

HOUSE BILL 374

J5

3lr0476

By: **Delegate Kipke**

Introduced and read first time: January 26, 2023

Assigned to: Health and Government Operations

A BILL ENTITLED

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; establishing requirements and
8 prohibitions regarding audits by pharmacy benefits managers, including provisions
9 related to audit limits, the acceptance of certain documents as validation or proof,
10 the charging and payment of fees, access to financial documentation, and audit
11 documentation; requiring that a final audit report include certain information if
12 applicable; authorizing a pharmacy or pharmacist to confirm with a pharmacy
13 customer or purchaser that the pharmacy customer or purchaser received a certain
14 refund; and generally relating to audits by pharmacy benefits managers.

15 BY adding to

16 Article – Health – General
17 Section 15–102.3(k)
18 Annotated Code of Maryland
19 (2019 Replacement Volume and 2022 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article – Insurance
22 Section 15–1629
23 Annotated Code of Maryland
24 (2017 Replacement Volume and 2022 Supplement)

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

27 **Article – Health – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 15-102.3.

2 **(K) THE PROVISIONS OF § 15-1629 OF THE INSURANCE ARTICLE APPLY TO**
3 **PHARMACY BENEFITS MANAGERS THAT CONTRACT WITH MANAGED CARE**
4 **ORGANIZATIONS.**

5 **Article - Insurance**

6 15-1629.

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

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

11 [(c)] **(B)** A pharmacy benefits manager shall conduct an audit of a pharmacy or
12 pharmacist under contract with the pharmacy benefits manager in accordance with this
13 section.

14 **(C) (1) A PHARMACY BENEFITS MANAGER MAY CONDUCT AN AUDIT**
15 **THROUGH AN AUDITING ENTITY.**

16 **(2) AN AUDITING ENTITY MUST REGISTER WITH THE COMMISSIONER**
17 **AS AN AUDITING ENTITY BEFORE CONDUCTING AN AUDIT IN THE STATE.**

18 **(3) THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT**
19 **THIS SUBSECTION.**

20 (d) A pharmacy benefits manager may not schedule an onsite audit to begin
21 during the first 5 calendar days of a month unless requested by the pharmacy or
22 pharmacist.

23 (e) When conducting an audit, a pharmacy benefits manager shall:

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

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

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

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

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

7 (i) written; or

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

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

13 **(I) A WHOLESALE DISTRIBUTOR:**

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

17 **2. FROM WHICH THE PHARMACY OR PHARMACIST HAS**
18 **PURCHASED PRESCRIPTION DRUGS; OR**

19 **(II) FOR INVOICES FOR DURABLE MEDICAL EQUIPMENT OR**
20 **SICKROOM SUPPLIES, A DISTRIBUTOR THAT HAS THE APPROPRIATE**
21 **AUTHORIZATION TO DO BUSINESS IN THE STATE;**

22 **(7) ALLOW A COMPLETED REGISTER TRANSACTION TO SERVE AS**
23 **PROOF OF DELIVERY OR PICKUP FOR A PHARMACY CUSTOMER;**

24 **[(6)] (8)** audit each pharmacy and pharmacist under the same standards
25 and parameters as other similarly situated pharmacies or pharmacists audited by the
26 pharmacy benefits manager;

27 **[(7)] (9)** only audit claims submitted or adjudicated within the 2-year
28 period immediately preceding the audit, unless a longer period is authorized under federal
29 or State law;

30 **[(8)] (10)** deliver the preliminary audit report to the pharmacy or
31 pharmacist within 120 calendar days after the completion of the audit, with reasonable
32 extensions allowed;

1 **[(9)] (11)** in accordance with subsection **[(k)] (M)** of this section, allow a
2 pharmacy or pharmacist to produce documentation to address any discrepancy found
3 during the audit; and

4 **[(10)] (12)** deliver the final audit report to the pharmacy or pharmacist:

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

8 (ii) within 30 days after the conclusion of the internal appeals
9 process under subsection **[(k)] (M)** of this section if the pharmacy or pharmacist requests
10 an internal appeal.

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

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

19 (2) the conclusion of the internal appeals process under subsection **[(k)]**
20 **(M)** of this section if the pharmacy or pharmacist requests an internal appeal.

21 (g) During an audit, a pharmacy benefits manager may not disrupt the provision
22 of services to the customers of a pharmacy.

23 (h) (1) A pharmacy benefits manager may not:

24 (i) use the accounting practice of extrapolation to calculate
25 overpayments or underpayments; **[or]**

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

27 1. share information from an audit with another pharmacy
28 benefits manager; or

29 2. use information from an audit conducted by another
30 pharmacy benefits manager;

31 **(III) CHARGE A PHARMACY OR PHARMACIST A FEE UNLESS AN**
32 **AUDIT FINDS THERE WAS A FINANCIAL DETRIMENT TO THE PHARMACY CUSTOMER**
33 **OR PURCHASER;**

1 (IV) CHARGE A PHARMACY OR PHARMACIST A FEE WITH REGARD
2 TO AN INCORRECT DAYS OF SUPPLY CALCULATION IF THE PHARMACY BENEFITS
3 MANAGER IS UNABLE TO ACCEPT THE CORRECT DAYS OF SUPPLY WITHOUT HELP
4 DESK INTERVENTION;

5 (V) HAVE OR REQUEST ACCESS TO A PHARMACY'S OR
6 PHARMACIST'S BANK, CREDIT CARD, OR DEPOSITORY STATEMENTS OR DATA; OR

7 (VI) AUDIT CLAIMS THAT WERE REVERSED OR FOR WHICH
8 THERE WAS NO REMUNERATION BY THE PURCHASER OR COST TO THE PHARMACY
9 CUSTOMER.

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

12 (i) required by federal or State law;

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

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

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

21 (i) (1) A PHARMACY BENEFITS MANAGER OR PURCHASER MAY NOT
22 AUDIT MORE THAN 50 PRESCRIPTIONS DURING A DESK OR SITE AUDIT UNLESS THE
23 PHARMACY BENEFITS MANAGER OR PURCHASER REQUESTING THE AUDIT PAYS THE
24 PHARMACY OR PHARMACIST \$20 PER ADDITIONAL PRESCRIPTION OR PROOF OF
25 DELIVERY OR PICKUP REQUEST.

26 (2) THE FEE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION
27 IS IN ADDITION TO THE FEE REQUIRED UNDER SUBSECTION (J)(1) OF THIS SECTION.

28 (J) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PHARMACY
29 BENEFITS MANAGER OR PURCHASER SHALL PAY A PHARMACY OR PHARMACIST \$250
30 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)] (K)** The recoupment of a claims payment from a pharmacy or pharmacist
5 by a pharmacy benefits manager shall be based on an actual overpayment or denial of an
6 audited claim unless the projected overpayment or denial is part of a settlement agreed to
7 by the pharmacy or pharmacist.

8 **[(j)] (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)** (1) A pharmacy benefits manager shall establish an internal appeals
21 process under which a pharmacy or pharmacist may appeal any disputed claim in a
22 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)** (1) A pharmacy benefits manager may not recoup by setoff any
36 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) 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) (1) A PHARMACY BENEFITS MANAGER SHALL PROVIDE A PHARMACY**
26 **OR PHARMACIST BEING AUDITED WITH A PHONE NUMBER THAT THE PHARMACY OR**
27 **PHARMACIST MAY USE TO ASK QUESTIONS REGARDING THE AUDIT.**

28 **(2) AN INDIVIDUAL WHO IS FAMILIAR WITH THE AUDIT SHALL**
29 **RESPOND TO ALL TELEPHONE INQUIRIES WITHIN 72 HOURS AFTER THE CALL WAS**
30 **MADE.**

31 **(R) (1) THE PHARMACY BENEFITS MANAGER SHALL GIVE THE PHARMACY**
32 **OR PHARMACIST THE OPTION TO PROVIDE REQUESTED AUDIT DOCUMENTATION BY**
33 **POSTAL MAIL, E-MAIL, OR FACSIMILE.**

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

4 **[(m)] (S)** (1) The Commissioner may adopt regulations regarding:
5 (i) the documentation that may be requested during an audit; and
6 (ii) the process a pharmacy benefits manager may use to conduct an
7 audit.

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

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2023.