

HOUSE BILL 1009

C3

2lr1852

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 **Health Insurance – Pharmacy Benefits Managers – Reimbursement and**
3 **Cost Sharing**

4 FOR the purpose of altering the application of the prohibition on pharmacy benefits
5 managers reimbursing a pharmacy or pharmacist in an amount less than the
6 pharmacy benefits manager reimburses itself or an affiliate; repealing provisions of
7 law relating to maximum allowable cost pricing, disputes regarding cost pricing, and
8 reimbursement and fee for performance–based reimbursement; altering how a
9 pharmacy benefits manager may determine reimbursement for a pharmacy or
10 pharmacist; authorizing the Maryland Insurance Commissioner to order
11 reimbursement if a pharmacy benefits manager violates certain provisions of this
12 Act; requiring that a beneficiary’s cost sharing be calculated at the point of sale and
13 based on a certain price; and generally relating to pharmacy benefits managers and
14 reimbursement, and cost sharing for prescription drugs.

15 BY repealing

16 Article – Insurance
17 Section 15–1628.1 through 15–1628.3
18 Annotated Code of Maryland
19 (2017 Replacement Volume and 2021 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article – Insurance
22 Section 15–1612
23 Annotated Code of Maryland
24 (2017 Replacement Volume and 2021 Supplement)

25 BY adding to

26 Article – Insurance
27 Section 15–1628.1
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2017 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 15–1628.1 through 15–1628.3 of Article – Insurance of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Insurance

15–1612.

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

(b) This section does not apply to reimbursement:

(1) for specialty drugs;

(2) for mail order drugs; or

(3) to a chain pharmacy with more than 15 stores or a pharmacist who is an employee of the chain pharmacy.

(c)] A pharmacy benefits manager may not reimburse a pharmacy or pharmacist for a pharmaceutical product or pharmacist service in an amount less than the amount that the pharmacy benefits manager reimburses itself or an affiliate for providing the same product or service.

15–1628.1.

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PHARMACY BENEFITS MANAGER MAY NOT REIMBURSE A PHARMACY OR PHARMACIST FOR A PRESCRIPTION DRUG OR PHARMACY SERVICE IN AN AMOUNT LESS THAN THE NATIONAL AVERAGE DRUG ACQUISITION COST FOR THE PRESCRIPTION DRUG OR PHARMACY SERVICE AT THE TIME THE DRUG IS ADMINISTERED OR DISPENSED PLUS THE PROFESSIONAL DISPENSING FEE AS DETERMINED BY THE CENTER FOR MEDICARE AND MEDICAID SERVICES THAT IS IN EFFECT AT THE TIME THE DRUG IS ADMINISTERED OR DISPENSED.

(2) IF THE NATIONAL AVERAGE DRUG ACQUISITION COST IS NOT AVAILABLE AT THE TIME A DRUG IS ADMINISTERED OR DISPENSED, A PHARMACY BENEFITS MANAGER MAY NOT REIMBURSE IN AN AMOUNT THAT IS LESS THAN THE WHOLESALE ACQUISITION COST OF THE DRUG, AS DEFINED IN 42 U.S.C. §

1 **1395W-3A(C)(6)(B), PLUS THE PROFESSIONAL DISPENSING FEE AS DETERMINED BY**
2 **THE CENTER FOR MEDICARE AND MEDICAID SERVICES THAT IS IN EFFECT AT THE**
3 **TIME THE DRUG IS ADMINISTERED OR DISPENSED.**

4 **(B) THE COMMISSIONER MAY ORDER REIMBURSEMENT TO AN INSURED,**
5 **PHARMACY, OR PHARMACIST THAT HAS INCURRED A MONETARY LOSS AS A RESULT**
6 **OF A VIOLATION OF THIS SECTION.**

7 **(C) A PHARMACY BENEFITS MANAGER MAY NOT:**

8 **(1) DISCRIMINATE IN REIMBURSEMENT, ASSESS ANY FEES OR**
9 **ADJUSTMENTS, OR EXCLUDE A PHARMACY FROM THE PHARMACY BENEFITS**
10 **MANAGER'S NETWORK ON THE BASIS THAT THE PHARMACY DISPENSES DRUGS**
11 **SUBJECT TO AN AGREEMENT UNDER 42 U.S.C. § 256B; OR**

12 **(2) ENGAGE IN ANY PRACTICE THAT:**

13 **(I) UNLESS AGREED TO BY THE PHARMACY IN ADVANCE, BASES**
14 **PHARMACY REIMBURSEMENT FOR A DRUG ON PATIENT OUTCOMES, SCORES, OR**
15 **METRICS;**

16 **(II) IMPOSES A POINT-OF-SALE FEE OR RETROACTIVE FEE; OR**

17 **(III) EXCEPT FOR RECEIVING DEDUCTIBLES OR COPAYMENTS,**
18 **DERIVES ANY REVENUE FROM A PHARMACY OR INSURED IN CONNECTION WITH**
19 **PERFORMING PHARMACY BENEFITS MANAGEMENT SERVICES.**

20 **(D) A PHARMACY BENEFITS MANAGER MAY OFFER A PURCHASER THE**
21 **OPTION OF CHARGING THE PURCHASER THE SAME PRICE FOR A PRESCRIPTION**
22 **DRUG AS IT PAYS A PHARMACY FOR THE PRESCRIPTION DRUG AS REIMBURSED BY A**
23 **MEDICAL ASSISTANCE PROGRAM.**

24 **(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A**
25 **BENEFICIARY'S DEFINED COST SHARING FOR A PRESCRIPTION DRUG SHALL BE**
26 **CALCULATED AT THE POINT OF SALE BASED ON A PRICE THAT IS REDUCED BY AN**
27 **AMOUNT EQUAL TO AT LEAST 100% OF ALL REBATES RECEIVED, OR TO BE**
28 **RECEIVED, IN CONNECTION WITH THE DISPENSING OR ADMINISTRATION OF THE**
29 **PRESCRIPTION DRUG.**

30 **(2) ANY REBATE OVER THE DEFINED COST SHARING SHALL BE**
31 **PASSED ON TO THE PURCHASER TO REDUCE PREMIUMS.**

1 **(3) THIS SUBSECTION DOES NOT PRECLUDE A PURCHASER FROM**
2 **DECREASING A BENEFICIARY’S DEFINED COST SHARING BY AN AMOUNT GREATER**
3 **THAN WHAT WAS PREVIOUSLY AGREED TO BY THE PURCHASER AND THE**
4 **BENEFICIARY.**

5 **(4) THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT**
6 **THIS SUBSECTION.**

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all
8 policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or
9 after January 1, 2023.

10 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 January 1, 2023.