HOUSE BILL 905

J1, C3, J2 0lr2585

By: **Delegates Shetty, Carr, Hill, Kelly, Kerr, Kipke, Lehman, R. Lewis, Pena–Melnyk, and Solomon**
Introduced and read first time: February 5, 2020
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Prescription Drug Benefits – Use of Real–Time Benefit Check Technology**

3 FOR the purpose of requiring, beginning on a certain date, a prescriber or dispenser of a
4 prescription drug to have access to and use, under certain circumstances, certain
5 technology that provides patient–specific prescription drug benefit and cost
6 information in a certain manner; requiring certain payors, providers, pharmacies,
7 and other organizations to take certain actions necessary to facilitate access to and
8 use of the technology; requiring, beginning on a certain date, certain electronic
9 health records to display certain information in a certain manner; requiring that
10 certain requests and certain responses be sent and received through the technology
11 in a certain manner; requiring a certain exchange of certain information to be
12 facilitated by using certain standards; requiring certain persons to partner with
13 certain intermediaries for a certain purpose; requiring certain intermediaries,
14 certain organizations, and certain technology to have certain capabilities for certain
15 purposes; requiring certain information displayed through certain technology to
16 include certain options available to a patient for covering the cost of a prescription
17 drug; prohibiting certain payors from prohibiting the display of certain information;
18 requiring certain providers to communicate to a patient certain information;
19 establishing that certain providers have no obligation to convey certain information
20 under certain circumstances; stating certain findings of the General Assembly;
21 providing for the construction of this Act; defining certain terms; and generally
22 relating to prescription drug benefits and the use of real–time benefit check
23 technology.

24 BY adding to
25 Article – Health – General
26 Section 19–145
27 Annotated Code of Maryland
28 (2019 Replacement Volume)

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

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

3 **Article – Health – General**

4 **19–145.**

5 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
6 **INDICATED.**

7 **(2) "COVERAGE" MEANS THE DRUG FORMULARY INFORMATION FOR**
8 **A HEALTH BENEFIT PLAN THAT INCLUDES THE BRAND AND GENERIC PRESCRIPTION**
9 **DRUGS THAT THE PAYOR WILL COVER FOR A SPECIFIC PATIENT UNDER THE HEALTH**
10 **BENEFIT PLAN OF THE PATIENT.**

11 **(3) "DISPENSER" MEANS A PERSON AUTHORIZED BY LAW TO**
12 **DISPENSE, AS DEFINED IN § 12–101 OF THE HEALTH OCCUPATIONS ARTICLE, A**
13 **PRESCRIPTION DRUG TO A PATIENT OR THE PATIENT'S AGENT IN THE STATE.**

14 **(4) (I) "INTERMEDIARIES" MEANS ENTITIES THAT FACILITATE**
15 **THE ROUTING OF PRESCRIPTION DRUG BENEFIT INVESTIGATION TRANSACTIONS.**

16 **(II) "INTERMEDIARIES" INCLUDES REAL–TIME NETWORKS,**
17 **SWITCHES, AND TRANSLATION SERVICES.**

18 **(5) "PATIENT–SPECIFIC ELIGIBILITY INFORMATION" MEANS**
19 **INFORMATION ON THE STATUS OF THE HEALTH BENEFIT PLAN AND PRESCRIPTION**
20 **BENEFIT UNDER THE PLAN PROVIDED TO A SPECIFIC PATIENT BY A PAYOR,**
21 **INCLUDING ANY EXCLUSIONS AND LIMITATIONS UNDER THE HEALTH BENEFIT PLAN**
22 **AND PRESCRIPTION DRUG BENEFIT UNDER THE PLAN.**

23 **(6) "PATIENT–SPECIFIC PRESCRIPTION DRUG BENEFIT AND COST**
24 **INFORMATION" MEANS THE TYPE OF PRESCRIPTION DRUG COVERAGE OFFERED TO**
25 **A PATIENT BY THE PATIENT'S PAYOR AND ANY OUT–OF–POCKET COSTS THAT MAY BE**
26 **INCURRED BY THE PATIENT UNDER THE COVERAGE, INCLUDING THE PATIENT'S**
27 **COPAYMENT, COINSURANCE, AND DEDUCTIBLE REQUIREMENTS UNDER THE**
28 **COVERAGE.**

29 **(7) "PAYOR" HAS THE MEANING STATED IN § 19–108.2 OF THIS TITLE.**

30 **(8) "PRESCRIBER" HAS THE MEANING STATED IN § 21–2A–01 OF THIS**
31 **ARTICLE.**

32 **(9) "PROVIDER" HAS THE MEANING STATED IN § 19–7A–01 OF THIS**

1 TITLE.

2 (10) "REAL–TIME" MEANS DELIVERED IMMEDIATELY AFTER
3 COLLECTION.

4 (11) "STANDARD TRANSACTION" MEANS AN ELECTRONIC PROCESS
5 THAT:

6 (I) FACILITATES INTEROPERABILITY AND DATA EXCHANGE OF
7 PRESCRIPTION DRUG BENEFIT AND INVESTIGATION RESPONSE INFORMATION; AND

8 (II) IS DEVELOPED BY AN ORGANIZATION ACCREDITED BY THE
9 AMERICAN NATIONAL STANDARDS INSTITUTE.

10 (12) "SWITCH" MEANS AN ENTITY THAT ROUTES CLAIMS FROM A
11 PHARMACY TO A PAYOR.

12 (13) "THERAPEUTICALLY EQUIVALENT ALTERNATIVE" MEANS A
13 PRESCRIPTION DRUG THAT:

14 (I) HAS THE SAME CLINICAL EFFECT AND SAFETY PROFILE TO
15 ANOTHER PRESCRIPTION DRUG PRESCRIBED FOR A PATIENT;

16 (II) IS KNOWN TO HAVE NEARLY IDENTICAL PROPERTIES TO
17 ANOTHER PRESCRIPTION DRUG PRESCRIBED FOR A PATIENT; AND

18 (III) MAY BE INTERCHANGED FOR ANOTHER PRESCRIPTION
19 DRUG PRESCRIBED FOR A PATIENT AS NEEDED.

20 (B) THE GENERAL ASSEMBLY FINDS THAT:

21 (1) THERE IS A NEED FOR CLEAR AND MEANINGFUL TRANSPARENCY
22 THAT LOWERS OUT–OF–POCKET COSTS FOR PATIENTS FOR PRESCRIPTION DRUGS
23 AND DRIVES CLINICALLY APPROPRIATE, DATA–DRIVEN, SHARED DECISION MAKING
24 THAT ENSURES THAT PATIENTS ARE INFORMED AND UNDERSTAND THE FULL RANGE
25 OF OPTIONS TO OBTAIN THEIR MEDICALLY NECESSARY MEDICATIONS;

26 (2) PATIENTS NEED TO UNDERSTAND THE OPPORTUNITY TO DRIVE
27 FULL VALUE OF THEIR HEALTH BENEFIT PLAN FORMULARIES AND UNDERSTAND
28 COVERAGE AND PAYMENT CONSIDERATIONS FOR DRUGS ON THEIR FORMULARIES,
29 INCLUDING LOWER COST CLINICAL AND THERAPEUTIC ALTERNATIVES; AND

30 (3) PATIENTS NEED TO UNDERSTAND THE OPPORTUNITY TO BENEFIT

FROM COMPETITIVE PRICING OF PRESCRIPTION DRUGS OUTSIDE THEIR HEALTH BENEFIT PLAN'S PRESCRIPTION DRUG FORMULARY, WHETHER IN THE FORM OF A LOWER CASH PRICE, PATIENT ASSISTANCE, OR FOUNDATION PROGRAMS.

(C) (1) BEGINNING JANUARY 1, 2021, AT THE POINT OF PRESCRIBING OR DISPENSING A PRESCRIPTION DRUG TO A PATIENT, A PRESCRIBER OR DISPENSER SHALL HAVE ACCESS TO AND USE, AS APPROPRIATE, TECHNOLOGY THAT PROVIDES PATIENT–SPECIFIC PRESCRIPTION DRUG BENEFIT AND COST INFORMATION THROUGH A REAL–TIME STANDARD TRANSACTION.

(2) PAYORS, PROVIDERS, PHARMACIES, AND OTHER ORGANIZATIONS INVOLVED IN THE PROCESS OF PRESCRIBING, DISPENSING, PAYING FOR, AND EXCHANGING INFORMATION RELATING TO PRESCRIPTION DRUGS, INCLUDING INTERMEDIARIES, REAL–TIME NETWORKS, SWITCHES, AND TRANSLATION SERVICES, SHALL TAKE ANY ACTIONS NECESSARY TO FACILITATE THE ACCESS TO AND USE OF THE TECHNOLOGY REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) (I) BEGINNING JANUARY 1, 2021, ELECTRONIC HEALTH RECORDS SHALL DISPLAY, THROUGH REAL–TIME INTEGRATION, THE MOST UP–TO–DATE PATIENT–SPECIFIC ELIGIBILITY INFORMATION.

(II) THE INFORMATION DISPLAYED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE INFORMATION ON A HEALTH BENEFIT PLAN'S COVERAGE AND BENEFITS, FORMULARY, COST–SHARING REQUIREMENTS, THERAPEUTICALLY EQUIVALENT ALTERNATIVES, AS APPROPRIATE, AND PRIOR AUTHORIZATION REQUIREMENTS.

(D) (1) REQUESTS FOR PATIENT–SPECIFIC PRESCRIPTION DRUG BENEFIT AND COST INFORMATION THROUGH THE TECHNOLOGY REQUIRED UNDER SUBSECTION (C) OF THIS SECTION AND ANY RESPONSES TO THOSE REQUESTS USING THE TECHNOLOGY SHALL BE SENT AND RECEIVED IN REAL TIME.

(2) THE REAL–TIME EXCHANGE OF THE PATIENT–SPECIFIC ELIGIBILITY INFORMATION, INCLUDING ANY INFORMATION RELATING TO A HEALTH BENEFIT PLAN'S COVERAGE AND BENEFITS, FORMULARY, AND COST–SHARING REQUIREMENTS, SHALL BE FACILITATED BY USING HEALTH CARE INDUSTRY STANDARDS DEVELOPED BY AN ORGANIZATION ACCREDITED BY THE AMERICAN NATIONAL STANDARDS INSTITUTE.

(3) ELECTRONIC HEALTH RECORD VENDORS, PAYORS, PROVIDERS, PHARMACIES, AND OTHER ORGANIZATIONS INVOLVED IN THE PROCESS OF PRESCRIBING, DISPENSING, PAYING FOR, AND EXCHANGING INFORMATION

1 RELATING TO PRESCRIPTION DRUGS SHALL PARTNER WITH INTERMEDIARIES TO
2 ENSURE THE DELIVERY OF ACCURATE PATIENT–SPECIFIC PRESCRIPTION DRUG
3 BENEFIT AND COST INFORMATION, AS WELL AS CASH PAY INFORMATION FOR
4 PRESCRIPTION DRUGS.

5 (4) TO EXPEDITE THE IMPLEMENTATION OF THE REQUIREMENTS OF
6 THIS SUBSECTION, INTERMEDIARIES MUST BE CAPABLE OF SUPPORTING AND USING
7 A STANDARD TRANSACTION THAT MEETS THE REQUIREMENTS OF THIS SECTION.

8 (5) THE TECHNOLOGY REQUIRED UNDER SUBSECTION (C) OF THIS
9 SECTION MUST BE CAPABLE OF SHOWING INFORMATION ON PATIENT FINANCIAL
10 AND RESOURCE ASSISTANCE WHEN AVAILABLE FOR THE PRESCRIPTION DRUG
11 SELECTED BY A PROVIDER.

12 (E) (1) PRESCRIPTION DRUG BENEFIT AND COST INFORMATION
13 DISPLAYED THROUGH THE TECHNOLOGY REQUIRED UNDER THIS SECTION SHALL
14 INCLUDE ALL OPTIONS AVAILABLE TO THE PATIENT FOR COVERING THE COST OF A
15 PRESCRIPTION DRUG, INCLUDING:

16 (I) COST COVERAGE OPTIONS AVAILABLE:

17 1. AT THE PATIENT'S PHARMACY OF CHOICE;

18 2. THROUGH MAIL SERVICE PHARMACIES; AND

19 3. THROUGH SPECIALTY PHARMACIES; AND

20 (II) CASH PAY OPTIONS.

21 (2) ORGANIZATIONS THAT PROVIDE PRESCRIPTION DRUG BENEFIT
22 AND COST INFORMATION TO PROVIDERS THROUGH INTEGRATION WITH
23 ELECTRONIC HEALTH RECORDS MUST BE CAPABLE OF RELAYING PATIENT CHOICE
24 INFORMATION IN REAL TIME USING A STANDARD TRANSACTION THAT MEETS THE
25 REQUIREMENTS OF THIS SECTION.

26 (3) A PAYOR MAY NOT PROHIBIT THE DISPLAY OF PATIENT–SPECIFIC
27 PRESCRIPTION DRUG BENEFIT AND COST INFORMATION AT THE POINT OF
28 PRESCRIBING THAT REFLECTS OTHER OPTIONS AVAILABLE FOR COVERING THE
29 COST OF A PRESCRIPTION DRUG THAN WHAT MAY BE AVAILABLE UNDER THE
30 PATIENT'S HEALTH BENEFIT PLAN, SUCH AS:

31 (I) A CASH PAY OPTION;

1 **(II) COVERAGE THROUGH A PATIENT ASSISTANCE OR SUPPORT**
2 **PROGRAM; OR**

3 **(III) A COST COVERAGE OPTION AT THE PATIENT'S PHARMACY**
4 **OF CHOICE.**

5 **(F) (1) (I) THIS SECTION MAY NOT BE CONSTRUED TO INTERFERE**
6 **WITH A PATIENT'S CHOICE OF PRESCRIPTION DRUG COST COVERAGE.**

7 **(II) A PROVIDER SHALL COMMUNICATE TO A PATIENT:**

8 **1. THE MOST THERAPEUTICALLY APPROPRIATE**
9 **TREATMENT FOR THE PATIENT'S GIVEN DIAGNOSIS; AND**

10 **2. WHEN APPROPRIATE, PRESCRIPTION DRUG COST**
11 **INFORMATION, INCLUDING THE CASH PRICE, THERAPEUTICALLY EQUIVALENT**
12 **ALTERNATIVES, AND DELIVERY OPTIONS FOR A PRESCRIPTION DRUG.**

13 **(2) (I) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT THE**
14 **RIGHT OF A PATIENT TO CHOOSE WHETHER TO USE THE PRESCRIPTION DRUG**
15 **BENEFIT UNDER THE PATIENT'S HEALTH BENEFIT PLAN WHEN OBTAINING A**
16 **PRESCRIPTION DRUG.**

17 **(II) IF A PATIENT CHOOSES NOT TO USE THE PRESCRIPTION**
18 **DRUG BENEFIT UNDER THE PATIENT'S HEALTH BENEFIT PLAN TO OBTAIN A**
19 **PRESCRIPTION DRUG, A PROVIDER DOES NOT HAVE AN OBLIGATION TO CONVEY**
20 **THIS INFORMATION TO THE PAYOR WHO PROVIDES THE HEALTH BENEFIT PLAN TO**
21 **THE PATIENT, TO PROTECT PATIENT'S PRIVACY AND RIGHT TO CHOOSE THE MEANS**
22 **OF PRESCRIPTION DRUG COST COVERAGE.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2020.