

Chapter 365

(House Bill 1274)

AN ACT concerning

Prescription Drugs – Pharmacy Benefits Managers ~~and Purchasers~~ – Federal 340B Program

FOR the purpose of establishing requirements and prohibitions on pharmacy benefits managers ~~and purchasers~~ related to the federal 340B Program, including requirements related to coverage and reimbursement for drugs purchased under the Program; and generally relating to prescription drugs, ~~purchasers~~, and pharmacy benefits managers.

BY adding to

Article – Insurance

Section 15–1611.2

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 – Insurance

15–1611.2.

(A) (1) IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “COVERED ENTITY” HAS THE MEANING STATED IN § 602 OF THE FEDERAL VETERANS HEALTH CARE ACT OF 1992.

(3) “PHARMACIES OR PHARMACISTS THAT PARTICIPATE IN THE 340B PROGRAM” MEANS:

(I) A PHARMACY OWNED OR OPERATED BY A COVERED ENTITY THAT IS ELIGIBLE TO OR IS ACTIVELY PARTICIPATING IN THE 340B PROGRAM; OR

(II) A PHARMACY OR PHARMACIST UNDER CONTRACT WITH A COVERED ENTITY TO DISPENSE DRUGS PURCHASED UNDER THE 340B PROGRAM TO PATIENTS OF THE COVERED ENTITY.

(4) “340B PROGRAM” MEANS THE DRUG PRICING PROGRAM ESTABLISHED UNDER § 602 OF THE FEDERAL VETERANS HEALTH CARE ACT OF 1992.

~~**(B) BEFORE ALLOWING A BENEFICIARY TO USE A MAIL-ORDER PHARMACY THAT PARTICIPATES IN THE 340B PROGRAM, A PHARMACY BENEFITS MANAGER OR A PURCHASER SHALL OBTAIN A SIGNED WAIVER FROM THE BENEFICIARY STATING THAT THE BENEFICIARY IS NOT REQUIRED TO USE THE MAIL-ORDER PHARMACY.**~~

~~**(C) (B) A PHARMACY BENEFITS MANAGER OR A PURCHASER SHALL:**~~

(1) MAKE FORMULARY AND COVERAGE DECISIONS FOR A PHARMACY OR PHARMACIST THAT PARTICIPATES IN THE 340B PROGRAM BASED ON THE NORMAL COURSE OF BUSINESS OF THE PHARMACY BENEFITS MANAGER OR PURCHASER; AND

(2) ALLOW A BENEFICIARY TO USE ANY IN-NETWORK PHARMACY OR PHARMACIST THAT THE BENEFICIARY CHOOSES, WITHOUT REGARD TO WHETHER THE PHARMACY OR PHARMACIST PARTICIPATES IN 340B PROGRAM.

~~**(D) (C) A PHARMACY BENEFITS MANAGER OR A PURCHASER MAY NOT:**~~

(1) TRANSFER 340B PROGRAM SAVINGS FROM A PHARMACY OR PHARMACIST THAT PARTICIPATES IN THE 340B PROGRAM TO A PHARMACY BENEFITS MANAGER OR PURCHASER;

(2) OFFER LOWER REIMBURSEMENT FOR A PRESCRIPTION DRUG PURCHASED UNDER THE 340B PROGRAM THAN THE REIMBURSEMENT IT OFFERS FOR THE SAME PRESCRIPTION DRUG IF IT IS NOT PURCHASED UNDER THE 340B PROGRAM;

(3) REFUSE TO COVER PRESCRIPTION DRUGS PURCHASED UNDER THE 340B PROGRAM;

(4) REFUSE TO ALLOW PHARMACIES OR PHARMACISTS THAT PARTICIPATE IN THE 340B PROGRAM TO PARTICIPATE IN THE PHARMACY BENEFITS MANAGER’S PURCHASER’S NETWORK ON THE SOLE BASIS THAT THE PHARMACY OR PHARMACIST PARTICIPATES IN THE 340B PROGRAM;

~~**(5) CHARGE MORE THAN FAIR MARKET VALUE OR SEEK PROFIT SHARING IN EXCHANGE FOR COVERAGE OF SERVICES FOR A PHARMACY OR PHARMACIST THAT PARTICIPATES IN THE 340B PROGRAM;**~~

~~(6) REQUIRE, AS A CONDITION OF COVERAGE, THAT A BENEFICIARY USE A SPECIFIED MAIL ORDER PHARMACY OR PHARMACIST THAT PARTICIPATES IN THE 340B PROGRAM OR OTHERWISE COERCE A BENEFICIARY INTO USING A SPECIFIC MAIL ORDER PHARMACY OR PHARMACIST THAT PARTICIPATES IN THE 340B PROGRAM;~~

~~(7)~~ (5) IMPOSE DIFFERENT REIMBURSEMENT OR NETWORK PARTICIPATION CONTRACT TERMS ON PHARMACIES OR PHARMACISTS THAT PARTICIPATE IN A PHARMACY BENEFITS MANAGER'S ~~OR PURCHASER'S~~ NETWORK BASED ON WHETHER A PHARMACY OR PHARMACIST PARTICIPATES IN THE 340B PROGRAM;

~~(8) REQUIRE A PHARMACY OR PHARMACIST TO REVERSE, RESUBMIT, OR CLARIFY A 340B PROGRAM CLAIM AFTER THE INITIAL ADJUDICATION, UNLESS THE ACTIONS ARE IN THE NORMAL COURSE OF BUSINESS OF THE PHARMACY BENEFITS MANAGER OR PURCHASER AND ARE NOT RELATED TO WHETHER THE PHARMACY OR PHARMACIST PARTICIPATES IN THE 340B PROGRAM;~~

~~(9) REQUIRE A BILLING MODIFIER TO INDICATE THAT THE CLAIM FOR A PRESCRIPTION DRUG IS A 340B PROGRAM CLAIM, UNLESS THE PRESCRIPTION DRUG IS BEING BILLED TO THE MARYLAND MEDICAL ASSISTANCE PROGRAM OR A MANAGED CARE ORGANIZATION;~~

(6) IMPOSE DIFFERENT FEES, CHARGEBACKS, OR OTHER ADJUSTMENTS ON PHARMACIES OR PHARMACISTS BASED ON WHETHER A PHARMACY OR PHARMACIST PARTICIPATES IN THE 340B PROGRAM;

~~(10)~~ (7) MODIFY A BENEFICIARY'S COPAYMENT ON THE BASIS OF WHETHER A PHARMACY OR PHARMACIST PARTICIPATES IN THE 340B PROGRAM;

~~(11)~~ (8) ESTABLISH OR SET NETWORK ADEQUACY REQUIREMENTS BASED ON WHETHER A PHARMACY OR PHARMACIST PARTICIPATES IN THE 340B PROGRAM; OR

~~(12)~~ (9) PROHIBIT ~~AN~~ A COVERED ENTITY AUTHORIZED TO PARTICIPATE IN THE 340B PROGRAM OR A PHARMACY OR PHARMACIST UNDER CONTRACT WITH ~~AN~~ A COVERED ENTITY AUTHORIZED TO PARTICIPATE IN THE 340B PROGRAM FROM PARTICIPATING IN THE PHARMACY BENEFITS MANAGER'S ~~OR PURCHASER'S~~ NETWORK ON THE BASIS OF THE COVERED ENTITY'S PARTICIPATION IN THE 340B PROGRAM.

~~(E)~~ (D) A PHARMACY BENEFITS MANAGER ~~OR PURCHASER~~ MAY NOT BASE ~~A~~ FORMULARY OR PRESCRIPTION DRUG COVERAGE DECISIONS ON:

(1) THE PRICE OF THE PRESCRIPTION DRUG UNDER THE 340B PROGRAM; OR

(2) WHETHER THE DISPENSING PHARMACY OR PHARMACIST PARTICIPATES IN THE 340B PROGRAM.

~~**(F) A 340B PROGRAM CLAIM PROCESSED BY A PHARMACY OR PHARMACIST THAT PARTICIPATES IN THE 340B PROGRAM IS FINAL AT THE POINT OF ADJUDICATION.**~~

~~**(G) THE ADMINISTRATION SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION.**~~

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

Approved by the Governor, May 16, 2022.