

SENATE BILL 1017

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CF HB 1307

By: **Senator Reilly**

Introduced and read first time: February 12, 2020

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Pharmacy Benefits Managers – Network Adequacy and Reimbursement**

3 FOR the purpose of requiring a pharmacy benefits manager to maintain a certain network
4 that provides certain access to pharmacy services; requiring the Commissioner to
5 establish certain criteria for determining the adequacy of a pharmacy benefits
6 manager's network; authorizing the Commissioner to adopt certain regulations;
7 prohibiting a pharmacy benefits manager from requiring a certain pharmacy or
8 pharmacist to obtain certain accreditation, certification, or credentialing as a
9 condition for participating in a certain network; authorizing the Commissioner to
10 use certain contracts to determine certain network adequacy; altering the fees or
11 other certain reimbursement that a pharmacy benefits manager is prohibited from
12 directly or indirectly charging a certain pharmacy or for which a pharmacy benefits
13 manager is prohibited from holding a certain pharmacy responsible; authorizing a
14 pharmacist or pharmacy to decline to provide certain pharmacy services under
15 certain circumstances; making a technical change; and generally relating to
16 pharmacy benefits managers, network adequacy, and reimbursement.

17 BY adding to
18 Article – Insurance
19 Section 15–1611.2
20 Annotated Code of Maryland
21 (2017 Replacement Volume and 2019 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Insurance
24 Section 15–1628, 15–1628.2(d), and 15–1628.3
25 Annotated Code of Maryland
26 (2017 Replacement Volume and 2019 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Insurance**15–1611.2.**

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A PHARMACY BENEFITS MANAGER SHALL MAINTAIN A REASONABLY ADEQUATE AND ACCESSIBLE PHARMACY BENEFITS MANAGER NETWORK CONSISTING OF CONTRACTED PHARMACIES THAT PROVIDE CONVENIENT PATIENT ACCESS TO PHARMACY SERVICES.

(B) (1) THE COMMISSIONER SHALL ESTABLISH CRITERIA FOR DETERMINING THE ADEQUACY OF A PHARMACY BENEFITS MANAGER’S NETWORK THAT INCLUDES:

(I) A DETERMINATION OF THE PURCHASERS THAT CONTRACT WITH THE PHARMACY BENEFITS MANAGER AND THE GEOGRAPHIC LOCATION IN WHICH THE PURCHASERS OFFER COVERAGE FOR PRESCRIPTION DRUG BENEFITS;

(II) A CALCULATION FOR DETERMINING A REASONABLE DISTANCE FROM A PATIENT’S HOME TO A CONTRACTED PHARMACY; AND

(III) A REVIEW OF COMPENSATION PROGRAMS TO ENSURE THAT THE REIMBURSEMENT PAID TO PHARMACIES AND PHARMACISTS FOR PHARMACY SERVICES IS FAIR AND REASONABLE.

(2) A MAIL–ORDER PHARMACY MAY NOT BE INCLUDED IN A DETERMINATION OF A PHARMACY BENEFITS MANAGER’S NETWORK ADEQUACY.

(C) THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

15–1628.

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

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

[(3)] (III) the dispute resolution and audit appeals process; and

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

3 (2) A PHARMACY BENEFITS MANAGER MAY NOT REQUIRE A
4 PHARMACY OR A PHARMACIST, AS A CONDITION FOR PARTICIPATING IN THE
5 PHARMACY BENEFITS MANAGER'S NETWORK, TO OBTAIN OR MAINTAIN
6 ACCREDITATION, CERTIFICATION, OR CREDENTIALING THAT IS INCONSISTENT
7 WITH, MORE STRINGENT THAN, OR IN ADDITION TO STATE REQUIREMENTS FOR
8 LICENSURE OR RELEVANT FEDERAL OR STATE STANDARDS.

9 (b) (1) A contract or an amendment to a contract between a pharmacy benefits
10 manager, a pharmacy services administration organization, or a group purchasing
11 organization and a pharmacy may not become effective unless:

12 (i) at least 30 days before the contract or amendment is to become
13 effective, the pharmacy benefits manager, pharmacy services administration organization,
14 or group purchasing organization files the contract or amendment with the Commissioner
15 in the form required by the Commissioner; and

16 (ii) the Commissioner does not disapprove the filing within 30 days
17 after the contract or amendment is filed.

18 (2) The Commissioner shall adopt regulations to establish the
19 circumstances under which the Commissioner may disapprove a contract.

20 (C) THE COMMISSIONER MAY USE A CONTRACT FILED UNDER SUBSECTION
21 (B) OF THIS SECTION IN MAKING A DETERMINATION OF WHETHER A PHARMACY
22 BENEFITS MANAGER'S NETWORK IS ADEQUATE AS REQUIRED UNDER § 15-1611.2 OF
23 THIS SUBTITLE.

24 15-1628.2.

25 (d) (1) If a pharmacy benefits manager denies an appeal and a contracted
26 pharmacy or a designee of the contracted pharmacy files a complaint with the
27 Commissioner, the Commissioner shall:

28 (i) review the compensation program of the pharmacy benefits
29 manager to ensure that the reimbursement for pharmacy [benefits management] services
30 paid to the pharmacist or a pharmacy complies with this subtitle and the terms of the
31 participating pharmacy contract; and

32 (ii) based on a determination made by the Commissioner under item
33 (i) of this paragraph, dismiss the appeal or uphold the appeal and order the pharmacy
34 benefits manager to pay the claim or claims in accordance with the Commissioner's
35 findings.

(2) On request, the pharmacy benefits manager shall provide to the Commissioner all mathematical calculations, accounts, records, documents, files, logs, correspondence, or other information necessary to complete the Commissioner's review.

(3) All information and data collected by the Commissioner during a review:

(i) is considered to be confidential and proprietary information; and

(ii) is not subject to disclosure under the Public Information Act.

15-1628.3.

(A) 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

(2) reported on the initial remittance advice of an adjudicated claim].

(B) IF THE AMOUNT REIMBURSED BY A PHARMACY BENEFITS MANAGER OR A PURCHASER FOR A PRESCRIPTION DRUG OR PHARMACY SERVICE IS LESS THAN THE PHARMACY ACQUISITION COST FOR THE SAME PRESCRIPTION DRUG OR PHARMACY SERVICE, THE PHARMACY OR PHARMACIST MAY DECLINE TO DISPENSE THE PRESCRIPTION DRUG OR PROVIDE THE PHARMACY SERVICE TO A BENEFICIARY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2020.