

HOUSE BILL 545

C3
HB 1527/18 – HGO

9lr0960
CF 9lr3082

By: **Delegates Kipke, Krebs, and Morgan**
Introduced and read first time: February 4, 2019
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance – Freedom of Choice of Pharmacy Act**

3 FOR the purpose of prohibiting certain carriers from prohibiting an enrollee from selecting,
4 or limiting the ability of an enrollee to select, a certain pharmacy for the receipt of
5 certain services under certain circumstances; prohibiting certain carriers, under
6 certain circumstances, from denying a pharmacy a certain right or imposing on an
7 enrollee certain payments, fees, reimbursement amounts, limitations, and conditions
8 for certain services; prohibiting certain carriers from imposing certain advantages
9 and penalties under a health benefit plan or reducing certain reimbursement to an
10 enrollee for certain services for a certain reason; prohibiting certain carriers from
11 requiring an enrollee to purchase certain services in a certain manner under certain
12 circumstances; prohibiting a pharmacy from waiving, discounting, rebating, or
13 modifying certain copayments, coinsurance requirements, and reimbursement;
14 requiring a pharmacy to offer a certain pharmacy service to certain enrollees under
15 certain circumstances; requiring certain carriers to provide a certain notice and
16 extend a certain offer to certain pharmacies on or before a certain date; requiring
17 that certain pharmacies be eligible to participate in certain health benefit plans
18 under certain terms and conditions; requiring certain carriers to inform certain
19 enrollees of the names and locations of certain pharmacies on a certain basis;
20 authorizing a pharmacy to inform certain customers of certain information;
21 repealing a certain prohibition on the imposition of certain copayments, deductibles,
22 and conditions under certain circumstances; repealing a requirement that a certain
23 nonprofit health service plan allow a subscriber, member, or beneficiary to fill a
24 prescription at a certain pharmacy; repealing certain provisions of law authorizing
25 certain carriers to require that certain drugs be obtained through certain pharmacies
26 or certain sources under certain circumstances; repealing a certain authorization for
27 a certain pharmacy to apply to be a certain designated pharmacy for a certain
28 purpose under certain circumstances; repealing a certain prohibition on certain
29 carriers unreasonably withholding a certain approval; defining certain terms;
30 providing for the application of this Act; providing for a delayed effective date; and
31 generally relating to health insurance and pharmacy services.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing
2 Article – Insurance
3 Section 15–805(d), 15–806, and 15–847(d) and (e)
4 Annotated Code of Maryland
5 (2017 Replacement Volume and 2018 Supplement)

6 BY adding to
7 Article – Insurance
8 Section 15–2001 through 15–2005 to be under the new subtitle “Subtitle 20. Freedom
9 of Choice of Pharmacy Act”
10 Annotated Code of Maryland
11 (2017 Replacement Volume and 2018 Supplement)

12 BY renumbering
13 Article – Insurance
14 Section 15–847(f) and (g), respectively
15 to be Section 15–847(d) and (e), respectively
16 Annotated Code of Maryland
17 (2017 Replacement Volume and 2018 Supplement)

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

20 **Article – Insurance**

21 15–805.

22 [(d) (1) This subsection applies to each individual or group policy or contract
23 that is issued or delivered in the State to an employer or individual by an insurer or
24 nonprofit health service plan and that provides benefits for pharmaceutical products.

25 (2) A policy or contract subject to this subsection may not impose a
26 copayment, deductible, or other condition on an insured or certificate holder who uses the
27 services of a community pharmacy that is not imposed when the insured or certificate
28 holder uses the services of a mail order pharmacy, if the benefits are provided under the
29 same program, policy, or contract.]

30 [15–806.

31 A nonprofit health service plan that provides pharmaceutical services shall allow a
32 subscriber, member, or beneficiary to fill prescriptions at the pharmacy of the subscriber’s,
33 member’s, or beneficiary’s choice.]

34 15–847.

1 [(d) Subject to § 15–805 of this subtitle and notwithstanding § 15–806 of this
2 subtitle, nothing in this article or regulations adopted under this article precludes an entity
3 subject to this section from requiring a covered specialty drug to be obtained through:

4 (1) a designated pharmacy or other source authorized under the Health
5 Occupations Article to dispense or administer prescription drugs; or

6 (2) a pharmacy participating in the entity’s provider network, if the entity
7 determines that the pharmacy:

8 (i) meets the entity’s performance standards; and

9 (ii) accepts the entity’s network reimbursement rates.

10 (e) (1) A pharmacy registered under § 340B of the federal Public Health
11 Services Act may apply to an entity subject to this section to be a designated pharmacy
12 under subsection (d)(1) of this section for the purpose of enabling the pharmacy’s patients
13 with HIV, AIDS, or hepatitis C to receive the copayment or coinsurance maximum provided
14 for in subsection (c) of this section if:

15 (i) the pharmacy is owned by a federally qualified health center, as
16 defined in 42 U.S.C. § 254B;

17 (ii) the federally qualified health center provides integrated and
18 coordinated medical and pharmaceutical services to HIV positive, AIDS, and hepatitis C
19 patients; and

20 (iii) the prescription drugs are covered specialty drugs for the
21 treatment of HIV, AIDS, or hepatitis C.

22 (2) An entity subject to this section may not unreasonably withhold
23 approval of a pharmacy’s application under paragraph (1) of this subsection.]

24 **SUBTITLE 20. FREEDOM OF CHOICE OF PHARMACY ACT.**

25 **15–2001.**

26 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

28 (B) “CARRIER” MEANS:

29 (1) AN INSURER;

30 (2) A NONPROFIT HEALTH SERVICE PLAN;

1 **(3) A HEALTH MAINTENANCE ORGANIZATION; OR**

2 **(4) ANY OTHER PERSON THAT PROVIDES HEALTH BENEFIT PLANS**
3 **SUBJECT TO REGULATION BY THE STATE.**

4 **(C) “CONTRACT PROVIDER” MEANS A PHARMACY AUTHORIZED TO PROVIDE**
5 **PHARMACY SERVICES, INCLUDING PRESCRIPTION DRUGS AND DEVICES, UNDER THE**
6 **TERMS AND CONDITIONS OF A CARRIER HEALTH BENEFIT PLAN.**

7 **(D) “ENROLLEE” MEANS A PERSON ENTITLED TO HEALTH CARE BENEFITS**
8 **FROM A CARRIER.**

9 **(E) “HEALTH BENEFIT PLAN” HAS THE MEANING STATED IN § 15–112 OF**
10 **THIS TITLE.**

11 **(F) “PHARMACIST” HAS THE MEANING STATED IN § 12–101 OF THE HEALTH**
12 **OCCUPATIONS ARTICLE.**

13 **(G) “PHARMACY” HAS THE MEANING STATED IN § 12–101 OF THE HEALTH**
14 **OCCUPATIONS ARTICLE.**

15 **15–2002.**

16 **THIS SUBTITLE APPLIES TO CARRIERS THAT PROVIDE, DIRECTLY OR**
17 **THROUGH A PHARMACY BENEFITS MANAGER, COVERAGE FOR PHARMACY SERVICES,**
18 **INCLUDING PRESCRIPTION DRUGS AND DEVICES, UNDER HEALTH BENEFIT PLANS**
19 **THAT ARE ISSUED OR DELIVERED IN THE STATE.**

20 **15–2003.**

21 **A CARRIER MAY NOT:**

22 **(1) PROHIBIT AN ENROLLEE FROM SELECTING, OR LIMIT THE ABILITY**
23 **OF AN ENROLLEE TO SELECT, A PHARMACY OF THE ENROLLEE’S CHOICE FOR THE**
24 **RECEIPT OF PHARMACY SERVICES IF THE PHARMACY PARTICIPATES AS A CONTRACT**
25 **PROVIDER IN THE HEALTH BENEFIT PLAN OFFERED BY THE CARRIER;**

26 **(2) DENY A PHARMACY THE RIGHT TO PARTICIPATE AS A CONTRACT**
27 **PROVIDER UNDER A HEALTH BENEFIT PLAN IF THE PHARMACY AGREES TO:**

28 **(I) PROVIDE PHARMACY SERVICES IN A MANNER THAT MEETS**
29 **THE TERMS AND CONDITIONS ESTABLISHED BY THE CARRIER UNDER THE HEALTH**
30 **BENEFIT PLAN; AND**

1 (II) THE TERMS OF REIMBURSEMENT ESTABLISHED BY THE
2 CARRIER UNDER THE HEALTH BENEFIT PLAN;

3 (3) FOR PHARMACY SERVICES PROVIDED TO AN ENROLLEE UNDER A
4 HEALTH BENEFIT PLAN THAT ARE RECEIVED FROM A CONTRACT PROVIDER, IMPOSE
5 ON THE ENROLLEE A COPAYMENT, FEE, OR CONDITION FOR THE PHARMACY
6 SERVICE THAT IS DIFFERENT FROM THE COPAYMENT, FEE, OR CONDITION IMPOSED
7 ON ALL OTHER ENROLLEES FOR THE SAME PHARMACY SERVICE UNDER THE HEALTH
8 BENEFIT PLAN;

9 (4) IMPOSE A MONETARY ADVANTAGE OR PENALTY UNDER A HEALTH
10 BENEFIT PLAN, INCLUDING A HIGHER COPAYMENT, A REDUCTION IN
11 REIMBURSEMENT FOR SERVICES, OR PROMOTION OF ONE PARTICIPATING
12 PHARMACY OVER ANOTHER PARTICIPATING PHARMACY THAT MAY AFFECT AN
13 ENROLLEE'S CHOICE OF PHARMACY FROM AMONG THE PHARMACIES THAT
14 PARTICIPATE IN THE HEALTH BENEFIT PLAN OFFERED BY THE CARRIER;

15 (5) BECAUSE OF AN ENROLLEE'S SELECTION OF A PHARMACY OF THE
16 ENROLLEE'S CHOICE, REDUCE ALLOWABLE REIMBURSEMENT FOR AN ENROLLEE'S
17 PHARMACY SERVICES UNDER A HEALTH BENEFIT PLAN IF THE PHARMACY HAS
18 AGREED TO PARTICIPATE IN THE HEALTH BENEFIT PLAN OFFERED BY THE CARRIER
19 UNDER TERMS AND CONDITIONS THAT ARE OFFERED TO ALL PHARMACIES UNDER
20 THE HEALTH BENEFIT PLAN;

21 (6) AS A CONDITION OF PAYMENT OR REIMBURSEMENT UNDER A
22 HEALTH BENEFIT PLAN, REQUIRE AN ENROLLEE TO PURCHASE PHARMACY
23 SERVICES EXCLUSIVELY THROUGH A MAIL-ORDER PHARMACY; OR

24 (7) IMPOSE ON AN ENROLLEE A COPAYMENT, AN AMOUNT OF
25 REIMBURSEMENT, A LIMITATION ON THE NUMBER OF DAYS OF A DRUG SUPPLY FOR
26 WHICH REIMBURSEMENT WILL BE ALLOWED, OR ANY OTHER PAYMENT OR
27 CONDITION RELATING TO THE PURCHASE OF A PHARMACY SERVICE FROM A
28 PHARMACY THAT IS COSTLIER OR MORE RESTRICTIVE TO AN ENROLLEE THAN
29 WOULD BE IMPOSED ON THE ENROLLEE IF THE SAME PHARMACY SERVICE WERE
30 PURCHASED FROM A MAIL-ORDER PHARMACY.

31 15-2004.

32 (A) IN THIS SECTION, "PHARMACY" INCLUDES A PHARMACIST ACTING ON
33 BEHALF OF A PHARMACY AS AN EMPLOYEE, AGENT, OR OWNER OF THE PHARMACY.

34 (B) (1) A PHARMACY MAY NOT WAIVE, DISCOUNT, REBATE, OR MODIFY AN

1 ENROLLEE'S COPAYMENT, COINSURANCE REQUIREMENT, OR REIMBURSEMENT FOR
2 PRESCRIPTION DRUG COVERAGE UNDER A HEALTH BENEFIT PLAN.

3 (2) IF A PHARMACY PROVIDES A PHARMACY SERVICE TO AN
4 ENROLLEE OF A HEALTH BENEFIT PLAN THAT MEETS THE TERMS AND CONDITIONS
5 OF THE HEALTH BENEFIT PLAN ESTABLISHED BY THE CARRIER, THE PHARMACY
6 SHALL OFFER THE SAME PHARMACY SERVICE TO ALL ENROLLEES OF THE HEALTH
7 BENEFIT PLAN UNDER THE SAME TERMS AND CONDITIONS ESTABLISHED BY THE
8 CARRIER.

9 15-2005.

10 (A) IF A CARRIER LIMITS COVERAGE AND REIMBURSEMENT OF PHARMACY
11 SERVICES UNDER A HEALTH BENEFIT PLAN TO PHARMACIES THAT CONTRACT WITH
12 THE CARRIER TO PROVIDE PHARMACY SERVICES, ON OR BEFORE MARCH 1, 2020,
13 THE CARRIER SHALL:

14 (1) PROVIDE WRITTEN NOTICE TO EACH PHARMACY THAT IS LOCATED
15 WITHIN THE GEOGRAPHICAL SERVICE AREA OF THE HEALTH BENEFIT PLAN OF THE
16 NETWORK REQUIREMENTS ESTABLISHED BY THE CARRIER; AND

17 (2) OFFER TO THE PHARMACY THE OPPORTUNITY TO PARTICIPATE IN
18 THE HEALTH BENEFIT PLAN DURING THE NEXT PLAN YEAR.

19 (B) EACH PHARMACY TO WHICH A CARRIER EXTENDS AN OFFER TO
20 PARTICIPATE IN A HEALTH BENEFIT PLAN UNDER SUBSECTION (A) OF THIS SECTION
21 SHALL BE ELIGIBLE TO PARTICIPATE IN THE HEALTH BENEFIT PLAN UNDER
22 IDENTICAL REIMBURSEMENT TERMS AND CONDITIONS.

23 (C) ON AN ANNUAL BASIS, A CARRIER SHALL INFORM THE ENROLLEES OF A
24 HEALTH BENEFIT PLAN OFFERED BY THE CARRIER OF THE NAMES AND LOCATIONS
25 OF PHARMACIES THAT ARE PARTICIPATING IN THE HEALTH BENEFIT PLAN.

26 (D) A PHARMACY MAY INFORM ITS CUSTOMERS OF THE PHARMACY'S
27 PARTICIPATION IN A HEALTH BENEFIT PLAN NETWORK THROUGH A MEANS THAT IS
28 ACCEPTABLE TO THE PHARMACY AND THE CARRIER OFFERING THE HEALTH
29 BENEFIT PLAN.

30 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 15-847(f) and (g),
31 respectively, of Article – Insurance of the Annotated Code of Maryland be renumbered to
32 be Section(s) 15-847(d) and (e), respectively.

33 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all
34 policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or

1 after January 1, 2020.

2 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
3 January 1, 2020.