

HOUSE BILL 819

C3

1l1733
CF 1l2464

By: **Delegate Krebs**

Introduced and read first time: January 29, 2021

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Pharmacy Benefits Managers – Prohibited Actions**

3 FOR the purpose of prohibiting a pharmacy benefits manager from engaging in any practice
4 that bases certain reimbursement for a prescription drug on patient outcomes,
5 scores, or metrics under certain circumstances; prohibiting a pharmacy benefits
6 manager from engaging in the practice of spread pricing, denying any pharmacy a
7 certain right, taking more than a certain number of days to review the application of
8 a pharmacy or pharmacist to participate in a certain policy or contract, and setting
9 different fees for a beneficiary's copay based on certain circumstances; prohibiting a
10 pharmacy benefits manager from requiring beneficiaries to use a mail order
11 pharmacy to fill a prescription; providing that certain provisions of this Act apply to
12 pharmacy benefits managers that contract with managed care organizations in the
13 same manner as they apply to pharmacy benefits managers that contract with
14 carriers; providing for the application of this Act; providing for the construction of
15 this Act; defining certain terms; providing for a delayed effective date; and generally
16 relating to pharmacy benefits managers.

17 BY adding to
18 Article – Health – General
19 Section 15–102.3(j)
20 Annotated Code of Maryland
21 (2019 Replacement Volume and 2020 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article – Insurance
24 Section 15–1601(a) and (o)
25 Annotated Code of Maryland
26 (2017 Replacement Volume and 2020 Supplement)

27 BY adding to
28 Article – Insurance

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 15–1601(q)
2 Annotated Code of Maryland
3 (2017 Replacement Volume and 2020 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Insurance
6 Section 15–1601(q), (r), and (s), 15–1611, and 15–1611.1
7 Annotated Code of Maryland
8 (2017 Replacement Volume and 2020 Supplement)

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

11 **Article – Health – General**

12 15–102.3.

13 **(J) THE PROVISIONS OF § 15–1611(B) OF THE INSURANCE ARTICLE APPLY**
14 **TO PHARMACY BENEFITS MANAGERS THAT CONTRACT WITH MANAGED CARE**
15 **ORGANIZATIONS IN THE SAME MANNER AS THEY APPLY TO PHARMACY BENEFITS**
16 **MANAGERS THAT CONTRACT WITH CARRIERS.**

17 **Article – Insurance**

18 15–1601.

19 (a) In this subtitle the following words have the meanings indicated.

20 (o) (1) “Purchaser” means the State Employee and Retiree Health and Welfare
21 Benefits Program, an insurer, a nonprofit health service plan, or a health maintenance
22 organization that:

23 (i) provides prescription drug coverage or benefits in the State; and

24 (ii) enters into an agreement with a pharmacy benefits manager for
25 the provision of pharmacy benefits management services.

26 (2) “Purchaser” does not include a person that provides prescription drug
27 coverage or benefits through plans subject to ERISA and does not provide prescription drug
28 coverage or benefits through insurance, unless the person is a multiple employer welfare
29 arrangement as defined in § 514(b)(6)(a)(ii) of ERISA.

30 **(Q) “SPREAD PRICING” MEANS THE MODEL OF PRESCRIPTION DRUG**
31 **PRICING IN WHICH A PHARMACY BENEFITS MANAGER CHARGES A PURCHASER A**
32 **CONTRACTED PRICE FOR A PRESCRIPTION DRUG THAT DIFFERS FROM THE AMOUNT**
33 **THE PHARMACY BENEFITS MANAGER DIRECTLY OR INDIRECTLY PAYS THE**

1 **PHARMACIST OR PHARMACY FOR THE PRESCRIPTION DRUG DISPENSED BY THE**
2 **PHARMACIST OR PHARMACY.**

3 **[(q)] (R)** (1) “Therapeutic interchange” means any change from one
4 prescription drug to another.

5 (2) “Therapeutic interchange” does not include:

6 (i) a change initiated pursuant to a drug utilization review;

7 (ii) a change initiated for patient safety reasons;

8 (iii) a change required due to market unavailability of the currently
9 prescribed drug;

10 (iv) a change from a brand name drug to a generic drug in accordance
11 with § 12–504 of the Health Occupations Article; or

12 (v) a change required for coverage reasons because the originally
13 prescribed drug is not covered by the beneficiary’s formulary or plan.

14 **[(r)] (S)** “Therapeutic interchange solicitation” means any communication by a
15 pharmacy benefits manager for the purpose of requesting a therapeutic interchange.

16 **[(s)] (T)** “Trade secret” has the meaning stated in § 11–1201 of the Commercial
17 Law Article.

18 15–1611.

19 (a) A pharmacy benefits manager may not prohibit a pharmacy or pharmacist
20 from:

21 (1) providing a beneficiary with information regarding the retail price for
22 a prescription drug or the amount of the cost share for which the beneficiary is responsible
23 for a prescription drug;

24 (2) discussing with a beneficiary information regarding the retail price for
25 a prescription drug or the amount of the cost share for which the beneficiary is responsible
26 for a prescription drug; or

27 (3) if a more affordable drug is available than one on the purchaser’s
28 formulary and the requirements for a therapeutic interchange under §§ 15–1633 through
29 15–1639 of this subtitle are met, selling the more affordable alternative to the beneficiary.

30 **(B) (1) A PHARMACY BENEFITS MANAGER MAY NOT:**

1 **(I) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ENGAGE**
2 **IN ANY PRACTICE THAT BASES REIMBURSEMENT TO A PHARMACY OR PHARMACIST**
3 **FOR A PRESCRIPTION DRUG ON PATIENT OUTCOMES, SCORES, OR METRICS;**

4 **(II) ENGAGE IN THE PRACTICE OF SPREAD PRICING;**

5 **(III) DENY ANY PHARMACY THE RIGHT TO PARTICIPATE IN A**
6 **POLICY OR CONTRACT WITH THE PHARMACY BENEFITS MANAGER IF THE PHARMACY**
7 **OR PHARMACIST AGREES TO MEET THE TERMS AND CONDITIONS OF THE POLICY OR**
8 **CONTRACT;**

9 **(IV) TAKE MORE THAN 30 DAYS TO REVIEW THE APPLICATION OF**
10 **A PHARMACY OR PHARMACIST TO PARTICIPATE IN A POLICY OR CONTRACT WITH**
11 **THE PHARMACY BENEFITS MANAGER; OR**

12 **(V) SET DIFFERENT FEES FOR A BENEFICIARY'S COPAY BASED**
13 **ON WHETHER A PHARMACY OR PHARMACIST IS AFFILIATED WITH AN INDEPENDENT**
14 **OR CHAIN PHARMACY.**

15 **(2) A PHARMACY BENEFITS MANAGER MAY PROVIDE**
16 **REIMBURSEMENT TO A PHARMACY OR PHARMACIST FOR PHARMACY CARE,**
17 **INCLUDING REIMBURSEMENT INCENTIVES BASED ON PATIENT OUTCOMES, SCORES,**
18 **OR METRICS.**

19 **[(b)] (C)** This section may not be construed to alter the requirements for a
20 therapeutic interchange under §§ 15–1633 through 15–1639 of this subtitle.

21 **(D) THIS SECTION MAY NOT BE CONSTRUED TO PREEMPT OR CONFLICT**
22 **WITH ANY FEDERAL LAW OR REGULATION.**

23 15–1611.1.

24 (a) Except as provided in subsection (b) **AND SUBJECT TO SUBSECTION (C)** of
25 this section, a pharmacy benefits manager may not require that a beneficiary use a specific
26 pharmacy or entity to fill a prescription if:

27 (1) the pharmacy benefits manager or a corporate affiliate of the pharmacy
28 benefits manager has an ownership interest in the pharmacy or entity; or

29 (2) the pharmacy or entity has an ownership interest in the pharmacy
30 benefits manager or a corporate affiliate of the pharmacy benefits manager.

31 (b) A pharmacy benefits manager may require a beneficiary to use a specific
32 pharmacy or entity for a specialty drug as defined in § 15–847 of this title.

1 **(C) A PHARMACY BENEFITS MANAGER MAY NOT REQUIRE THAT A**
2 **BENEFICIARY USE A MAIL ORDER PHARMACY TO FILL A PRESCRIPTION.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
4 policies or contracts issued, delivered, or renewed in the State on or after January 1, 2022.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 January 1, 2022.