

HOUSE BILL 754

C3

9lr1276

By: **Delegate Kipke**

Introduced and read first time: February 8, 2019

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance and Pharmacy Benefits Managers – Cost Pricing and**
3 **Reimbursement**

4 FOR the purpose of authorizing a pharmacist or a pharmacy to decline to dispense a
5 prescription drug or provide a pharmacy service to a certain member if the amount
6 reimbursed by a certain insurer, nonprofit health service plan, or health
7 maintenance organization is less than a certain acquisition cost; requiring that each
8 contract between a pharmacy benefits manager and a contracted pharmacy include
9 a certain process to appeal, investigate, and resolve disputes regarding cost pricing
10 and reimbursement, rather than only maximum allowable cost pricing; requiring
11 that the appeals process include a requirement that a pharmacy benefits manager
12 provide a certain formulary under certain circumstances; repealing the authority of
13 a pharmacy benefits manager to retroactively deny or modify reimbursement to a
14 pharmacy or pharmacist for an approved claim that caused certain monetary loss;
15 defining a certain term; providing for the application of certain provisions of this Act;
16 and generally relating to cost pricing and reimbursement of prescription drugs.

17 BY adding to
18 Article – Insurance
19 Section 15–1012 and 15–1628.2
20 Annotated Code of Maryland
21 (2017 Replacement Volume and 2018 Supplement)

22 BY repealing
23 Article – Insurance
24 Section 15–1628.1(f) through (i)
25 Annotated Code of Maryland
26 (2017 Replacement Volume and 2018 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – Insurance

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 15–1631
2 Annotated Code of Maryland
3 (2017 Replacement Volume and 2018 Supplement)

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

6 **Article – Insurance**

7 **15–1012.**

8 (A) IN THIS SECTION, “MEMBER” MEANS AN INDIVIDUAL ENTITLED TO
9 HEALTH CARE BENEFITS FOR PRESCRIPTION DRUGS OR PHARMACY SERVICES
10 UNDER A POLICY OR CONTRACT ISSUED OR DELIVERED IN THE STATE BY AN ENTITY
11 SUBJECT TO THIS SECTION.

12 (B) (1) THIS SECTION APPLIES TO:

13 (I) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT
14 PROVIDE COVERAGE FOR PRESCRIPTION DRUGS AND PHARMACY SERVICES UNDER
15 HEALTH INSURANCE POLICIES OR CONTRACTS THAT ARE ISSUED OR DELIVERED IN
16 THE STATE; AND

17 (II) HEALTH MAINTENANCE ORGANIZATIONS THAT PROVIDE
18 COVERAGE FOR PRESCRIPTION DRUGS AND PHARMACY SERVICES UNDER
19 CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE.

20 (2) AN INSURER, A NONPROFIT HEALTH SERVICE PLAN, OR A HEALTH
21 MAINTENANCE ORGANIZATION THAT PROVIDES COVERAGE FOR PRESCRIPTION
22 DRUGS AND PHARMACY SERVICES THROUGH A PHARMACY BENEFITS MANAGER IS
23 SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

24 (C) IF THE AMOUNT REIMBURSED BY AN ENTITY SUBJECT TO THIS SECTION
25 FOR A PRESCRIPTION DRUG OR PHARMACY SERVICE IS LESS THAN THE PHARMACY
26 ACQUISITION COST FOR THE SAME PRESCRIPTION DRUG OR PHARMACY SERVICE,
27 THE PHARMACIST OR PHARMACY MAY DECLINE TO DISPENSE THE PRESCRIPTION
28 DRUG OR PROVIDE THE PHARMACY SERVICE TO A MEMBER.

29 15–1628.1.

30 [(f) Each contract between a pharmacy benefits manager and a contracted
31 pharmacy must include a process to appeal, investigate, and resolve disputes regarding
32 maximum allowable cost pricing that includes:

1 (1) a requirement that an appeal be filed by the contract pharmacy no later
2 than 21 days after the date of the initial adjudicated claim;

3 (2) a requirement that, within 21 days after the date the appeal is filed, the
4 pharmacy benefits manager investigate and resolve the appeal and report to the contracted
5 pharmacy on the pharmacy benefits manager's determination on the appeal;

6 (3) a requirement that a pharmacy benefits manager make available on its
7 website information about the appeal process, including:

8 (i) a telephone number at which the contracted pharmacy may
9 directly contact the department or office responsible for processing appeals for the
10 pharmacy benefits manager to speak to an individual or leave a message for an individual
11 who is responsible for processing appeals;

12 (ii) an e-mail address of the department or office responsible for
13 processing appeals to which an individual who is responsible for processing appeals has
14 access; and

15 (iii) a notice indicating that the individual responsible for processing
16 appeals shall return a call or an e-mail made by a contracted pharmacy to the individual
17 within 3 business days or less of receiving the call or e-mail;

18 (4) a requirement that a pharmacy benefits manager provide:

19 (i) a reason for any appeal denial; and

20 (ii) the national drug code of a drug and the name of the wholesale
21 distributor from which the drug was available on the date the claim was adjudicated at a
22 price at or below the maximum allowable cost determined by the pharmacy benefits
23 manager; and

24 (5) if an appeal is upheld, a requirement that a pharmacy benefits
25 manager:

26 (i) for the appealing pharmacy:

27 1. adjust the maximum allowable cost for the drug as of the
28 date of the original claim for payment; and

29 2. without requiring the appealing pharmacy to reverse and
30 rebill the claims, provide reimbursement for the claim and any subsequent and similar
31 claims under similarly applicable contracts with the pharmacy benefits manager:

32 A. for the original claim, in the first remittance to the
33 pharmacy after the date the appeal was determined; and

1 B. for subsequent and similar claims under similarly
2 applicable contracts, in the second remittance to the pharmacy after the date the appeal
3 was determined; and

4 (ii) for a similarly situated contracted pharmacy in the State:

5 1. adjust the maximum allowable cost for the drug as of the
6 date the appeal was determined; and

7 2. provide notice to the pharmacy or pharmacy's contracted
8 agent that:

9 A. an appeal has been upheld; and

10 B. without filing a separate appeal, the pharmacy or the
11 pharmacy's contracted agent may reverse and rebill a similar claim.

12 (g) A pharmacy benefits manager may not retaliate against a contracted
13 pharmacy for exercising its right to appeal under this section or filing a complaint with the
14 Commissioner under this subsection.

15 (h) A pharmacy benefits manager may not charge a contracted pharmacy a fee
16 related to the readjudication of a claim or claims resulting from carrying out the
17 requirement of a contract specified in subsection (f)(5) of this section or the upholding of an
18 appeal under subsection (i) of this section.

19 (i) (1) If a pharmacy benefits manager denies an appeal and a contracted
20 pharmacy files a complaint with the Commissioner, the Commissioner shall:

21 (i) review the compensation program of the pharmacy benefits
22 manager to ensure that the reimbursement for pharmacy benefits management services
23 paid to the pharmacist or a pharmacy complies with this subtitle and the terms of the
24 contract; and

25 (ii) based on a determination made by the Commissioner under item
26 (i) of this paragraph, dismiss the appeal or uphold the appeal and order the pharmacy
27 benefits manager to pay the claim or claims in accordance with the Commissioner's
28 findings.

29 (2) All pricing information and data collected by the Commissioner during
30 a review required by paragraph (1) of this subsection:

31 (i) is considered to be confidential and proprietary information; and

32 (ii) is not subject to disclosure under the Public Information Act.]

33 **15-1628.2.**

1 **(A) IN THIS SECTION, “CONTRACTED PHARMACY” MEANS A PHARMACY**
2 **THAT PARTICIPATES IN THE NETWORK OF A PHARMACY BENEFITS MANAGER**
3 **THROUGH A CONTRACT WITH:**

4 **(1) THE PHARMACY BENEFITS MANAGER; OR**

5 **(2) A PHARMACY SERVICES ADMINISTRATION ORGANIZATION OR A**
6 **GROUP PURCHASING ORGANIZATION.**

7 **(B) EACH CONTRACT BETWEEN A PHARMACY BENEFITS MANAGER AND A**
8 **CONTRACTED PHARMACY MUST INCLUDE A PROCESS TO APPEAL, INVESTIGATE, AND**
9 **RESOLVE DISPUTES REGARDING COST PRICING AND REIMBURSEMENT THAT**
10 **INCLUDES:**

11 **(1) A REQUIREMENT THAT AN APPEAL BE FILED BY THE CONTRACT**
12 **PHARMACY NOT LATER THAN 21 DAYS AFTER THE DATE OF THE INITIAL**
13 **ADJUDICATED CLAIM;**

14 **(2) A REQUIREMENT THAT, WITHIN 21 DAYS AFTER THE DATE THE**
15 **APPEAL IS FILED, THE PHARMACY BENEFITS MANAGER INVESTIGATE AND RESOLVE**
16 **THE APPEAL AND REPORT TO THE CONTRACTED PHARMACY ON THE PHARMACY**
17 **BENEFITS MANAGER’S DETERMINATION ON THE APPEAL;**

18 **(3) A REQUIREMENT THAT A PHARMACY BENEFITS MANAGER MAKE**
19 **AVAILABLE ON ITS WEBSITE INFORMATION ABOUT THE APPEAL PROCESS,**
20 **INCLUDING:**

21 **(I) A TELEPHONE NUMBER AT WHICH THE CONTRACTED**
22 **PHARMACY MAY DIRECTLY CONTACT THE DEPARTMENT OR OFFICE RESPONSIBLE**
23 **FOR PROCESSING APPEALS FOR THE PHARMACY BENEFITS MANAGER TO SPEAK TO**
24 **AN INDIVIDUAL OR LEAVE A MESSAGE FOR AN INDIVIDUAL WHO IS RESPONSIBLE**
25 **FOR PROCESSING APPEALS;**

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

29 **(III) A NOTICE INDICATING THAT THE INDIVIDUAL RESPONSIBLE**
30 **FOR PROCESSING APPEALS SHALL RETURN A CALL OR AN E-MAIL MADE BY A**
31 **CONTRACTED PHARMACY TO THE INDIVIDUAL WITHIN 3 BUSINESS DAYS OR LESS**
32 **AFTER RECEIVING THE CALL OR E-MAIL;**

1 **(4) A REQUIREMENT THAT A PHARMACY BENEFITS MANAGER**
2 **PROVIDE:**

3 **(I) A REASON FOR ANY APPEAL DENIAL; AND**

4 **(II) 1. THE NATIONAL DRUG CODE OF A DRUG AND THE NAME**
5 **OF THE WHOLESALE DISTRIBUTOR FROM WHICH THE DRUG WAS AVAILABLE ON THE**
6 **DATE THE CLAIM WAS ADJUDICATED AT A PRICE AT OR BELOW THE MAXIMUM**
7 **ALLOWABLE COST DETERMINED BY THE PHARMACY BENEFITS MANAGER; OR**

8 **2. IF THE PHARMACY BENEFITS MANAGER DOES NOT**
9 **USE MAXIMUM ALLOWABLE COST IN DETERMINING THE AMOUNT OF**
10 **REIMBURSEMENT TO A PHARMACY OR PHARMACIST, THE FORMULARY USED TO**
11 **DETERMINE THE AMOUNT OF REIMBURSEMENT; AND**

12 **(5) IF AN APPEAL IS UPHELD, A REQUIREMENT THAT A PHARMACY**
13 **BENEFITS MANAGER:**

14 **(I) FOR THE APPEALING PHARMACY:**

15 **1. ADJUST THE COST OR REIMBURSEMENT FOR THE**
16 **DRUG AS OF THE DATE OF THE ORIGINAL CLAIM FOR PAYMENT; AND**

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

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

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

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

28 **1. ADJUST THE COST OR REIMBURSEMENT FOR THE**
29 **DRUG AS OF THE DATE THE APPEAL WAS DETERMINED; AND**

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

1 **A. AN APPEAL HAS BEEN UPHELD; AND**

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

5 **(C) A PHARMACY BENEFITS MANAGER MAY NOT RETALIATE AGAINST A**
6 **CONTRACTED PHARMACY FOR EXERCISING ITS RIGHT TO APPEAL UNDER THIS**
7 **SECTION OR FILING A COMPLAINT WITH THE COMMISSIONER UNDER THIS SECTION.**

8 **(D) A PHARMACY BENEFITS MANAGER MAY NOT CHARGE A CONTRACTED**
9 **PHARMACY A FEE RELATED TO THE READJUDICATION OF A CLAIM OR CLAIMS**
10 **RESULTING FROM CARRYING OUT THE REQUIREMENT OF A CONTRACT SPECIFIED IN**
11 **SUBSECTION (B)(5) OF THIS SECTION OR THE UPHOLDING OF AN APPEAL UNDER**
12 **SUBSECTION (E) OF THIS SECTION.**

13 **(E) (1) IF A PHARMACY BENEFITS MANAGER DENIES AN APPEAL AND A**
14 **CONTRACTED PHARMACY FILES A COMPLAINT WITH THE COMMISSIONER, THE**
15 **COMMISSIONER SHALL:**

16 **(I) REVIEW THE COMPENSATION PROGRAM OF THE PHARMACY**
17 **BENEFITS MANAGER TO ENSURE THAT THE REIMBURSEMENT FOR PHARMACY**
18 **BENEFITS MANAGEMENT SERVICES PAID TO THE PHARMACIST OR A PHARMACY**
19 **COMPLIES WITH THIS SUBTITLE AND THE TERMS OF THE CONTRACT; AND**

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

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

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

29 **(II) IS NOT SUBJECT TO DISCLOSURE UNDER THE PUBLIC**
30 **INFORMATION ACT.**

31 15-1631.

32 Except for an overpayment as defined in § 15-1629(h) of this subtitle, if a claim has

1 been approved by a pharmacy benefits manager through adjudication, the pharmacy
2 benefits manager may not retroactively deny or modify reimbursement to a pharmacy or
3 pharmacist for the approved claim unless:

4 (1) the claim was fraudulent;

5 (2) the pharmacy or pharmacist had been reimbursed for the claim
6 previously; **OR**

7 (3) the services reimbursed were not rendered by the pharmacy or
8 pharmacist]; or

9 (4) subject to § 15–1629(h)(2) of this part, the claim otherwise caused
10 monetary loss to the pharmacy benefits manager, provided that the pharmacy benefits
11 manager allowed the pharmacy a reasonable opportunity to remedy the cause of the
12 monetary loss].

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2019.