SENATE BILL 689

By: Senator Ready
Introduced and read first time: February 4, 2022
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Pharmacy Benefits Managers – Prohibited Actions

FOR the purpose of prohibiting a pharmacy benefits manager from taking certain actions related to pricing, the participation of a pharmacy or pharmacist in a policy or contract with the pharmacy benefits manager, fees, and the use of a mail order pharmacy by beneficiaries; providing that certain provisions of this Act apply to pharmacy benefits managers that contract with managed care organizations in the same manner as they apply to pharmacy benefits managers that contract with carriers; prohibiting all pharmacy benefits managers from taking certain actions related to the use of specific pharmacies or entities to fill prescriptions, the provision and discussion of certain price and cost share information by pharmacies and pharmacists, and the sale of certain alternative drugs; and generally relating to pharmacy benefits managers.

BY adding to
Article – Health – General
Section 15–102.3(j)
Annotated Code of Maryland
(2019 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,
Article – Insurance
Section 15–1601(a)
Annotated Code of Maryland
(2017 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 15–1601(s), (u), (v), and (w), 15–1611, and 15–1611.1
Annotated Code of Maryland
(2017 Replacement Volume and 2021 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
BY adding to
Article – Insurance
Section 15–1601(u)
Annotated Code of Maryland
(2017 Replacement Volume and 2021 Supplement)

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

Article – Health – General

15–102.3.

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

Article – Insurance

15–1601.

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

(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, AN
INSURER, A NONPROFIT HEALTH SERVICE PLAN, OR A HEALTH MAINTENANCE
ORGANIZATION 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.

(u) "SPREAD PRICING" MEANS THE MODEL OF PRESCRIPTION DRUG
PRICING IN WHICH A PHARMACY BENEFITS MANAGER CHARGES A PURCHASER A
CONTRACTED PRICE FOR A PRESCRIPTION DRUG THAT DIFFERS FROM THE AMOUNT
THE PHARMACY BENEFITS MANAGER DIRECTLY OR INDIRECTLY PAYS THE
PHARMACIST OR PHARMACY FOR THE PRESCRIPTION DRUG DISPENSED BY THE
PHARMACIST OR PHARMACY.

[(u)] (V) (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.

[(v) (W)] “Therapeutic interchange solicitation” means any communication by a pharmacy benefits manager for the purpose of requesting a therapeutic interchange.

[(w) (X)] “Trade secret” has the meaning stated in § 11–1201 of the Commercial Law Article.

15–1611.

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

[(b) (A) A pharmacy benefits manager may not prohibit a pharmacy or pharmacist from:

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

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

(3) if a more affordable drug is available than one on the purchaser’s formulary and the requirements for a therapeutic interchange under §§ 15–1633.1 through 15–1639 of this subtitle are met, selling the more affordable alternative to the beneficiary.

(B) A PHARMACY BENEFITS MANAGER MAY NOT:

(1) ENGAGE IN THE PRACTICE OF SPREAD PRICING;

(2) DENY ANY PHARMACY THE RIGHT TO PARTICIPATE IN A POLICY OR CONTRACT WITH THE PHARMACY BENEFITS MANAGER IF THE PHARMACY OR
PHARMACIST AGREES TO MEET THE TERMS AND CONDITIONS OF THE POLICY OR CONTRACT;

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

(4) SET DIFFERENT FEES FOR A BENEFICIARY’S COPAY BASED ON WHETHER A PHARMACY OR PHARMACIST IS AFFILIATED WITH AN INDEPENDENT OR CHAIN PHARMACY.

(c) This section may not be construed to alter the requirements for a therapeutic interchange under §§ 15–1633.1 through 15–1639 of this subtitle.

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

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)] (A) Except as provided in subsection (B) OF THIS SECTION AND SUBJECT TO 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)] (B) 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.

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies or contracts issued, delivered, or renewed in the State on or after January 1, 2023.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect January 1, 2023.