

HOUSE BILL 539

J5, J4
HB 755/22 – HGO

3lr0777
CF 3lr3007

By: **Delegates M. Morgan and Kipke**
Introduced and read first time: February 1, 2023
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Pharmacy Benefits Managers – Prohibited Actions**

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

14 BY adding to
15 Article – Health – General
16 Section 15–102.3(k)
17 Annotated Code of Maryland
18 (2019 Replacement Volume and 2022 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Insurance
21 Section 15–1601(a)
22 Annotated Code of Maryland
23 (2017 Replacement Volume and 2022 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Insurance
26 Section 15–1601(s), (u), (v), and (w), 15–1611, and 15–1611.1
27 Annotated Code of Maryland
28 (2017 Replacement Volume and 2022 Supplement)

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



1 BY adding to
2 Article – Insurance
3 Section 15–1601(u)
4 Annotated Code of Maryland
5 (2017 Replacement Volume and 2022 Supplement)

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

8 **Article – Health – General**

9 15–102.3.

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

14 **Article – Insurance**

15 15–1601.

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

17 (s) “Purchaser” means a person that offers a plan or program in the State,
18 including the State Employee and Retiree Health and Welfare Benefits Program, **AN**
19 **INSURER, A NONPROFIT HEALTH SERVICE PLAN, OR A HEALTH MAINTENANCE**
20 **ORGANIZATION** that:

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

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

24 **(U) “SPREAD PRICING” MEANS THE MODEL OF PRESCRIPTION DRUG**
25 **PRICING IN WHICH A PHARMACY BENEFITS MANAGER CHARGES A PURCHASER A**
26 **CONTRACTED PRICE FOR A PRESCRIPTION DRUG THAT DIFFERS FROM THE AMOUNT**
27 **THE PHARMACY BENEFITS MANAGER DIRECTLY OR INDIRECTLY PAYS THE**
28 **PHARMACIST OR PHARMACY FOR THE PRESCRIPTION DRUG DISPENSED BY THE**
29 **PHARMACIST OR PHARMACY.**

30 **[(u)] (V)** (1) “Therapeutic interchange” means any change from one
31 prescription drug to another.

32 (2) “Therapeutic interchange” does not include:

- 1 (i) a change initiated pursuant to a drug utilization review;
- 2 (ii) a change initiated for patient safety reasons;
- 3 (iii) a change required due to market unavailability of the currently
4 prescribed drug;
- 5 (iv) a change from a brand name drug to a generic drug in accordance
6 with § 12–504 of the Health Occupations Article; or
- 7 (v) a change required for coverage reasons because the originally
8 prescribed drug is not covered by the beneficiary’s formulary or plan.

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

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

13 15–1611.

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

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

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

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

24 (3) if a more affordable drug is available than one on the purchaser’s
25 formulary and the requirements for a therapeutic interchange under §§ 15–1633.1 through
26 15–1639 of this subtitle are met, selling the more affordable alternative to the beneficiary.

27 **(B) A PHARMACY BENEFITS MANAGER MAY NOT:**

28 **(1) ENGAGE IN THE PRACTICE OF SPREAD PRICING;**

29 **(2) DENY ANY PHARMACY THE RIGHT TO PARTICIPATE IN A POLICY OR**
30 **CONTRACT WITH THE PHARMACY BENEFITS MANAGER IF THE PHARMACY OR**

1 PHARMACIST AGREES TO MEET THE TERMS AND CONDITIONS OF THE POLICY OR
2 CONTRACT;

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

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

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

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

13 15–1611.1.

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

16 [(b)] **(A)** Except as provided in subsection **(B) OF THIS SECTION AND SUBJECT**
17 **TO SUBSECTION (c)** of this section, a pharmacy benefits manager may not require that a
18 beneficiary use a specific pharmacy or entity to fill a prescription if:

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

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

23 [(c)] **(B)** A pharmacy benefits manager may require a beneficiary to use a
24 specific pharmacy or entity for a specialty drug as defined in § 15–847 of this title.

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

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
28 policies or contracts issued, delivered, or renewed in the State on or after January 1, 2024.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 January 1, 2024.