

HOUSE BILL 1008

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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 **Pharmacy Benefits Managers and Purchasers – Beneficiary Choice of Pharmacy**

3 FOR the purpose of prohibiting a pharmacy benefits manager or purchaser from prohibiting
4 a beneficiary from selecting a pharmacy or pharmacist of the beneficiary's choosing,
5 denying a pharmacy or pharmacist the right to participate in a network, imposing
6 certain monetary advantages or penalties on a beneficiary, or requiring the use of a
7 mail-order pharmacy, under certain circumstances; requiring a pharmacy benefits
8 manager or purchaser that restricts participation in a geographical network to notify
9 all pharmacies in the geographic area of the opportunity to participate in the
10 network; authorizing a beneficiary, pharmacy, or pharmacist to maintain a cause of
11 action for violations of the requirements of this Act; and generally relating to
12 pharmacy benefits managers and purchasers.

13 BY repealing and reenacting, without amendments,
14 Article – Insurance
15 Section 15–1601(a), (c), (l), (m), (n), (o), (p), (q), and (s)
16 Annotated Code of Maryland
17 (2017 Replacement Volume and 2021 Supplement)

18 BY repealing
19 Article – Insurance
20 Section 15–1611.1
21 Annotated Code of Maryland
22 (2017 Replacement Volume and 2021 Supplement)

23 BY adding to
24 Article – Insurance
25 Section 15–1611.1
26 Annotated Code of Maryland
27 (2017 Replacement Volume and 2021 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Insurance**

4 15–1601.

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

6 (c) “Beneficiary” means an individual who receives prescription drug coverage or
7 benefits from a purchaser.

8 (l) “Participating pharmacy contract” means a contract filed with the
9 Commissioner in accordance with § 15–1628(b) of this subtitle.

10 (m) “Pharmacist” has the meaning stated in § 12–101 of the Health Occupations
11 Article.

12 (n) “Pharmacy” has the meaning stated in § 12–101 of the Health Occupations
13 Article.

14 (o) “Pharmacy and therapeutics committee” means a committee established by a
15 pharmacy benefits manager to:

16 (1) objectively appraise and evaluate prescription drugs; and

17 (2) make recommendations to a purchaser regarding the selection of drugs
18 for the purchaser’s formulary.

19 (p) (1) “Pharmacy benefits management services” means:

20 (i) the procurement of prescription drugs at a negotiated rate for
21 dispensation within the State to beneficiaries;

22 (ii) the administration or management of prescription drug coverage
23 provided by a purchaser for beneficiaries; and

24 (iii) any of the following services provided with regard to the
25 administration of prescription drug coverage:

26 1. mail service pharmacy;

27 2. claims processing, retail network management, and
28 payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;

29 3. clinical formulary development and management services;

- 1 4. rebate contracting and administration;
- 2 5. patient compliance, therapeutic intervention, and generic
3 substitution programs; or
- 4 6. disease management programs.

5 (2) “Pharmacy benefits management services” does not include any service
6 provided by a nonprofit health maintenance organization that operates as a group model,
7 provided that the service:

8 (i) is provided solely to a member of the nonprofit health
9 maintenance organization; and

10 (ii) is furnished through the internal pharmacy operations of the
11 nonprofit health maintenance organization.

12 (q) “Pharmacy benefits manager” means a person that performs pharmacy
13 benefits management services.

14 (s) “Purchaser” means a person that offers a plan or program in the State,
15 including the State Employee and Retiree Health and Welfare Benefits Program, that:

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

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

19 **[15–1611.1.**

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

22 (b) Except as provided in subsection (c) of this section, a pharmacy benefits
23 manager may not require that a beneficiary use a specific pharmacy or entity to fill a
24 prescription if:

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

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

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

31 **15–1611.1.**

1 **(A) IN THIS SECTION, "CONTRACTED PROVIDER" MEANS A PHARMACY OR**
2 **PHARMACIST THAT PARTICIPATES IN THE NETWORK OF A PHARMACY BENEFITS**
3 **MANAGER OR PURCHASER THROUGH A PARTICIPATING PHARMACY CONTRACT WITH**
4 **THE PHARMACY BENEFITS MANAGER OR PURCHASER.**

5 **(B) UNLESS THE ENTITY CONTRACTS WITH AN OUTSIDE PHARMACY OR**
6 **GROUP OF PHARMACIES TO PROVIDE PRESCRIPTION DRUGS AND SERVICES, THIS**
7 **SECTION DOES NOT APPLY TO AN ENTITY THAT:**

8 **(1) HAS ITS OWN FACILITY;**

9 **(2) EMPLOYS OR CONTRACTS WITH PHYSICIANS, PHARMACISTS,**
10 **NURSES, AND OTHER HEALTH CARE PERSONNEL; AND**

11 **(3) DISPENSES PRESCRIPTION DRUGS FROM ITS OWN PHARMACY TO**
12 **ITS EMPLOYEES AND DEPENDENTS ENROLLED IN ITS HEALTH BENEFIT PLAN.**

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

14 **(1) PROHIBIT A BENEFICIARY FROM SELECTING, OR LIMITING A**
15 **BENEFICIARY'S ABILITY TO SELECT, A PHARMACY OR PHARMACIST OF THE**
16 **BENEFICIARY'S CHOICE IF THE PHARMACY OR PHARMACIST HAS AGREED TO**
17 **PARTICIPATE AS A CONTRACTED PROVIDER FOR THE PHARMACY BENEFITS**
18 **MANAGER OR PURCHASER;**

19 **(2) DENY A PHARMACY OR PHARMACIST THE RIGHT TO PARTICIPATE**
20 **AS A CONTRACT PROVIDER UNDER A PARTICIPATING PHARMACY CONTRACT IF THE**
21 **PHARMACY OR PHARMACIST AGREES TO THE TERMS AND REQUIREMENTS FOR**
22 **PARTICIPATING IN THE PHARMACY BENEFITS MANAGER'S OR PURCHASER'S**
23 **NETWORK FOR THE GEOGRAPHICAL AREA, INCLUDING REQUIREMENTS FOR:**

24 **(I) PROVIDING PHARMACY SERVICES, INCLUDING DISPENSING**
25 **PRESCRIPTION DRUGS; AND**

26 **(II) REIMBURSEMENT;**

27 **(3) IMPOSE ON A BENEFICIARY ANY COPAYMENT, FEE, OR CONDITION**
28 **THAT IS NOT EQUALLY IMPOSED ON ALL BENEFICIARIES IN THE SAME BENEFIT**
29 **CATEGORY, CLASS, OR COPAYMENT LEVEL IF THE BENEFICIARY IS RECEIVING**
30 **PHARMACY SERVICES FROM A CONTRACT PROVIDER;**

1 **(4) IMPOSE A MONETARY ADVANTAGE OR PENALTY THAT WOULD**
2 **AFFECT A BENEFICIARY'S CHOICE OF CONTRACTED PROVIDERS, INCLUDING:**

3 **(I) CHARGING DIFFERENT COPAYMENTS FOR DIFFERENT**
4 **CONTRACTED PROVIDERS;**

5 **(II) REDUCING REIMBURSEMENT FOR SERVICES; OR**

6 **(III) PROMOTING ONE CONTRACT PROVIDER OVER ANOTHER**
7 **CONTRACT PROVIDER;**

8 **(5) REDUCE ALLOWABLE REIMBURSEMENT FOR PHARMACY**
9 **SERVICES TO A BENEFICIARY BECAUSE THE BENEFICIARY SELECTS ONE CONTRACT**
10 **PROVIDER OVER ANOTHER;**

11 **(6) REQUIRE A BENEFICIARY, AS A CONDITION OF PAYMENT OR**
12 **REIMBURSEMENT, TO PURCHASE PHARMACY SERVICES, INCLUDING PRESCRIPTION**
13 **DRUGS, EXCLUSIVELY THROUGH A MAIL-ORDER PHARMACY; OR**

14 **(7) IMPOSE ON A BENEFICIARY A COPAYMENT, AN AMOUNT OF**
15 **REIMBURSEMENT, A LIMITATION ON THE NUMBER OF DAYS OF A DRUG SUPPLY FOR**
16 **WHICH REIMBURSEMENT WILL BE ALLOWED, OR ANY OTHER PAYMENT OR**
17 **CONDITION RELATING TO THE PURCHASE OF A PHARMACY SERVICE FROM A**
18 **PHARMACY THAT IS MORE COSTLY OR MORE RESTRICTIVE TO A BENEFICIARY THAN**
19 **WOULD BE IMPOSED ON THE BENEFICIARY IF THE SAME PHARMACY SERVICE WERE**
20 **PURCHASED FROM A MAIL-ORDER PHARMACY OR ANY OTHER PHARMACY THAT IS**
21 **WILLING TO PROVIDE THE SAME SERVICES OR PRODUCTS FOR THE SAME COST AND**
22 **COPAYMENT AS ANY MAIL-ORDER SERVICE.**

23 **(D) (1) IF A PHARMACY BENEFITS MANAGER OR A PURCHASER**
24 **RESTRICTS PHARMACY PARTICIPATION OF CONTRACTED PROVIDERS IN A**
25 **GEOGRAPHICAL COVERAGE AREA, THE PHARMACY BENEFITS MANAGER OR**
26 **PURCHASER SHALL NOTIFY, IN WRITING, ALL PHARMACIES AND PHARMACISTS**
27 **WITHIN THE GEOGRAPHICAL COVERAGE AREA OF THE PHARMACY BENEFITS**
28 **MANAGER'S OR PURCHASER'S NETWORK, AND OFFER TO THE PHARMACIES AND**
29 **PHARMACISTS THE OPPORTUNITY TO PARTICIPATE IN THE NETWORK AT LEAST 60**
30 **DAYS BEFORE THE EFFECTIVE DATE OF THE RESTRICTIONS.**

31 **(2) ALL PHARMACISTS OR PHARMACIES IN THE GEOGRAPHICAL**
32 **COVERAGE AREA OF THE NETWORK SHALL BE ELIGIBLE TO PARTICIPATE UNDER**
33 **IDENTICAL REIMBURSEMENT TERMS FOR PROVIDING PHARMACY SERVICES,**
34 **INCLUDING PRESCRIPTION DRUGS.**

1 **(3) THE PHARMACY BENEFITS MANAGER OR PURCHASER SHALL,**
2 **THROUGH REASONABLE MEANS, ON A TIMELY BASIS AND AT REGULAR INTERVALS,**
3 **INFORM ITS BENEFICIARIES OF THE NAMES AND LOCATIONS OF PHARMACIES AND**
4 **PHARMACISTS THAT ARE PARTICIPATING IN THE NETWORK AS CONTRACTED**
5 **PROVIDERS.**

6 **(4) CONTRACTED PROVIDERS MAY ANNOUNCE THEIR**
7 **PARTICIPATION TO THEIR CUSTOMERS THROUGH A MEANS ACCEPTABLE TO THE**
8 **CONTRACTED PROVIDER AND PHARMACY BENEFITS MANAGER OR PURCHASER.**

9 **(E) THE COMMISSIONER MAY DISAPPROVE A PARTICIPATING CONTRACT**
10 **THAT DOES NOT COMPLY WITH THIS SECTION.**

11 **(F) A BENEFICIARY, PHARMACY, OR PHARMACIST INJURED BY A VIOLATION**
12 **OF THIS SECTION MAY MAINTAIN A CAUSE OF ACTION TO ENJOIN THE CONTINUANCE**
13 **OF THE VIOLATION.**

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