SENATE BILL 964

C3 1lr3088
CF HB 601

By: **Senator Jennings**
Introduced and read first time: February 21, 2021
Assigned to: Rules

A BILL ENTITLED

AN ACT concerning

Pharmacy Benefits Managers – Definition of Purchaser and ERISA

FOR the purpose of altering the definition of "purchaser" for the purposes of certain provisions of State insurance law governing pharmacy benefits managers to repeal the exclusion of certain persons that provide prescription drug coverage or benefits through plans subject to ERISA; repealing a certain definition; and generally relating to pharmacy benefits managers and plans subject to ERISA.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 15–1601
Annotated Code of Maryland
(2017 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 – Insurance

15–1601.

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

(b) "Agent" means a pharmacy, a pharmacist, a mail order pharmacy, or a nonresident pharmacy acting on behalf or at the direction of a pharmacy benefits manager.

(c) "Beneficiary" means an individual who receives prescription drug coverage or benefits from a purchaser.

(c–1) "Compensation program" means a program, policy, or process through which sources and pricing information are used by a pharmacy benefits manager to determine the

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

terms of payment as stated in a participating pharmacy contract.

(c–2) "Contracted pharmacy" means a pharmacy that participates in the network of a pharmacy benefits manager through a contract with:

(1) the pharmacy benefits manager; or

(2) a pharmacy services administration organization or a group purchasing organization.

[(d) "ERISA" has the meaning stated in § 8–301 of this article.**]**

[(e)**] (D)** "Formulary" means a list of prescription drugs used by a purchaser.

[(f)**] (E)** (1) "Manufacturer payments" means any compensation or remuneration a pharmacy benefits manager receives from or on behalf of a pharmaceutical manufacturer.

(2) "Manufacturer payments" includes:

(i) payments received in accordance with agreements with pharmaceutical manufacturers for formulary placement and, if applicable, drug utilization;

(ii) rebates, regardless of how categorized;

(iii) market share incentives;

(iv) commissions;

(v) fees under products and services agreements;

(vi) any fees received for the sale of utilization data to a pharmaceutical manufacturer; and

(vii) administrative or management fees.

(3) "Manufacturer payments" does not include purchase discounts based on invoiced purchase terms.

[(g)**] (F)** "Nonprofit health maintenance organization" has the meaning stated in § 6–121(a) of this article.

[(h)**] (G)** "Nonresident pharmacy" has the meaning stated in § 12–403 of the Health Occupations Article.

[(h–1)**] (H)** "Participating pharmacy contract" means a contract filed with the

Commissioner in accordance with § 15–1628(b) of this subtitle.

(i) “Pharmacist” has the meaning stated in § 12–101 of the Health Occupations Article.

(j) “Pharmacy” has the meaning stated in § 12–101 of the Health Occupations Article.

(k) “Pharmacy and therapeutics committee” means a committee established by a pharmacy benefits manager to:

(1) objectively appraise and evaluate prescription drugs; and

(2) make recommendations to a purchaser regarding the selection of drugs for the purchaser’s formulary.

(l) (1) “Pharmacy benefits management services” means:

(i) the procurement of prescription drugs at a negotiated rate for dispensation within the State to beneficiaries;

(ii) the administration or management of prescription drug coverage provided by a purchaser for beneficiaries; and

(iii) any of the following services provided with regard to the administration of prescription drug coverage:

1. mail service pharmacy;

2. claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;

3. clinical formulary development and management services;

4. rebate contracting and administration;

5. patient compliance, therapeutic intervention, and generic substitution programs; or

6. disease management programs.

(2) “Pharmacy benefits management services” does not include any service provided by a nonprofit health maintenance organization that operates as a group model, provided that the service:

(i) is provided solely to a member of the nonprofit health maintenance organization; and

(ii) is furnished through the internal pharmacy operations of the nonprofit health maintenance organization.

(m) "Pharmacy benefits manager" means a person that performs pharmacy benefits management services.

(n) "Proprietary information" means:

(1) a trade secret;

(2) confidential commercial information; or

(3) confidential financial information.

(o) **[**(1)**]** "Purchaser" means the State Employee and Retiree Health and Welfare Benefits Program, an insurer, a nonprofit health service plan, or a health maintenance organization that:

[(i)**]** **(1)** provides prescription drug coverage or benefits in the State; and

[(ii)**]** **(2)** enters into an agreement with a pharmacy benefits manager for the provision of pharmacy benefits management services.

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

(p) "Rebate sharing contract" means a contract between a pharmacy benefits manager and a purchaser under which the pharmacy benefits manager agrees to share manufacturer payments with the purchaser.

(q) (1) "Therapeutic interchange" means any change from one prescription drug to another.

(2) "Therapeutic interchange" does not include:

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

(ii) a change initiated for patient safety reasons;

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

(iv) a change from a brand name drug to a generic drug in accordance

with § 12–504 of the Health Occupations Article; or

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

(r) "Therapeutic interchange solicitation" means any communication by a pharmacy benefits manager for the purpose of requesting a therapeutic interchange.

(s) "Trade secret" has the meaning stated in § 11–1201 of the Commercial Law Article.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.