

**HB0754/276784/1**

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 754  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, insert “EMERGENCY BILL”; in the sponsor line, strike “Delegate Kipke” and substitute “Delegates Kipke, Pendergrass, Pena–Melnyk, Bagnall, Barron, Bhandari, Carr, Charles, Chisholm, Cullison, Hill, Johnson, Kelly, Kerr, Krebs, R. Lewis, Metzgar, Morgan, Rosenberg, Sample-Hughes, Szeliga, and K. Young”; strike beginning with “authorizing” in line 4 down through “cost,” in line 7 and substitute “providing that certain provisions of this Act apply in a certain manner to contracts between pharmacy benefits managers that contract with managed care organizations; prohibiting a certain contract or amendment to a certain contract from becoming effective except under certain circumstances; clarifying that certain provisions of law apply to certain appeals; providing that a certain process required to be included in certain contracts must include a requirement that a pharmacy benefits manager provide a certain mathematical calculation; requiring the Commissioner to take certain actions if a designee of the contracted pharmacy files a complaint; requiring a pharmacy benefits manager to provide certain information to the Commissioner for a certain purpose under certain circumstances;”; in line 10, strike “, rather than only maximum allowable cost pricing”; in line 12, strike “a certain formulary under certain circumstances” and substitute “certain information”; in line 14, after “loss;” insert “prohibiting pharmacy benefits managers and certain purchasers from directly or indirectly charging a contracted pharmacy, or holding a contracted pharmacy responsible for, fees or reimbursements related to the adjudication of certain claims; providing that certain actions are a violation of certain provisions of law;”; in line 15, strike “a certain term” and substitute “certain terms; making conforming and technical changes; making this Act an emergency measure”; after line 16, insert:

“BY adding to

Article - Health - General

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Section 15-102.3(g)  
Annotated Code of Maryland  
(2015 Replacement Volume and 2018 Supplement)

BY repealing and reenacting, without amendments,

Article - Insurance  
Section 15-1601(a)  
Annotated Code of Maryland  
(2017 Replacement Volume and 2018 Supplement)”;

in line 19, strike “15–1012 and 15–1628.2” and substitute “15–1601(c–1), (c–2), and (h–1), 15–1628.2, and 15–1628.3”; and strike in their entirety lines 22 through 26, inclusive.

On page 2, in line 1, strike “15–1631” and substitute “15–1628, 15–1628.1, 15–1631, and 15–1642”.

AMENDMENT NO. 2

On page 2, after line 5, insert:

“Article – Health–General

15–102.3.

**(G) THE PROVISIONS OF § 15–1628.3 OF THE INSURANCE ARTICLE APPLY TO PHARMACY BENEFITS MANAGERS THAT CONTRACT WITH MANAGED CARE ORGANIZATIONS IN THE SAME MANNER AS THEY APPLY TO A PHARMACY BENEFITS MANAGERS THAT CONTRACT WITH CARRIERS.”;**

strike in their entirety lines 7 through 28, inclusive, and substitute:

“15–1601.

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

(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 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:

(I) THE PHARMACY BENEFITS MANAGER; OR

(II) A PHARMACY SERVICES ADMINISTRATION ORGANIZATION OR A GROUP PURCHASING ORGANIZATION.

(H-1) “PARTICIPATING PHARMACY CONTRACT” MEANS A CONTRACT FILED WITH THE COMMISSIONER IN ACCORDANCE WITH § 15-1628(B) OF THIS SUBTITLE.

15-1628.

(A) At the time of entering into a contract with a pharmacy or a pharmacist, and at least 30 working days before any contract change, a pharmacy benefits manager shall disclose to the pharmacy or pharmacist:

(1) the applicable terms, conditions, and reimbursement rates;

(2) the process and procedures for verifying pharmacy benefits and beneficiary eligibility;

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(3) the dispute resolution and audit appeals process; and

(4) the process and procedures for verifying the prescription drugs included on the formularies used by the pharmacy benefits manager.

**(B) (1) A CONTRACT OR AN AMENDMENT TO A CONTRACT BETWEEN A PHARMACY BENEFITS MANAGER, A PHARMACY SERVICES ADMINISTRATION ORGANIZATION, OR A GROUP PURCHASING ORGANIZATION AND A PHARMACY MAY NOT BECOME EFFECTIVE UNLESS:**

**(I) AT LEAST 30 DAYS BEFORE THE CONTRACT OR AMENDMENT IS TO BECOME EFFECTIVE, THE PHARMACY BENEFITS MANAGER, PHARMACY SERVICES ADMINISTRATION ORGANIZATION, OR GROUP PURCHASING ORGANIZATION FILES THE CONTRACT OR AMENDMENT WITH THE COMMISSIONER IN THE FORM REQUIRED BY THE COMMISSIONER; AND**

**(II) THE COMMISSIONER DOES NOT DISAPPROVE THE FILING WITHIN 30 DAYS AFTER THE CONTRACT OR AMENDMENT IS FILED.**

**(2) THE COMMISSIONER SHALL ADOPT REGULATIONS TO ESTABLISH THE CIRCUMSTANCES UNDER WHICH THE COMMISSIONER MAY DISAPPROVE A CONTRACT.”;**

after line 29, insert:

**“(a) (1) In this section the following words have the meanings indicated.**

**[(2) “Contracted pharmacy” means a pharmacy that participates in the network of a pharmacy benefits manager through a contract with:**

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(i) the pharmacy benefits manager; or

(ii) a pharmacy services administration organization or a group purchasing organization.]

**[(3)] (2)** “Drug shortage list” means a list of drug products listed on the federal Food and Drug Administration’s Drug Shortages website.

**[(4)] (3)** (i) “Maximum allowable cost” means the maximum amount that a pharmacy benefits manager or a purchaser will reimburse a contracted pharmacy for the cost of a multisource generic drug, a medical product, or a device.

(ii) “Maximum allowable cost” does not include dispensing fees.

**[(5)] (4)** “Maximum allowable cost list” means a list of multisource generic drugs, medical products, and devices for which a maximum allowable cost has been established by a pharmacy benefits manager or a purchaser.

(b) In each PARTICIPATING PHARMACY contract [between a pharmacy benefits manager and a contracted pharmacy], the pharmacy benefits manager shall include the sources used to determine maximum allowable cost pricing.

(c) A pharmacy benefits manager shall:

(1) update its pricing information at least every 7 days;

(2) establish a reasonable process by which a contracted pharmacy has access to the current and applicable maximum allowable cost price lists in an electronic format as updated in accordance with the requirements of this section; and

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(3) immediately after a pricing information update under item (1) of this subsection, use the updated pricing information in calculating the payments made to all contracted pharmacies.

(d) (1) A pharmacy benefits manager shall maintain a procedure to eliminate products from the list of drugs subject to maximum allowable cost pricing as necessary to:

(i) remain consistent with pricing changes;

(ii) remove from the list drugs that no longer meet the requirements of subsection (e) of this section; and

(iii) reflect the current availability of drugs in the marketplace.

(2) A product on the maximum allowable cost list shall be eliminated from the list by the pharmacy benefits manager within 7 days after the pharmacy benefits manager knows of a change in the availability of the product.

(e) Before placing a prescription drug on a maximum allowable cost list, a pharmacy benefits manager shall ensure that:

(1) the drug is listed as “A” or “B” rated in the most recent version of the U.S. Food and Drug Administration’s approved drug products with therapeutic equivalence evaluations, also known as the Orange Book, or has an “NR” or “NA” rating or similar rating by a nationally recognized reference;

(2) (i) if a drug is manufactured by more than one manufacturer, the drug is generally available for purchase by contracted pharmacies, including contracted retail pharmacies, in the State from a wholesale distributor with a permit in the State;  
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(ii) if a drug is manufactured by only one manufacturer, the drug is generally available for purchase by contracted pharmacies, including contracted retail pharmacies, in the State from at least two wholesale distributors with a permit in the State; and

(3) the drug is not obsolete, temporarily unavailable, or listed on a drug shortage list as currently in shortage.”;

in line 30, strike the bracket; in the same line, strike “Each” and substitute “**FOR DISPUTES REGARDING MAXIMUM ALLOWABLE COST PRICING, EACH PARTICIPATING PHARMACY**”; and strike beginning with “between” in line 30 down through “pharmacy” in line 31.

AMENDMENT NO. 3

On page 3, in line 19, strike “and”; and after line 23, insert:

**“(III) THE MATHEMATICAL CALCULATION USED TO DETERMINE THE MAXIMUM ALLOWABLE COST; AND”.**

On page 4, in line 20, after “pharmacy” insert “**OR A DESIGNEE OF THE CONTRACTED PHARMACY**”; in line 23, after the third “the” insert “**PARTICIPATING PHARMACY**”; after line 28, insert:

**“(2) ON REQUEST, THE PHARMACY BENEFITS MANAGER SHALL PROVIDE TO THE COMMISSIONER ON REQUEST ALL MATHEMATICAL CALCULATIONS, ACCOUNTS, RECORDS, DOCUMENTS, FILES, LOGS, CORRESPONDENCE, OR OTHER INFORMATION NECESSARY TO COMPLETE THE COMMISSIONER’S REVIEW UNDER PARAGRAPH (1) OF THIS SUBSECTION.”;**

in line 29, strike “(2)” and substitute “**(3)**”; in the same line, strike “pricing”; in line 30, strike “required by paragraph (1) of this subsection”; and in line 32, strike the bracket.

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On page 5, strike in their entirety lines 1 through 6, inclusive; in line 7, strike “(B)” and substitute “(A)”; in the same line, strike “EACH” and substitute “FOR DISPUTES REGARDING COST PRICING AND REIMBURSEMENT UNDER A PARTICIPATING PHARMACY CONTRACT, EACH PARTICIPATING PHARMACY”; strike beginning with “BETWEEN” in line 7 down through “PHARMACY” in line 8; strike beginning with the first “THE” in line 12 down through “CLAIM” in line 13 and substitute “:

**(I) THE DATE A DIRECT OR INDIRECT REMUNERATION FEE IS CHARGED; OR**

**(II) ANOTHER DATE AS DETERMINED BY THE COMMISSIONER**”;

strike in their entirety lines 14 through 17, inclusive; and in line 18, strike “(3)” and substitute “(2)”.

**AMENDMENT NO. 4**

On page 6, in lines 1 and 12, strike “(4)” and “(5)”, respectively, and substitute “(3)” and “(4)”, respectively; strike in their entirety lines 4 through 7, inclusive; in line 8, strike “2.” and substitute “(II)”; strike beginning with “IF” in line 8 down through “PHARMACIST,” in line 10; in line 10, strike “FORMULARY” and substitute “MATHEMATICAL CALCULATION”; strike in their entirety lines 14 through 29, inclusive, and substitute:

**“(I) MAKE ADJUSTMENTS AS NECESSARY TO COMPLY WITH THE COMPENSATION PROGRAM AS STATED IN THE PARTICIPATING PHARMACY CONTRACT AS OF THE DATE THE APPEAL WAS DETERMINED; AND”;**



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in line 30, strike “**2.**” and substitute “**(II)**”; and in line 31, strike the colon.

On page 7, in line 1, strike “**A.**”; strike beginning with the semicolon in line 1 down through “**CLAIM**” in line 4; strike beginning with “**CARRYING**” in line 10 down through “**OR**” in line 11; in line 14, after “**PHARMACY**” insert “**OR A DESIGNEE OF THE CONTRACTED PHARMACY**”; in line 19, after the second “**THE**” insert “**PARTICIPATING PHARMACY**”; after line 23, insert:

**“(2) ON REQUEST, THE PHARMACY BENEFITS MANAGER SHALL PROVIDE TO THE COMMISSIONER ON REQUEST ALL MATHEMATICAL CALCULATIONS, ACCOUNTS, RECORDS, DOCUMENTS, FILES, LOGS, CORRESPONDENCE, OR OTHER INFORMATION NECESSARY TO COMPLETE THE COMMISSIONER’S REVIEW.”;**

in line 24, strike “**(2)**” and substitute “**(3)**”; in the same line, strike “**PRICING**”; and strike beginning with “**REQUIRED**” in line 25 down through “**SUBSECTION**” in line 26.

**AMENDMENT NO. 5**

On page 7, after line 30, insert:

**“15-1628.3.**

**A PHARMACY BENEFITS MANAGER OR A PURCHASER MAY NOT DIRECTLY OR INDIRECTLY CHARGE A CONTRACTED PHARMACY, OR HOLD A CONTRACTED PHARMACY RESPONSIBLE FOR, A FEE OR PERFORMANCE-BASED REIMBURSEMENT RELATED TO THE ADJUDICATION OF A CLAIM OR AN INCENTIVE PROGRAM THAT IS NOT:**

**(1) SPECIFICALLY ENUMERATED BY THE PHARMACY BENEFITS MANAGER OR PURCHASER AT THE TIME OF CLAIM PROCESSING; OR**

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**(2) REPORTED ON THE INITIAL REMITTANCE ADVICE OF AN ADJUDICATED CLAIM.**

On page 8, after line 12, insert:

“15-1642.

**(A) IT IS A VIOLATION OF THIS SUBTITLE FOR A PHARMACY BENEFITS MANAGER TO:**

**(1) MISREPRESENT PERTINENT FACTS OR POLICY PROVISIONS THAT RELATE TO A CLAIM OR THE COMPENSATION PROGRAM AT ISSUE IN A COMPLAINT OR AN APPEAL OF A DECISION REGARDING A COMPLAINT;**

**(2) REFUSE TO PAY A CLAIM FOR AN ARBITRARY OR CAPRICIOUS REASON BASED ON ALL AVAILABLE INFORMATION;**

**(3) FAIL TO SETTLE A CLAIM OR DISPUTE PROMPTLY WHENEVER LIABILITY IS REASONABLY CLEAR UNDER ONE PART OF A POLICY OR CONTRACT, IN ORDER TO INFLUENCE SETTLEMENTS UNDER OTHER PARTS OF THE POLICY OR CONTRACT; OR**

**(4) FAIL TO ACT IN GOOD FAITH.**

**(B) IT IS A VIOLATION OF THIS SUBTITLE FOR A PHARMACY BENEFITS MANAGER, WHEN COMMITTED AT A FREQUENCY TO INDICATE A GENERAL BUSINESS PRACTICE, TO:**

**(1) MISREPRESENT PERTINENT FACTS OR POLICY PROVISIONS THAT RELATE TO A CLAIM, THE COMPENSATION PROGRAM, OR THE COVERAGE AT ISSUE IN A COMPLAINT OR AN APPEAL OF A DECISION REGARDING A COMPLAINT;**

**(2) FAIL TO MAKE A PROMPT, FAIR, AND EQUITABLE GOOD-FAITH ATTEMPT TO SETTLE CLAIMS FOR WHICH LIABILITY HAS BECOME REASONABLY CLEAR;**

**(3) FAIL TO SETTLE A CLAIM PROMPTLY WHENEVER LIABILITY IS REASONABLY CLEAR UNDER ONE PART OF A POLICY OR CONTRACT, IN ORDER TO INFLUENCE SETTLEMENTS UNDER OTHER PARTS OF THE POLICY OR CONTRACT;**  
**OR**

**(4) REFUSE TO PAY A CLAIM FOR AN ARBITRARY OR CAPRICIOUS REASON BASED ON ALL AVAILABLE INFORMATION.**

**[(a)] (C) If the Commissioner determines that a pharmacy benefits manager has violated any provision of this subtitle or any regulation adopted under this subtitle, the Commissioner may issue an order that requires the pharmacy benefits manager to:**

**(1) cease and desist from the identified violation and further similar violations;**

**(2) take specific affirmative action to correct the violation;**

**(3) make restitution of money, property, or other assets to a person that has suffered financial injury because of the violation; or**

**(4) pay a fine in an amount determined by the Commissioner.**

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[(b)] (D) (1) An order of the Commissioner issued under this section may be served on a pharmacy benefits manager that is registered under Part II of this subtitle in the manner provided in § 2–204 of this article.

(2) An order of the Commissioner issued under this section may be served on a pharmacy benefits manager that is not registered under Part II of this subtitle in the manner provided in § 4–206 or § 4–207 of this article for service on an unauthorized insurer that does an act of insurance business in the State.

(3) A request for a hearing on any order issued under this section does not stay that portion of the order that requires the pharmacy benefits manager to cease and desist from conduct identified in the order.

(4) The Commissioner may file a petition in the circuit court of any county to enforce an order issued under this section, whether or not a hearing has been requested or, if requested, whether or not a hearing has been held.

(5) If the Commissioner prevails in an action brought under this section, the Commissioner may recover, for the use of the State, reasonable attorney's fees and the costs of the action.

[(c)] (E) In addition to any other enforcement action taken by the Commissioner under this section, the Commissioner may impose a civil penalty not exceeding \$10,000 for each violation of this subtitle.

[(d)] (F) The Commissioner may adopt regulations:

(1) to carry out this subtitle; and

(2) to establish a complaint process to address grievances and appeals brought in accordance with this subtitle.

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[(e)] (G) This section does not limit any other regulatory authority of the Commissioner under this article.”;

and strike in their entirety lines 13 and 14 and substitute:

“SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.”.