALL IMPOSE A FINE ON THE EMPLOYER OR INSURER, NOT**
25 **EXCEEDING 20% OF THE AMOUNT OF THE APPROVED FEE OR CHARGE.**

26 (2) The employer or insurer shall pay the fine to the Commission to be
27 deposited in the General Fund of the State.

28 (b) (1) Interest, payable to the provider of the treatment [or], services, **OR**
29 **DRUGS**, shall accrue at the rate specified in § 11-107(a) of the Courts Article on any
30 amount owed to the provider that:

31 (i) is due and payable; and

32 (ii) remains unpaid more than 45 days after notice of the
33 payment due has been mailed.

34 (2) Interest shall accrue beginning on the 46th day after the later of:

- 1 (i) the day the payment becomes due; or
2 (ii) the day the notice of the payment due is mailed.

3 **9-665.**

4 (A) A PHARMACEUTICAL BILL SUBMITTED TO AN EMPLOYER OR ITS
5 INSURER FOR REIMBURSEMENT OF A REPACKAGED OR RELABELED DRUG
6 SHALL INCLUDE THE ORIGINAL MANUFACTURER OR DISTRIBUTOR STOCK
7 PACKAGE NATIONAL DRUG CODE FOR EACH DRUG USED IN THE REPACKAGED
8 OR RELABELED DRUG.

9 (B) AN EMPLOYER OR ITS INSURER SHALL REIMBURSE A PROVIDER
10 FOR A REPACKAGED OR RELABELED PRESCRIPTION DRUG AT THE RATE IN THE
11 FEE SCHEDULE ADOPTED BY THE COMMISSION UNDER § 9-663(C) OF THIS
12 SUBTITLE UNLESS THE EMPLOYER OR ITS INSURER, OR ANY ENTITY ACTING ON
13 BEHALF OF THE EMPLOYER OR ITS INSURER, DIRECTLY CONTRACTS WITH THE
14 PROVIDER, OR THE PROVIDER'S ASSIGNEE, TO ALLOW FOR REIMBURSEMENT AT
15 A LOWER RATE.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2014.