

HOUSE BILL 374

J5

(3lr0476)

ENROLLED BILL

— Health and Government Operations/Finance —

Introduced by ~~Delegate Kipke~~ Delegates Kipke, Alston, Bagnall, Bhandari, Chisholm, Cullison, Guzzone, Hill, Hutchinson, S. Johnson, Kaiser, Kerr, R. Lewis, Lopez, Martinez, M. Morgan, Pena-Melnyk, Reilly, Rosenberg, Szeliga, Taveras, White, and Woods

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Health Insurance – Pharmacy Benefits Managers – Audits of Pharmacies and**
3 **Pharmacists**

4 FOR the purpose of ~~expanding the applicability of the provisions regarding audits of a~~
5 ~~pharmacy or pharmacist to all pharmacy benefits managers; authorizing a pharmacy~~
6 ~~benefits manager to conduct an audit through an auditing entity that is registered~~
7 ~~with the Maryland Insurance Commissioner; requiring the Secretary of Health to~~
8 adopt certain regulations for pharmacy benefits managers that contract with
9 managed care organizations that establish requirements for conducting audits of
10 pharmacies or pharmacists; establishing requirements and prohibitions regarding
11 audits by certain pharmacy benefits managers, including provisions related to audit
12 limits, the acceptance of certain documents as validation or proof, the recoupment of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 ~~funds or charging and payment~~ of fees for prescriptions of unbreakable package
 2 sizes, access to financial documentation, and audit documentation; requiring that a
 3 final audit report include certain information if applicable; authorizing a pharmacy
 4 or pharmacist to confirm with a pharmacy customer or purchaser that the pharmacy
 5 customer or purchaser received a certain refund; and generally relating to audits by
 6 pharmacy benefits managers.

7 BY adding to

8 Article – Health – General

9 Section ~~15-102.3(k)~~ 15-103(b)(33)

10 Annotated Code of Maryland

11 (2019 Replacement Volume and 2022 Supplement)

12 BY repealing and reenacting, with amendments,

13 Article – Insurance

14 Section 15-1629

15 Annotated Code of Maryland

16 (2017 Replacement Volume and 2022 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

18 That the Laws of Maryland read as follows:

19 **Article – Health – General**

20 ~~15-102.3.~~

21 ~~(k) THE PROVISIONS OF § 15-1629 OF THE INSURANCE ARTICLE APPLY TO~~
 22 ~~PHARMACY BENEFITS MANAGERS THAT CONTRACT WITH MANAGED CARE~~
 23 ~~ORGANIZATIONS.~~

24 15-103.

25 (b) (33) THE SECRETARY SHALL ADOPT REGULATIONS FOR PHARMACY
 26 BENEFITS MANAGERS THAT CONTRACT WITH MANAGED CARE ORGANIZATIONS THAT
 27 ESTABLISH REQUIREMENTS FOR CONDUCTING AUDITS OF PHARMACIES OR
 28 PHARMACISTS THAT ARE:

29 (i) TO THE EXTENT PRACTICABLE, SUBSTANTIVELY SIMILAR
 30 TO THE AUDIT PROVISIONS UNDER § 15-1629 OF THE INSURANCE ARTICLE; AND

31 (ii) CONSISTENT WITH FEDERAL LAW.

32 **Article – Insurance**

33 15-1629.

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

3 ~~[(b)]~~ ~~(A)~~ This section does not apply to an audit that involves probable or
4 potential fraud or willful misrepresentation by a pharmacy or pharmacist.

5 ~~[(c)]~~ ~~(B)~~ A pharmacy benefits manager shall conduct an audit of a pharmacy or
6 pharmacist under contract with the pharmacy benefits manager in accordance with this
7 section.

8 ~~(c)~~ (D) (1) A PHARMACY BENEFITS MANAGER MAY CONDUCT AN AUDIT
9 THROUGH AN AUDITING ENTITY.

10 ~~(2)~~ ~~AN AUDITING ENTITY MUST REGISTER WITH THE COMMISSIONER~~
11 ~~AS AN AUDITING ENTITY BEFORE CONDUCTING AN AUDIT IN THE STATE.~~

12 ~~(3)~~ (2) THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY
13 OUT THIS SUBSECTION.

14 ~~(d)~~ (E) A pharmacy benefits manager may not schedule an onsite audit to begin
15 during the first 5 calendar days of a month unless requested by the pharmacy or
16 pharmacist.

17 ~~(e)~~ (F) When conducting an audit, a pharmacy benefits manager shall:

18 (1) if the audit is onsite, provide written notice to the pharmacy or
19 pharmacist at least 2 weeks before conducting the initial onsite audit for each audit cycle;

20 (2) employ the services of a pharmacist if the audit requires the clinical or
21 professional judgment of a pharmacist;

22 (3) [permit] **ALLOW** its auditors to enter the prescription area of a
23 pharmacy only when accompanied by or authorized by a member of the pharmacy staff;

24 (4) allow a pharmacist or pharmacy to use any prescription, or authorized
25 change to a prescription, that meets the requirements of COMAR 10.34.20.02 to validate
26 claims submitted for reimbursement for dispensing of original and refill prescriptions;

27 (5) for purposes of validating the pharmacy record with respect to orders
28 or refills of a drug, allow the pharmacy or pharmacist to use records of a hospital or a
29 physician or other prescriber authorized by law that are:

30 (i) written; or

(ii) transmitted electronically or by any other means of communication authorized by contract between the pharmacy and the pharmacy benefits manager;

~~(6) FOR PURPOSES OF AN INVOICE AUDIT, ACCEPT AS VALIDATION INVOICES ISSUED BEFORE THE DATE OF DISPENSING FROM:~~

~~(I) A WHOLESALE DISTRIBUTOR:~~

~~1. THAT HAS BEEN ISSUED A PERMIT BY THE STATE BOARD OF PHARMACY UNDER TITLE 12, SUBTITLE 6C OF THE HEALTH OCCUPATIONS ARTICLE; AND~~

~~2. FROM WHICH THE PHARMACY OR PHARMACIST HAS PURCHASED PRESCRIPTION DRUGS; OR~~

~~(H) FOR INVOICES FOR DURABLE MEDICAL EQUIPMENT OR SICKROOM SUPPLIES, A DISTRIBUTOR THAT HAS THE APPROPRIATE AUTHORIZATION TO DO BUSINESS IN THE STATE;~~

~~(7) (6) ALLOW ACCEPT A COMPLETED CASH REGISTER TRANSACTION TO SERVE AS PROOF OF DELIVERY OR PICKUP FOR A PHARMACY CUSTOMER UNLESS THERE IS CONTRADICTORY INFORMATION;~~

[(6)] ~~(8)~~ (7) audit each pharmacy and pharmacist under the same standards and parameters as other similarly situated pharmacies or pharmacists audited by the pharmacy benefits manager;

[(7)] ~~(9)~~ (8) only audit claims submitted or adjudicated within the 2-year period immediately preceding the audit, unless a longer period is authorized under federal or State law;

[(8)] ~~(10)~~ (9) deliver the preliminary audit report to the pharmacy or pharmacist within 120 calendar days after the completion of the audit, with reasonable extensions allowed;

[(9)] ~~(11)~~ (10) in accordance with subsection [(k)] ~~(M)~~ ~~(L)~~ (M) of this section, allow a pharmacy or pharmacist to produce documentation to address any discrepancy found during the audit; and

[(10)] ~~(12)~~ (11) deliver the final audit report to the pharmacy or pharmacist:

1 (i) within 6 months after delivery of the preliminary audit report if
 2 the pharmacy or pharmacist does not request an internal appeal under subsection [(k)] ~~(M)~~
 3 ~~(L)~~ (M) of this section; or

4 (ii) within 30 days after the conclusion of the internal appeals
 5 process under subsection [(k)] ~~(M)~~ ~~(L)~~ (M) of this section if the pharmacy or pharmacist
 6 requests an internal appeal.

7 ~~(G)~~ (G) If a contract between a pharmacy or pharmacist and a pharmacy
 8 benefits manager specifies a period of time in which a pharmacy or pharmacist is allowed
 9 to withdraw and resubmit a claim and that period of time expires before the pharmacy
 10 benefits manager delivers a preliminary audit report that identifies discrepancies, the
 11 pharmacy benefits manager shall allow the pharmacy or pharmacist to withdraw and
 12 resubmit a claim within 30 days after:

13 (1) the preliminary audit report is delivered if the pharmacy or pharmacist
 14 does not request an internal appeal under subsection [(k)] ~~(M)~~ ~~(L)~~ (M) of this section; or

15 (2) the conclusion of the internal appeals process under subsection [(k)]
 16 ~~(M)~~ ~~(L)~~ (M) of this section if the pharmacy or pharmacist requests an internal appeal.

17 ~~(H)~~ (H) During an audit, a pharmacy benefits manager may not disrupt the
 18 provision of services to the customers of a pharmacy.

19 ~~(I)~~ (I) (1) A pharmacy benefits manager may not:

20 (i) use the accounting practice of extrapolation to calculate
 21 overpayments or underpayments; [or]

22 (ii) [Except] EXCEPT as provided in paragraph (2) of this subsection:

23 1. share information from an audit with another pharmacy
 24 benefits manager; or

25 2. use information from an audit conducted by another
 26 pharmacy benefits manager;

27 ~~(III) CHARGE A PHARMACY OR PHARMACIST A FEE UNLESS AN~~
 28 ~~AUDIT FINDS THERE WAS A FINANCIAL DETRIMENT TO THE PHARMACY CUSTOMER~~
 29 ~~OR PURCHASER;~~

30 ~~(IV) CHARGE A PHARMACY OR PHARMACIST A FEE WITH REGARD~~
 31 ~~TO AN INCORRECT DAYS OF SUPPLY CALCULATION IF THE PHARMACY BENEFITS~~
 32 ~~MANAGER IS UNABLE TO ACCEPT THE CORRECT DAYS OF SUPPLY WITHOUT HELP~~
 33 ~~DESK INTERVENTION;~~

1 **(III) RECOUP ANY FUNDS FROM OR CHARGE ANY FEES TO A**
 2 **PHARMACY OR PHARMACIST FOR A PRESCRIPTION WITH REGARD TO AN INCORRECT**
 3 **DAYS OF SUPPLY CALCULATION IF THE PACKAGE SIZE OF THE MEDICATION IS**
 4 **UNBREAKABLE AND THE PHARMACY BENEFITS MANAGER CANNOT ACCEPT THE**
 5 **CORRECT MATHEMATICALLY CALCULABLE DAYS' SUPPLY DURING PRESCRIPTION**
 6 **ADJUDICATION;**

7 ~~(IV)~~ **(IV)** HAVE OR REQUEST ACCESS TO A PHARMACY'S OR
 8 PHARMACIST'S BANK, CREDIT CARD, OR DEPOSITORY STATEMENTS OR DATA AS IT
 9 RELATES TO COST-SHARING; OR

10 ~~(V)~~ **(V)** AUDIT CLAIMS THAT WERE REVERSED OR FOR WHICH
 11 THERE WAS NO REMUNERATION BY THE PURCHASER OR COST TO THE PHARMACY
 12 CUSTOMER EXCEPT IF NECESSARY TO EVALUATE COMPLIANCE TO A CONTRACT.

13 (2) Paragraph (1)(ii) of this subsection does not apply to the sharing of
 14 information:

15 (i) required by federal or State law;

16 (ii) in connection with an acquisition or merger involving the
 17 pharmacy benefits manager; or

18 (iii) at the payor's request or under the terms of the agreement
 19 between the pharmacy benefits manager and the payor.

20 ~~(3) FOR CLAIMS THAT WERE AUDITED IN VIOLATION OF PARAGRAPH~~
 21 ~~(1)(VI) OF THIS SUBSECTION, THE PHARMACY BENEFITS MANAGER OR PURCHASER~~
 22 ~~SHALL PAY THE PHARMACY OR PHARMACIST \$20 PER CLAIM FOUND TO BE IN~~
 23 ~~VIOLATION.~~

24 ~~(J) (1)~~ **(1)** A PHARMACY BENEFITS MANAGER OR PURCHASER MAY NOT
 25 AUDIT MORE THAN ~~50~~ **125** PRESCRIPTIONS DURING A DESK OR SITE AUDIT ~~UNLESS~~
 26 ~~THE PHARMACY BENEFITS MANAGER OR PURCHASER REQUESTING THE AUDIT PAYS~~
 27 ~~THE PHARMACY OR PHARMACIST \$20 PER ADDITIONAL PRESCRIPTION OR PROOF~~
 28 ~~OF DELIVERY OR PICKUP REQUEST.~~

29 ~~(2) THE FEE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION~~
 30 ~~IS IN ADDITION TO THE FEE REQUIRED UNDER SUBSECTION (J)(1) OF THIS SECTION.~~

31 ~~(J) (1)~~ **(1)** **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PHARMACY**
 32 **BENEFITS MANAGER OR PURCHASER SHALL PAY A PHARMACY OR PHARMACIST \$250**
 33 **PER HOUR OF AUDIT OR \$10 PER PRESCRIPTION AUDITED, WHICHEVER IS GREATER.**

1 ~~(2) THE FEE REQUIRED UNDER THIS SUBSECTION SHALL BE~~
2 ~~ADJUSTED ON JULY 1 EACH YEAR FOR INFLATION IN ACCORDANCE WITH THE~~
3 ~~CONSUMER PRICE INDEX.~~

4 [(i)] ~~(H)~~ ~~(J)~~ (K) The recoupment of a claims payment from a pharmacy or
5 pharmacist by a pharmacy benefits manager shall be based on an actual overpayment or
6 denial of an audited claim unless the projected overpayment or denial is part of a settlement
7 agreed to by the pharmacy or pharmacist.

8 [(j)] ~~(I)~~ ~~(K)~~ (L) (1) In this subsection, “overpayment” means a payment by the
9 pharmacy benefits manager to a pharmacy or pharmacist that is greater than the rate or
10 terms specified in the contract between the pharmacy or pharmacist and the pharmacy
11 benefits manager at the time that the payment is made.

12 (2) A clerical error, record-keeping error, typographical error, or
13 scrivener’s error in a required document or record may not constitute fraud or grounds for
14 recoupment of a claims payment from a pharmacy or pharmacist by a pharmacy benefits
15 manager if the prescription was otherwise legally dispensed and the claim was otherwise
16 materially correct.

17 (3) Notwithstanding paragraph (2) of this subsection, claims remain
18 subject to recoupment of overpayment or payment of any discovered underpayment by the
19 pharmacy benefits manager.

20 [(k)] ~~(M)~~ ~~(L)~~ (M) (1) A pharmacy benefits manager shall establish an internal
21 appeals process under which a pharmacy or pharmacist may appeal any disputed claim in
22 a preliminary audit report.

23 (2) Under the internal appeals process, a pharmacy benefits manager shall
24 allow a pharmacy or pharmacist to request an internal appeal within 30 working days after
25 receipt of the preliminary audit report, with reasonable extensions allowed.

26 (3) The pharmacy benefits manager shall include in its preliminary audit
27 report a written explanation of the internal appeals process, including the name, address,
28 and telephone number of the person to whom an internal appeal should be addressed.

29 (4) The decision of the pharmacy benefits manager on an appeal of a
30 disputed claim in a preliminary audit report by a pharmacy or pharmacist shall be reflected
31 in the final audit report.

32 (5) The pharmacy benefits manager shall deliver the final audit report to
33 the pharmacy or pharmacist within 30 calendar days after conclusion of the internal
34 appeals process.

35 [(l)] ~~(N)~~ ~~(M)~~ (N) (1) A pharmacy benefits manager may not recoup by setoff
36 any money for an overpayment or denial of a claim until:

1 (i) the pharmacy or pharmacist has an opportunity to review the
2 pharmacy benefits manager's findings; and

3 (ii) if the pharmacy or pharmacist concurs with the pharmacy
4 benefits manager's findings of overpayment or denial, 30 working days have elapsed after
5 the date the final audit report has been delivered to the pharmacy or pharmacist.

6 (2) If the pharmacy or pharmacist does not concur with the pharmacy
7 benefits manager's findings of overpayment or denial, the pharmacy benefits manager may
8 not recoup by setoff any money pending the outcome of an appeal under subsection [(k)]
9 ~~(M)~~ ~~(L)~~ (M) of this section.

10 (3) A pharmacy benefits manager shall remit any money due to a pharmacy
11 or pharmacist as a result of an underpayment of a claim within 30 working days after the
12 final audit report has been delivered to the pharmacy or pharmacist.

13 (4) Notwithstanding the provisions of paragraph (1) of this subsection, a
14 pharmacy benefits manager may withhold future payments before the date the final audit
15 report has been delivered to the pharmacy or pharmacist if the identified discrepancy for
16 all disputed claims in a preliminary audit report for an individual audit exceeds \$25,000.

17 ~~(O) THE FINAL AUDIT REPORT SHALL, IF APPLICABLE:~~

18 ~~(1) IDENTIFY EACH PHARMACY CUSTOMER OR PURCHASER~~
19 ~~RECEIVING A REFUND; AND~~

20 ~~(2) SPECIFY THE AMOUNT BEING REFUNDED TO EACH PHARMACY~~
21 ~~CUSTOMER OR PURCHASER.~~

22 ~~(P) A PHARMACY OR PHARMACIST MAY CONFIRM WITH THE PHARMACY~~
23 ~~CUSTOMER OR PURCHASER THAT THE PHARMACY CUSTOMER OR PURCHASER~~
24 ~~RECEIVED THE REFUND AMOUNT FROM THE PHARMACY BENEFITS MANAGER.~~

25 ~~(Q)~~ ~~(N)~~ (O) (1) A PHARMACY BENEFITS MANAGER SHALL PROVIDE A
26 PHARMACY OR PHARMACIST BEING AUDITED WITH A PHONE NUMBER AND, IF
27 AVAILABLE, ACCESS TO A SECURE PORTAL THAT THE PHARMACY OR PHARMACIST
28 MAY USE TO ASK QUESTIONS REGARDING THE AUDIT.

29 (2) AN INDIVIDUAL WHO IS FAMILIAR WITH THE AUDIT SHALL
30 RESPOND TO ALL ~~TELEPHONE~~ INQUIRIES MADE THROUGH A PHONE NUMBER OR
31 SECURE PORTAL PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION WITHIN
32 ~~72 HOURS~~ 3 BUSINESS DAYS AFTER THE ~~CALL~~ INQUIRY WAS MADE.

1 ~~(R)~~ ~~(O)~~ (P) (1) THE PHARMACY BENEFITS MANAGER SHALL GIVE THE
 2 PHARMACY OR PHARMACIST THE OPTION TO PROVIDE REQUESTED AUDIT
 3 DOCUMENTATION BY POSTAL MAIL, E-MAIL, OR FACSIMILE.

4 (2) IF A DOCUMENT IS REQUESTED REGARDING AN AUDIT, THE
 5 PHARMACY BENEFITS MANAGER SHALL PROVIDE A SECURE FACSIMILE NUMBER
 6 AND A MECHANISM FOR RECEIVING SECURE E-MAILS.

7 (3) ON OR BEFORE OCTOBER 1, 2025, A PHARMACY BENEFITS
 8 MANAGER SHALL PROVIDE A MECHANISM FOR SECURE ELECTRONIC
 9 COMMUNICATION FOR PHARMACIES AND PHARMACISTS TO COMMUNICATE WITH
 10 AND SUBMIT DOCUMENTS TO THE AUDITING ENTITY.

11 [(m)] ~~(S)~~ ~~(P)~~ (Q) (1) The Commissioner may adopt regulations regarding:

12 (i) the documentation that may be requested during an audit; and

13 (ii) the process a pharmacy benefits manager may use to conduct an
 14 audit.

15 (2) On request of the Commissioner or the Commissioner's designee, a
 16 pharmacy benefits manager shall provide a copy of its audit procedures or internal appeals
 17 process.

18 SECTION 2. AND BE IT FURTHER ENACTED, That:

19 (a) Except as provided in subsection (b) of this section, for an audit of a pharmacy
 20 or pharmacist under contract with a pharmacy benefits manager, this Act shall apply only
 21 to an audit performed on or after January 1, 2024.

22 (b) For a pharmacy benefits manager that contracts with the State ~~or a local~~
 23 ~~government~~, this Act shall apply only to audits that occur on the first day of the first plan
 24 year beginning on or after January 1, 2024, or the first time a contract between a pharmacy
 25 benefits manager with the State ~~or a local government~~ is amended or renewed on or after
 26 January 1, 2024.

27 SECTION 2. 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 28 ~~October 1, 2023~~ January 1, 2024.