

SB1079/537573/1

BY: Finance Committee

AMENDMENTS TO SENATE BILL 1079

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “Senator Mathias” and substitute “Senators Mathias, Astle, Benson, Feldman, Hershey, Klausmeier, Middleton, Reilly, and Rosapepe”; strike beginning with “altering” in line 3 down through “Commissioner;” in line 6; in line 6, after “the” insert “Maryland Insurance”; strike beginning with “altering” in line 7 down through “circumstances;” in line 12; strike beginning with “authorizing” in line 14 down through “circumstances;” in line 17 and substitute “clarifying that certain actions of the Commissioner are subject to certain hearing provisions; providing that a certain provision prohibiting reimbursements in a certain amount does not apply to reimbursement for certain drugs or to certain chain pharmacies;”; in line 17, strike “certain reimbursement from”; in line 18, strike “to” and substitute “from reimbursing”; in line 19, after “service” insert “in a certain amount”; and strike beginning with the first “prohibiting” in line 19 down through the second “pharmacy” in line 31.

On page 2, strike beginning with “under” in line 1 down through “circumstances;” in line 6 and substitute “requiring a pharmacy benefits manager to establish a certain process by which a certain pharmacy has access to certain maximum allowable cost price lists in a certain format as updated in accordance with certain requirements; requiring a pharmacy benefits manager to use updated pricing information in calculating certain payments immediately after a certain update;”; strike beginning with “prohibiting” in line 9 down through “amount;” in line 11; strike beginning with “authorizing” in line 12 down through “provisions;” in line 17; in line 18, after “for” insert “exercising a certain right to appeal or”; strike beginning with “establishing” in line 20 down through “Act;” in line 21 and substitute “requiring the Commission to review a certain compensation program for a certain purpose and take certain action on appeal and order a pharmacy benefits manager to pay a certain claim under certain circumstances; providing that certain information is considered to be confidential and proprietary information and is

(Over)

not subject to disclosure under certain provisions of law; authorizing the Commissioner, under certain circumstances, to issue an order that requires a pharmacy benefits manager to pay a certain fine; authorizing the Commissioner to adopt certain regulations and establish a certain complaint process;”; in line 23, strike “providing for a delayed effective date;”; in line 27, strike “15-1642(c)” and substitute “15-1642”; and in line 32, strike “, 15-1612, and 15-1612.1”.

AMENDMENT NO. 2

On page 3, in lines 3, 4, 17, 20, 23, and 24, in each instance, strike the brackets; strike beginning with “**OF**” in line 5 down through “**REQUIRES**” in line 10; in line 20, strike “**1-YEAR**”; and strike beginning with “**OF**” in line 24 down through “**REQUIRES**” in line 30.

On page 4, strike in their entirety lines 3 through 6, inclusive; in lines 7, 19, 21, 23, and 25, in each instance, strike the brackets; in line 7, strike “**(E)**”; in line 10, strike “**(F)**” and substitute “**(E)**”; in lines 14, 19, 21, 23, and 25, strike “**(1)**”, “**(I)**”, “**(II)**”, “**(III)**”, and “**(IV)**”, respectively; in line 14, strike “**PARAGRAPH (2) OF THIS SUBSECTION AND**”; in the same line, after “the” insert “**APPLICABLE**”; and strike in their entirety lines 27 through 34, inclusive.

AMENDMENT NO. 3

On page 5, strike in their entirety lines 1 and 2; in line 3, strike the brackets; in the same line, strike “**(C)**”; in line 6, before “**A**” insert:

“(A) THIS SECTION DOES NOT APPLY TO REIMBURSEMENT:

(1) FOR SPECIALTY DRUGS;

(2) FOR MAIL ORDER DRUGS; OR

(3) TO A CHAIN PHARMACY WITH MORE THAN 15 STORES OR A PHARMACIST WHO IS AN EMPLOYEE OF THE CHAIN PHARMACY.

(B)”;

and strike in their entirety lines 11 through 30, inclusive.

AMENDMENT NO. 4

On page 6, strike in their entirety lines 1 through 14, inclusive; and strike beginning with “SOLD” in line 22 down through “PHARMACY” in line 24 and substitute **“LISTED ON THE FEDERAL FOOD AND DRUG ADMINISTRATION’S DRUG SHORTAGES WEBSITE”**.

AMENDMENT NO. 5

On page 7, in line 2, strike “METHODOLOGY AND”; strike in their entirety lines 4 through 12, inclusive; in line 13, strike the brackets; in the same line, strike “(D)”; strike beginning with “and” in line 14 down through “USE” in line 18; after line 18, insert:

“(2) ESTABLISH A REASONABLE PROCESS BY WHICH A CONTRACTED PHARMACY HAS ACCESS TO THE CURRENT AND APPLICABLE MAXIMUM ALLOWABLE COST PRICE LISTS IN AN ELECTRONIC FORMAT AS UPDATED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION; AND”;

in line 19, strike “(2)” and substitute “(3)”; in line 21, strike “; AND” and substitute a period; and strike in their entirety lines 22 through 34, inclusive.

AMENDMENT NO. 6

On page 8, strike line 1 in its entirety; in lines 2, 13, and 30, in each instance, strike the brackets; in the same lines, strike “(F)”, “(G)”, and “(I)”, respectively; in line 7, strike “(G)” and substitute “(E)”; in line 8, strike “ENSURE THE” and substitute

(Over)

“REFLECT THE CURRENT”; in lines 10 and 11, strike “24 HOURS” and substitute “7 DAYS”; in lines 11 and 12, strike “OR SHOULD HAVE KNOWN”; in line 12, strike “PRICING OR”; in line 19, before the first “the” insert “(I) IF A DRUG IS MANUFACTURED BY MORE THAN ONE MANUFACTURER,”; in the same line, strike the brackets; strike beginning with “IN” in line 19 down through “VERSIONS” in line 20; in line 22, after “STATE” insert “; OR”

(II) IF A DRUG IS MANUFACTURED BY ONLY ONE MANUFACTURER, THE DRUG IS GENERALLY AVAILABLE FOR PURCHASE BY CONTRACTED PHARMACIES, INCLUDING CONTRACTED RETAIL PHARMACIES, IN THE STATE FROM AT LEAST TWO WHOLESALE DISTRIBUTORS WITH A PERMIT IN THE STATE”;

in line 24, after “LIST” insert “AS CURRENTLY IN SHORTAGE”; and strike in their entirety lines 25 through 29, inclusive.

AMENDMENT NO. 7

On page 9, in line 4, strike the brackets; in the same line, strike “7”; in line 11, strike “DIRECT”; in line 12, after “may” insert “DIRECTLY”; in the same line, after “the” insert “DEPARTMENT OR OFFICE RESPONSIBLE FOR PROCESSING APPEALS FOR THE”; in the same line, strike “SPECIFICALLY” and substitute “OR LEAVE A MESSAGE FOR AN INDIVIDUAL WHO IS”; in line 13, after “appeals” insert “;

(II) AN E-MAIL ADDRESS OF THE DEPARTMENT OR OFFICE RESPONSIBLE FOR PROCESSING APPEALS TO WHICH AN INDIVIDUAL WHO IS RESPONSIBLE FOR PROCESSING APPEALS HAS ACCESS”;

in line 14, strike “(II)” and substitute “(III)”; in line 15, strike “SPECIFICALLY”; in the same line, strike “CALLS” and substitute “A CALL OR AN E-MAIL”; in line 16, after “3” insert “BUSINESS”; in line 17, after “CALL” insert “OR E-MAIL”; in lines 20 and 21,

strike “that IS READILY AVAILABLE FOR PURCHASE”; in line 22, strike “may be purchased by the contracted pharmacy” and substitute “WAS AVAILABLE ON THE DATE THE CLAIM WAS ADJUDICATED”; and strike in their entirety lines 26 through 29, inclusive, and substitute:

“(I) FOR THE APPEALING PHARMACY:

1. ADJUST THE MAXIMUM ALLOWABLE COST FOR THE DRUG AS OF THE DATE OF THE ORIGINAL CLAIM FOR PAYMENT; AND

2. WITHOUT REQUIRING THE APPEALING PHARMACY TO REVERSE AND REBILL THE CLAIMS, PROVIDE REIMBURSEMENT FOR THE CLAIM AND ANY SUBSEQUENT AND SIMILAR CLAIMS UNDER SIMILARLY APPLICABLE CONTRACTS WITH THE PHARMACY BENEFITS MANAGER:

A. FOR THE ORIGINAL CLAIM, IN THE FIRST REMITTANCE TO THE PHARMACY AFTER THE DATE THE APPEAL WAS DETERMINED; AND

B. FOR SUBSEQUENT AND SIMILAR CLAIMS UNDER SIMILARLY APPLICABLE CONTRACTS, IN THE SECOND REMITTANCE TO THE PHARMACY AFTER THE DATE THE APPEAL WAS DETERMINED; AND

(II) FOR A SIMILARLY SITUATED CONTRACTED PHARMACY IN THE STATE:

1. ADJUST THE MAXIMUM ALLOWABLE COST FOR THE DRUG AS OF THE DATE THE APPEAL WAS DETERMINED; AND

(Over)

2. PROVIDE NOTICE TO THE PHARMACY OR PHARMACY'S CONTRACTED AGENT THAT:

A. AN APPEAL HAS BEEN UPHELD; AND

B. WITHOUT FILING A SEPARATE APPEAL, THE PHARMACY OR THE PHARMACY'S CONTRACTED AGENT MAY REVERSE AND REBILL A SIMILAR CLAIM.

AMENDMENT NO. 8

On pages 9 and 10, strike in their entirety the lines beginning with line 30 on page 9 through line 9 on page 10, inclusive.

On page 10, in lines 10 and 13, strike “(5)” and “(K)”, respectively, and substitute “(G)” and “(H)”, respectively; in line 11, after “FOR” insert “EXERCISING ITS RIGHT TO APPEAL UNDER THIS SECTION OR”; in line 14, strike “AN ADJUDICATION OF A CLAIM UNDER” and substitute “THE READJUDICATION OF A CLAIM OR CLAIMS RESULTING FROM CARRYING OUT THE REQUIREMENT OF A CONTRACT SPECIFIED IN SUBSECTION (F)(5) OF THIS SECTION OR THE UPHOLDING OF AN APPEAL UNDER SUBSECTION (I) OF”; strike in their entirety lines 15 through 18, inclusive, and substitute:

“(I) (1) IF A PHARMACY BENEFITS MANAGER DENIES AN APPEAL AND A CONTRACTED PHARMACY FILES A COMPLAINT WITH THE COMMISSIONER, THE COMMISSIONER SHALL:

(I) REVIEW THE COMPENSATION PROGRAM OF THE PHARMACY BENEFITS MANAGER TO ENSURE THAT THE REIMBURSEMENT FOR PHARMACY BENEFITS MANAGEMENT SERVICES PAID TO THE PHARMACIST OR A

PHARMACY COMPLIES WITH THIS SUBTITLE AND THE TERMS OF THE CONTRACT;
AND

(II) BASED ON A DETERMINATION MADE BY THE
COMMISSIONER UNDER ITEM (I) OF THIS PARAGRAPH, DISMISS THE APPEAL OR
UPHOLD THE APPEAL AND ORDER THE PHARMACY BENEFITS MANAGER TO PAY
THE CLAIM OR CLAIMS IN ACCORDANCE WITH THE COMMISSIONER’S FINDINGS.

(2) ALL PRICING INFORMATION AND DATA COLLECTED BY THE
COMMISSIONER DURING A REVIEW REQUIRED BY PARAGRAPH (1) OF THIS
SUBSECTION:

(I) IS CONSIDERED TO BE CONFIDENTIAL AND
PROPRIETARY INFORMATION; AND

(II) IS NOT SUBJECT TO DISCLOSURE UNDER THE PUBLIC
INFORMATION ACT.”;

after line 19, insert:

“(a) If the Commissioner determines that a pharmacy benefits manager has
violated any provision of this subtitle or any regulation adopted under this subtitle, the
Commissioner may issue an order that requires the pharmacy benefits manager to:

(1) cease and desist from the identified violation and further similar
violations;

(2) take specific affirmative action to correct the violation; [or]

(Over)

(3) make restitution of money, property, or other assets to a person that has suffered financial injury because of the violation; OR

(4) PAY A FINE IN AN AMOUNT DETERMINED BY THE COMMISSIONER.

(b) (1) An order of the Commissioner issued under this section may be served on a pharmacy benefits manager that is registered under Part II of this subtitle in the manner provided in § 2–204 of this article.

(2) An order of the Commissioner issued under this section may be served on a pharmacy benefits manager that is not registered under Part II of this subtitle in the manner provided in § 4–206 or § 4–207 of this article for service on an unauthorized insurer that does an act of insurance business in the State.

(3) A request for a hearing on any order issued under this section does not stay that portion of the order that requires the pharmacy benefits manager to cease and desist from conduct identified in the order.

(4) The Commissioner may file a petition in the circuit court of any county to enforce an order issued under this section, whether or not a hearing has been requested or, if requested, whether or not a hearing has been held.

(5) If the Commissioner prevails in an action brought under this section, the Commissioner may recover, for the use of the State, reasonable attorney’s fees and the costs of the action.”;

in line 21, strike “AND SUBJECT TO § 15–1628.1(L) OF THIS SUBTITLE”; after line 22, insert:

“(D) THE COMMISSIONER MAY ADOPT REGULATIONS:

(1) TO CARRY OUT THIS SUBTITLE; AND

(2) TO ESTABLISH A COMPLAINT PROCESS TO ADDRESS GRIEVANCES AND APPEALS BROUGHT IN ACCORDANCE WITH THIS SUBTITLE.

[(d)](E) This section does not limit any other regulatory authority of the Commissioner under this article.”;

in line 24, strike “renewed” and substitute “in effect”; in line 27, strike “January” and substitute “June”; and in the same line, strike “2019” and substitute “2018”.