

Chapter 217

(House Bill 382)

AN ACT concerning

~~Pharmacy Benefits Administration—Maryland Medical Assistance Program and Pharmacy Benefits Managers~~
Maryland Department of Health and Prescription Drug Affordability Board – Managed Care Organizations and Prescription Drug Claims – Study

FOR the purpose of ~~altering the reimbursement levels for drug products that the Maryland Medical Assistance Program is required to establish and that pharmacy benefits managers that contract with a pharmacy on behalf of a managed care organization are required to reimburse the pharmacy; altering the definition of “purchaser” for purposes of certain provisions of law regulating pharmacy benefits managers to include certain insurers, nonprofit health services plans, and health maintenance organizations~~ requiring the Maryland Department of Health and the Prescription Drug Affordability Board jointly to study certain information regarding the payment of prescription drug claims under the Maryland Medical Assistance Program during certain calendar years and how to address certain inconsistencies; and generally relating to pharmacy benefits administration managed care organizations and the payment of prescription drug claims.

~~BY repealing and reenacting, with amendments,
 Article—Health—General
 Section 15—118(b)
 Annotated Code of Maryland
 (2019 Replacement Volume and 2022 Supplement)~~

~~BY adding to
 Article—Health—General
 Section 15—118(f)
 Annotated Code of Maryland
 (2019 Replacement Volume and 2022 Supplement)~~

~~BY repealing and reenacting, with amendments,
 Article—Insurance
 Section 15—1601(e)
 Annotated Code of Maryland
 (2017 Replacement Volume and 2022 Supplement)~~

~~BY adding to
 Article—Insurance
 Section 15—1632
 Annotated Code of Maryland
 (2017 Replacement Volume and 2022 Supplement)~~

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

~~Article — Health — General~~

~~15 — 118.~~

~~(b) (1) [Except] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION AND EXCEPT as provided under paragraph [(2)] (3) of this subsection, the Program shall establish [maximum] reimbursement levels for the drug products for which there is a generic equivalent authorized under § 12-504 of the Health Occupations Article [based on the cost of the generic product].~~

~~(2) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, MINIMUM REIMBURSEMENT LEVELS ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE AT LEAST EQUAL TO THE NATIONAL AVERAGE DRUG ACQUISITION COST OF THE GENERIC PRODUCT PLUS THE FEE FOR SERVICE PROFESSIONAL DISPENSING FEE DETERMINED BY THE DEPARTMENT IN ACCORDANCE WITH THE MOST RECENT IN STATE COST OF DISPENSING SURVEY.~~

~~[(2)] (3) [If] EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, IF a prescriber directs a specific brand name drug, the reimbursement level shall be based on the [cost] NATIONAL AVERAGE DRUG ACQUISITION COST of the brand name product PLUS THE FEE FOR SERVICE PROFESSIONAL DISPENSING FEE DETERMINED BY THE DEPARTMENT IN ACCORDANCE WITH THE MOST RECENT IN STATE COST OF DISPENSING SURVEY.~~

~~(4) PARAGRAPHS (2) AND (3) OF THIS SUBSECTION DO NOT APPLY TO:~~

~~(i) A PHARMACY OWNED BY, OR UNDER THE SAME CORPORATE AFFILIATION, AS A PHARMACY BENEFITS MANAGER; OR~~

~~(ii) A MAIL ORDER PHARMACY.~~

~~(f) THE PROVISIONS OF § 15-1632 OF THE INSURANCE ARTICLE APPLY TO A MANAGED CARE ORGANIZATION THAT USES A PHARMACY BENEFITS MANAGER TO MANAGE PRESCRIPTION DRUG COVERAGE BENEFITS ON BEHALF OF THE MANAGED CARE ORGANIZATION.~~

~~Article — Insurance~~

~~15 — 1601.~~

~~(e) (1) "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)] (I) provides prescription drug coverage or benefits in the State; and~~

~~[(2)] (II) enters into an agreement with a pharmacy benefits manager for the provision of pharmacy benefits management services.~~

~~(2) "PURCHASER" DOES NOT INCLUDE A NONPROFIT HEALTH MAINTENANCE ORGANIZATION THAT:~~

~~(I) OPERATES AS A GROUP MODEL;~~

~~(II) PROVIDES SERVICES SOLELY TO A MEMBER OR PATIENT OF THE NONPROFIT HEALTH MAINTENANCE ORGANIZATION; AND~~

~~(III) FURNISHES SERVICES THROUGH THE INTERNAL PHARMACY OPERATIONS OF THE NONPROFIT HEALTH MAINTENANCE ORGANIZATION.~~

~~15-1632.~~

~~A PHARMACY BENEFITS MANAGER THAT CONTRACTS WITH A PHARMACY ON BEHALF OF A MANAGED CARE ORGANIZATION, AS DEFINED IN § 15-101 OF THE HEALTH GENERAL ARTICLE, SHALL REIMBURSE THE PHARMACY AN AMOUNT THAT IS AT LEAST EQUAL TO THE NATIONAL AVERAGE DRUG ACQUISITION COST PLUS THE FEE FOR SERVICE PROFESSIONAL DISPENSING FEE DETERMINED BY THE MARYLAND DEPARTMENT OF HEALTH FOR THE MARYLAND MEDICAL ASSISTANCE PROGRAM IN ACCORDANCE WITH THE MOST RECENT IN-STATE COST OF DISPENSING SURVEY.~~

(a) The Maryland Department of Health and the Prescription Drug Affordability Board jointly shall study:

(1) (i) the total amount the managed care organizations in the State paid pharmacies for prescription drug claims in calendar years 2021 and 2022; and

(ii) what the total amount paid to pharmacies would have been, in calendar years 2021 and 2022, if the prescription drug claims had been reimbursed at the Maryland Medical Assistance Program fee-for-service rates; and

(2) how to best address the inconsistency in the amounts studied under item (1) of this subsection by:

(i) considering the total cost to the State; and

(ii) recommending a methodology for determining the most accurate ingredient cost of a drug and an appropriate dispensing fee.

(b) On or before October 31, 2023, the Maryland Department of Health and the Prescription Drug Affordability Board jointly shall report its findings to the Maryland Medicaid Administration and, in accordance with § 2-1257 of the State Government Article, the Senate Budget and Taxation Committee, the Senate Finance Committee, the House Appropriations Committee, and the House Health and Government Operations Committee.

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 ye 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.

Approved by the Governor, April 24, 2023.