

# 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

AN ACT concerning

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

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

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

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

#### **Article – State Personnel and Pensions**

2–502.2.

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

(2) “Market check” means a technology–driven evaluation of prescription drug pricing based on benchmarks derived from pharmacy benefits managers’ reverse 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.



months.

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

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

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

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

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

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

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

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

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

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

(ii) automatically adjudicate prescription drug claims; and

(iii) collect data on pharmacy reimbursement.

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

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

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

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

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

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

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

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

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

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

(i) a pharmacy benefits manager;

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

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

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

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

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

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

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

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

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

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

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

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

- (i) a State-funded health plan other than the Program;
- (ii) a self-funded county, municipal, or other local government employee health plan;
- (iii) a public school employee health plan; and
- (iv) a health plan of a public institution of higher education.

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

- (i) retain full autonomy over determination of the entity's prescription drug formulary and pharmacy benefit designs; but
- (ii) agree, before participating in the reverse auction, to accept the prescription drug pricing plan that is selected through the reverse auction process.

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

- (1) conduct the reverse auction; and
- (2) carry out administrative and management duties.

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

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

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

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

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

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

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