

# HOUSE BILL 607

P4, C3

EMERGENCY BILL

1lr1579

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By: **Delegate Kipke**

Introduced and read first time: January 20, 2021

Assigned to: Health and Government Operations and Appropriations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Health and Welfare Benefits Program – Requirements for Selection of**  
3 **Pharmacy Benefits Manager**

4 FOR the purpose of requiring that the terms of a certain participant bidding agreement for  
5 participation in a reverse auction for the selection of a pharmacy benefits manager  
6 for the Maryland Rx Program include a requirement that the bidder, if selected as a  
7 pharmacy benefits manager for the Program through the auction, pay a certain  
8 dispensing fee to certain pharmacists; requiring the Department of Budget and  
9 Management to require that the fee be stated by the bidders in certain bids;  
10 providing for the retroactive application of this Act; making this Act an emergency  
11 measure; making technical corrections; and generally relating to pharmacy benefits  
12 managers and the State Health and Welfare Benefits Program.

13 BY repealing and reenacting, with amendments,  
14 Article – State Personnel and Pensions  
15 Section 2–502.2  
16 Annotated Code of Maryland  
17 (2015 Replacement Volume and 2020 Supplement)

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

20 **Article – State Personnel and Pensions**

21 2–502.2.

22 (a) (1) In this section the following terms have the meanings indicated.

23 (2) “Market check” means a technology–driven evaluation of prescription  
24 drug pricing based on benchmarks derived from pharmacy benefits managers’ reverse  
25 auction processes conducted in the United States over the immediately preceding 12

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 months.

2 (3) "Pharmacy benefits manager" has the meaning stated in § 15–1601 of  
3 the Insurance Article.

4 (4) "Price" means the projected cost of a bid for providing services over the  
5 duration of the contract.

6 (5) "Reverse auction" means an automated bidding process conducted  
7 online that starts with an opening price and allows qualified bidders to counteroffer a lower  
8 price for multiple rounds of bidding.

9 (b) It is the intent of the General Assembly to optimize prescription drug savings  
10 by the State through:

11 (1) adoption of a reverse auction process for the selection of a pharmacy  
12 benefits manager for the Program;

13 (2) electronic review and validation of pharmacy benefits manager claims  
14 invoices as the foundation for reconciling pharmacy bills;

15 (3) market checks of the incumbent pharmacy benefits manager's  
16 prescription drug pricing; and

17 (4) limiting independent pharmacies from unsustainable reimbursement  
18 practices while preventing a reduction in employee benefits.

19 (c) (1) At least 3 months before a pharmacy benefits manager reverse auction  
20 is scheduled to be completed, the Department shall procure, through a competitive sealed  
21 proposal conducted in accordance with § 13–104 of the State Finance and Procurement  
22 Article, a technology platform, and any associated professional services necessary to  
23 operate the platform, to:

24 (i) evaluate the qualifications of prospective pharmacy benefits  
25 managers for the Program;

26 (ii) automatically adjudicate prescription drug claims; and

27 (iii) collect data on pharmacy reimbursement.

28 (2) The platform procured under paragraph (1) of this subsection shall have  
29 the capability to:

30 (i) host and conduct an online automated reverse auction;

31 (ii) automate repricing of diverse and complex pharmacy benefits  
32 manager prescription drug pricing proposals to enable direct comparisons of the price of

1 bids using all annual claims data available for state-funded health plans or multiple health  
2 plan prescription drug purchasing groups using code-based classification of prescription  
3 drugs from nationally accepted drug sources;

4 (iii) produce an automated report and analysis of bids, including the  
5 ranking of bids based on the comparative costs and qualitative aspects of the costs within  
6 48 hours after the close of each round of reverse auction bidding;

7 (iv) after the close of a reverse auction, perform electronic, line by  
8 line, claim by claim review of all invoiced pharmacy benefits manager claims within 12  
9 hours of receipt and identify all deviations from the specific terms of the services contract  
10 resulting from the reverse auction process; and

11 (v) if available, after the close of a reverse auction, perform  
12 comparisons of the financial effects on the State of alternative drug-pricing metrics, such  
13 as the national average drug acquisition cost and average wholesale price.

14 (3) A responsive offeror under paragraph (2) of this subsection may not  
15 subcontract any part of the reverse auction or a review described under paragraph (2)(iv)  
16 of this subsection.

17 (4) The Department shall consult with the Department of Information  
18 Technology and Department of General Services in conducting the procurement required  
19 under paragraph (1) of this subsection.

20 (5) The Department may not award a contract under paragraph (1) of this  
21 subsection to:

22 (i) a pharmacy benefits manager;

23 (ii) a subsidiary or affiliate of a pharmacy benefits manager; or

24 (iii) a vendor that is managed by a pharmacy benefits manager or  
25 receives, directly or indirectly, remuneration from a pharmacy benefits manager for  
26 aggregating clients into a contractual relationship with a pharmacy benefits manager.

27 (6) The Department may structure a contract awarded under this  
28 subsection to require the pharmacy benefits manager selected under [subsection (e) of] this  
29 section to pay the cost of the technology platform and associated professional services  
30 contracted under this subsection by assessing a per-prescription fee paid by the pharmacy  
31 benefits manager directly to the technology platform vendor.

32 (d) (1) In consultation with the vendor selected under subsection (c) of this  
33 section, and with consideration of recommendations that may be offered by the Maryland  
34 Prescription Drug Affordability Board, the Department shall specify the terms of a  
35 participant bidding agreement that all bidders must accept as a prerequisite for  
36 participation in the reverse auction, including:

- 1 (i) common definitions;
- 2 (ii) prescription drug classifications;
- 3 (iii) rules that may include retail pricing rules such as maximum  
4 allowable cost price lists and, **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,**  
5 dispensing fees;
- 6 (iv) whether the vendor will be assessed a platform vendor fee  
7 described under subsection (c)(6) of this section; and
- 8 (v) any other contract terms the Department determines are  
9 necessary to further the intent of the General Assembly as established in subsection (b) of  
10 this section.

11 **(2) (I) THE TERMS OF A PARTICIPANT BIDDING AGREEMENT THAT**  
12 **ALL BIDDERS MUST ACCEPT AS A PREREQUISITE FOR PARTICIPATION IN THE**  
13 **REVERSE AUCTION SHALL INCLUDE A REQUIREMENT THAT A BIDDER, IF SELECTED**  
14 **AS A PHARMACY BENEFITS MANAGER FOR THE MARYLAND RX PROGRAM, PAY A**  
15 **FEE-FOR-SERVICE PROFESSIONAL DISPENSING FEE TO A PHARMACIST THAT IS**  
16 **BASED ON AN IN-STATE COST TO DISPENSE MARKET SURVEY.**

17 **(II) THE DEPARTMENT SHALL REQUIRE THAT THE**  
18 **FEE-FOR-SERVICE PROFESSIONAL DISPENSING FEE REQUIRED UNDER**  
19 **SUBPARAGRAPH (I) OF THIS PARAGRAPH BE STATED BY THE BIDDER IN THE BID**  
20 **SUBMITTED IN THE REVERSE AUCTION.**

21 **[(2)] (3)** The terms of a participant bidding agreement specified under  
22 paragraph (1) of this subsection may not be modified except by affirmative approval by the  
23 Department.

24 (e) (1) (i) The Department may perform annual market checks of  
25 pharmacy benefits manager services during the term of a pharmacy benefits manager  
26 contract to ensure continuing competitiveness of prescription drug pricing over the life of  
27 the contract.

28 (ii) A market check performed under this paragraph shall include an  
29 evaluation of the effect of alternative drug-pricing metrics, such as the national average  
30 drug acquisition cost and average wholesale price, on the cost of prescription drugs and  
31 savings to the State.

32 (2) The Department shall make regular, periodic payment of invoices  
33 within the time periods specified in a contract based on the automated adjudication of  
34 invoiced claims using the technology platform to validate that claims payments comply with  
35 the terms of the contract.

1 (f) (1) The following health plans in the State may use the reverse auction  
2 process established under this section individually or collectively as a joint purchasing  
3 group with the Program:

4 (i) a State-funded health plan other than the Program;

5 (ii) a self-funded county, municipal, or other local government  
6 employee health plan;

7 (iii) a public school employee health plan; and

8 (iv) a health plan of a public institution of higher education.

9 (2) A health plan that participates in a reverse auction purchasing group  
10 under paragraph (1) of this subsection shall:

11 (i) retain full autonomy over determination of the entity's  
12 prescription drug formulary and pharmacy benefit designs; but

13 (ii) agree, before participating in the reverse auction, to accept the  
14 prescription drug pricing plan that is selected through the reverse auction process.

15 (g) A pharmacy benefits manager that submits a bid under [subsection (e) of] this  
16 section or enters into a contract with the Department or a health plan described under  
17 subsection [(g)(1)] **(F)(1)** of this section shall provide the Department and health plan  
18 access to complete pharmacy claims data necessary for the Department and health plan to:

19 (1) conduct the reverse auction; and

20 (2) carry out administrative and management duties.

21 (h) (1) A prospective bidder or offeror, a bidder, or an offeror may submit a  
22 protest as provided under Title 15, Subtitle 2 of the State Finance and Procurement Article.

23 (2) If the prescription benefits manager selected under [subsection (e) of]  
24 this section asserts that the Department has underpaid on a claim, the prescription benefits  
25 manager may submit a contract claim as provided under Title 15, Subtitle 2 of the State  
26 Finance and Procurement Article.

27 (i) (1) If the Department and the Department of General Services determine  
28 that the implementation of this section is not administratively feasible for the benefit year  
29 beginning after December 31, 2020, the Department may delay implementation of this  
30 section to the benefit year beginning after December 31, 2021.

31 (2) For purposes of carrying out the provisions of subsections (c) and (d) of  
32 this section before January 1, 2021, the Board of Public Works may approve a request from

1 the Department for an exemption from specific provisions of Division II of the State Finance  
2 and Procurement Article.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
4 apply retroactively and shall be applied to and interpreted to affect any participant bidding  
5 agreements and reverse auction bids submitted under § 2–502.2 of the State Personnel and  
6 Pensions Article.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency  
8 measure, is necessary for the immediate preservation of the public health or safety, has  
9 been passed by a yea and nay vote supported by three–fifths of all the members elected to  
10 each of the two Houses of the General Assembly, and shall take effect from the date it is  
11 enacted.