HOUSE BILL 1008

By: Delegate Kipke
Introduced and read first time: February 10, 2022
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 Pharmacy Benefits Managers and Purchasers – Beneficiary Choice of Pharmacy

3 FOR the purpose of prohibiting a pharmacy benefits manager or purchaser from prohibiting
4 a beneficiary from selecting a pharmacy or pharmacist of the beneficiary’s choosing,
5 denying a pharmacy or pharmacist the right to participate in a network, imposing
6 certain monetary advantages or penalties on a beneficiary, or requiring the use of a
7 mail–order pharmacy, under certain circumstances; requiring a pharmacy benefits
8 manager or purchaser that restricts participation in a geographical network to notify
9 all pharmacies in the geographic area of the opportunity to participate in the
10 network; authorizing a beneficiary, pharmacy, or pharmacist to maintain a cause of
11 action for violations of the requirements of this Act; and generally relating to
12 pharmacy benefits managers and purchasers.

13 BY repealing and reenacting, without amendments,
14 Article – Insurance
15 Section 15–1601(a), (c), (l), (m), (n), (o), (p), (q), and (s)
16 Annotated Code of Maryland
17 (2017 Replacement Volume and 2021 Supplement)

18 BY repealing
19 Article – Insurance
20 Section 15–1611.1
21 Annotated Code of Maryland
22 (2017 Replacement Volume and 2021 Supplement)

23 BY adding to
24 Article – Insurance
25 Section 15–1611.1
26 Annotated Code of Maryland
27 (2017 Replacement Volume and 2021 Supplement)

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

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

(l) “Participating pharmacy contract” means a contract filed with the Commissioner in accordance with § 15–1628(b) of this subtitle.

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

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

(o) “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.

(p) (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;
rebate contracting and administration;

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

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.

(q) “Pharmacy benefits manager” means a person that performs pharmacy benefits management services.

(s) “Purchaser” means a person that offers a plan or program in the State, including the State Employee and Retiree Health and Welfare Benefits Program, that:

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

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

[15–1611.1.

(a) This section applies only to a pharmacy benefits manager that provides pharmacy benefits management services on behalf of a carrier.

(b) Except as provided in subsection (c) of this section, a pharmacy benefits manager may not require that a beneficiary use a specific pharmacy or entity to fill a prescription if:

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

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

(c) A pharmacy benefits manager may require a beneficiary to use a specific pharmacy or entity for a specialty drug as defined in § 15–847 of this title.]
(A) In this section, “contracted provider” means a pharmacy or pharmacist that participates in the network of a pharmacy benefits manager or purchaser through a participating pharmacy contract with the pharmacy benefits manager or purchaser.

(B) Unless the entity contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services, this section does not apply to an entity that:

(1) has its own facility;

(2) employs or contracts with physicians, pharmacists, nurses, and other health care personnel; and

(3) dispenses prescription drugs from its own pharmacy to its employees and dependents enrolled in its health benefit plan.

(C) A pharmacy benefits manager or purchaser may not:

(1) prohibit a beneficiary from selecting, or limiting a beneficiary’s ability to select, a pharmacy or pharmacist of the beneficiary’s choice if the pharmacy or pharmacist has agreed to participate as a contracted provider for the pharmacy benefits manager or purchaser;

(2) deny a pharmacy or pharmacist the right to participate as a contract provider under a participating pharmacy contract if the pharmacy or pharmacist agrees to the terms and requirements for participating in the pharmacy benefits manager’s or purchaser’s network for the geographical area, including requirements for:

   (I) providing pharmacy services, including dispensing prescription drugs; and

   (II) reimbursement;

(3) impose on a beneficiary any copayment, fee, or condition that is not equally imposed on all beneficiaries in the same benefit category, class, or copayment level if the beneficiary is receiving pharmacy services from a contract provider;
(4) IMPOSE A MONETARY ADVANTAGE OR PENALTY THAT WOULD AFFECT A BENEFICIARY’S CHOICE OF CONTRACTED PROVIDERS, INCLUDING:

   (I) CHARGING DIFFERENT COPAYMENTS FOR DIFFERENT CONTRACTED PROVIDERS;

   (II) REDUCING REIMBURSEMENT FOR SERVICES; OR

   (III) PROMOTING ONE CONTRACT PROVIDER OVER ANOTHER CONTRACT PROVIDER;

(5) REDUCE ALLOWABLE REIMBURSEMENT FOR PHARMACY SERVICES TO A BENEFICIARY BECAUSE THE BENEFICIARY SELECTS ONE CONTRACT PROVIDER OVER ANOTHER;

(6) REQUIRE A BENEFICIARY, AS A CONDITION OF PAYMENT OR REIMBURSEMENT, TO PURCHASE PHARMACY SERVICES, INCLUDING PRESCRIPTION DRUGS, EXCLUSIVELY THROUGH A MAIL–ORDER PHARMACY; OR

(7) IMPOSE ON A BENEFICIARY A COPAYMENT, AN AMOUNT OF REIMBURSEMENT, A LIMITATION ON THE NUMBER OF DAYS OF A DRUG SUPPLY FOR WHICH REIMBURSEMENT WILL BE ALLOWED, OR ANY OTHER PAYMENT OR CONDITION RELATING TO THE PURCHASE OF A PHARMACY SERVICE FROM A PHARMACY THAT IS MORE COSTLY OR MORE RESTRICTIVE TO A BENEFICIARY THAN WOULD BE IMPOSED ON THE BENEFICIARY IF THE SAME PHARMACY SERVICE WERE PURCHASED FROM A MAIL–ORDER PHARMACY OR ANY OTHER PHARMACY THAT IS WILLING TO PROVIDE THE SAME SERVICES OR PRODUCTS FOR THE SAME COST AND COPAYMENT AS ANY MAIL–ORDER SERVICE.

(D) (1) IF A PHARMACY BENEFITS MANAGER OR A PURCHASER Restricts PHARMACY Participation of Contracted Providers in a GEOGRAPHICAL COVERAGE AREA, THE PHARMACY BENEFITS MANAGER OR PURCHASER SHALL NOTIFY, IN WRITING, ALL PHARMACIES AND PHARMACISTS WITHIN THE GEOGRAPHICAL COVERAGE AREA OF THE PHARMACY BENEFITS MANAGER’S OR PURCHASER’S NETWORK, AND OFFER TO THE PHARMACIES AND PHARMACISTS THE OPPORTUNITY TO PARTICIPATE IN THE NETWORK AT LEAST 60 DAYS BEFORE THE EFFECTIVE DATE OF THE RESTRICTIONS.

(2) ALL PHARMACISTS OR PHARMACIES IN THE GEOGRAPHICAL COVERAGE AREA OF THE NETWORK SHALL BE ELIGIBLE TO PARTICIPATE UNDER IDENTICAL REIMBURSEMENT TERMS FOR PROVIDING PHARMACY SERVICES, INCLUDING PRESCRIPTION DRUGS.
(3) The pharmacy benefits manager or purchaser shall, through reasonable means, on a timely basis and at regular intervals, inform its beneficiaries of the names and locations of pharmacies and pharmacists that are participating in the network as contracted providers.

(4) Contracted providers may announce their participation to their customers through a means acceptable to the contracted provider and pharmacy benefits manager or purchaser.

(e) The commissioner may disapprove a participating contract that does not comply with this section.

(f) A beneficiary, pharmacy, or pharmacist injured by a violation of this section may maintain a cause of action to enjoin the continuance of the violation.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.