

CHAPTER 262

(House Bill 257)

AN ACT concerning

Pharmacy Benefits Managers – Contracts with Pharmacies and Pharmacists

FOR the purpose of requiring a pharmacy benefits manager to ~~enter into certain contracts with pharmacy providers under certain circumstances; specifying certain requirements of the contracts~~ disclose certain information to a pharmacy or a pharmacist at the time of entering into a contract with the pharmacy or pharmacist and at a certain time before a contract change; specifying provisions that apply to audits carried out by pharmacy benefits managers of pharmacies or pharmacy claims, pharmacists, and claims of pharmacies and pharmacists; making certain provisions of law applicable to pharmacy benefits managers; requiring a pharmacy benefits manager to establish a certain appeals process; establishing a process for a pharmacy or pharmacist to file a certain complaint with the Maryland Insurance Commissioner; establishing a certain process for review of the underpayment of a claim *requiring a pharmacy benefits manager to establish a certain process for review of a failure to pay the contractual reimbursement amount of certain claims;* making certain provisions of law applicable to health maintenance organizations; providing for the application of this Act; ~~providing certain penalties;~~ *providing that this Act may not be construed to limit the applicability of certain provisions of law under certain circumstances;* defining certain terms; and generally relating to regulation of pharmacy benefits managers' contracts with pharmacies and pharmacists.

BY adding to

Article – Insurance

Section 15-1601 ~~through 15-1604~~ 15-1603 to be under the new subtitle

“Subtitle 16. Pharmacy Benefits Managers”

Annotated Code of Maryland

(2006 Replacement Volume and 2007 Supplement)

BY adding to

Article – Health – General

Section 19-706(ppp)

Annotated Code of Maryland

(2005 Replacement Volume and 2007 Supplement)

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

Article – Insurance

SUBTITLE 16. PHARMACY BENEFITS MANAGERS.

15-1601.

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "EXTRAPOLATION AUDIT" MEANS AN AUDIT OF A SAMPLE OF PRESCRIPTION DRUG BENEFIT CLAIMS SUBMITTED BY A PHARMACY PROVIDER TO A PHARMACY BENEFITS MANAGER OR ITS DESIGNATED CONTRACTOR OR AGENT THAT IS USED TO ESTIMATE AUDIT RESULTS FOR A LARGER BATCH OR GROUP OF CLAIMS.~~

~~(3) (I) "PHARMACY BENEFITS MANAGEMENT SERVICES" MEANS THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS.~~

~~(II) "PHARMACY BENEFITS MANAGEMENT SERVICES" INCLUDES:~~

~~1. PROCUREMENT OF PRESCRIPTION DRUGS AT A NEGOTIATED RATE FOR DISPENSATION WITHIN THE STATE;~~

~~2. PROCESSING OF PRESCRIPTION DRUG CLAIMS;~~

~~3. ADMINISTRATION OF PAYMENTS RELATED TO PRESCRIPTION DRUG CLAIMS; AND~~

~~4. NEGOTIATING OR ENTERING INTO CONTRACTUAL ARRANGEMENTS WITH PHARMACY PROVIDERS.~~

~~(4) "PHARMACY BENEFITS MANAGER" MEANS A PERSON THAT PERFORMS PHARMACY BENEFITS MANAGEMENT SERVICES.~~

~~(5) "PHARMACY PROVIDER" MEANS A PHARMACY OR A PHARMACIST.~~

~~(6) (I) "PURCHASER" MEANS A PERSON THAT ENTERS INTO AN AGREEMENT WITH A PHARMACY BENEFITS MANAGER FOR THE PROVISION OF PHARMACY BENEFITS MANAGEMENT SERVICES.~~

~~(II) "PURCHASER" INCLUDES THE STATE.~~

~~(B) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO A MANAGED CARE ORGANIZATION AUTHORIZED BY TITLE 15, SUBTITLE 1 OF THE HEALTH GENERAL ARTICLE.~~

~~(C) IF THE PHARMACY BENEFITS MANAGEMENT SERVICES PERFORMED BY A PHARMACY BENEFITS MANAGER FOR A PURCHASER INCLUDE NEGOTIATING OR ENTERING INTO CONTRACTUAL ARRANGEMENTS WITH PHARMACY PROVIDERS, BEFORE THE PHARMACY BENEFITS MANAGER MAY PROVIDE PHARMACY BENEFITS MANAGEMENT SERVICES FOR THE PURCHASER, THE PHARMACY BENEFITS MANAGER SHALL ENTER INTO ANY NECESSARY WRITTEN CONTRACTS WITH PHARMACY PROVIDERS.~~

~~(D) A CONTRACT WITH A PHARMACY PROVIDER SHALL REQUIRE THE PHARMACY BENEFITS MANAGER TO:~~

~~(1) DISCLOSE TO THE PHARMACY PROVIDER:~~

~~(I) THE TERMS, CONDITIONS, FEES, BENEFIT DESIGNS, PROCESS, AND PROCEDURES FOR ACCESSING THE PHARMACY BENEFITS MANAGEMENT SERVICES PROVIDED BY THE PHARMACY BENEFITS MANAGER; AND~~

~~(II) THE PHARMACY BENEFITS MANAGER'S PROCEDURES FOR HANDLING DISPUTES; AND~~

~~(2) PROVIDE AT LEAST 30 DAYS' WRITTEN NOTICE TO THE PHARMACY PROVIDER OF BENEFIT CHANGES, INCLUDING ADDITIONS OR DELETIONS TO COVERED PRESCRIPTION DRUGS, WITH THE EXCEPTION OF NEW DRUGS APPROVED BY THE U.S. FOOD AND DRUG ADMINISTRATION.~~

~~(E) THE FOLLOWING PROVISIONS SHALL APPLY TO AUDITS OF PHARMACIES OR CLAIMS FROM PHARMACIES CARRIED OUT BY PHARMACY BENEFITS MANAGERS OR THE AGENTS OF PHARMACY BENEFITS MANAGERS:~~

~~(1) A PHARMACY BENEFITS MANAGER OR THE AGENT OF A PHARMACY BENEFITS MANAGER SHALL PROVIDE WRITTEN NOTICE TO A PHARMACY AT LEAST 2 WEEKS BEFORE BEGINNING THE AUDIT;~~

~~(2) ONLY CLAIMS THAT HAVE BEEN SPECIFICALLY REQUESTED FOR AUDITING MAY BE SUBJECT TO AN AUDIT;~~

~~(3) A PHARMACY BENEFITS MANAGER MAY NOT REQUIRE EXTRAPOLATION AUDITS AS A CONDITION OF A CONTRACT OR PARTICIPATION IN A NETWORK OR PROGRAM OF THE PHARMACY BENEFITS MANAGER;~~

~~(4) (I) ANY AUDIT FINDING OF AN OVERPAYMENT OR UNDERPAYMENT SHALL BE BASED ON AN ACTUAL OVERPAYMENT OR UNDERPAYMENT FOUND IN CLAIMS SUBJECT TO AUDIT; AND~~

~~(H) THE OVERPAYMENT OR UNDERPAYMENT MAY NOT BE A PROJECTED AMOUNT BASED ON THE NUMBER OF PATIENTS WITH A SIMILAR DIAGNOSIS WHO PURCHASE DRUGS AT THE PHARMACY OR ON THE NUMBER OF SIMILAR ORDERS OR REFILLS FOR SIMILAR DRUGS;~~

~~(5) A CLAIM MAY NOT BE SUBJECTED TO AN AUDIT MORE THAN 1 YEAR AFTER THE CLAIM WAS ADJUDICATED BY THE PHARMACY BENEFITS MANAGER;~~

~~(6) A PHARMACY BENEFITS MANAGER MAY NOT RECOUP BY SETOFF ANY MONEYS THAT THE PHARMACY BENEFITS MANAGER CONTENDS ARE DUE AS A RESULT OF AN AUDIT UNTIL THE PHARMACY HAS THE OPPORTUNITY TO REVIEW AND CONCUR WITH THE AUDIT FINDINGS;~~

~~(7) ANY MONEYS DUE TO A PHARMACY BENEFITS MANAGER OR A PHARMACY AS A RESULT OF AN AUDIT SHALL BE REMITTED WITHIN 30 DAYS OF NOTIFICATION; AND~~

~~(8) IF THE PHARMACY BENEFITS MANAGER AND THE PHARMACY CANNOT AGREE ON THE MONEYS DUE AS A RESULT OF AN AUDIT, THE COMMISSIONER SHALL REVIEW THE AUDIT AND DETERMINE IF ANY MONEYS ARE DUE.~~

~~(F) ON OR BEFORE APRIL 1, 2009, THE COMMISSIONER SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.~~

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "BENEFICIARY" MEANS AN INDIVIDUAL WHO RECEIVES PRESCRIPTION DRUG COVERAGE OR BENEFITS FROM A PURCHASER.

(C) "ERISA" HAS THE MEANING STATED IN § 8-301 OF THIS ARTICLE.

(D) "NONPROFIT HEALTH MAINTENANCE ORGANIZATION" HAS THE MEANING STATED IN § 6-121(A) OF THIS ARTICLE.

(E) "PHARMACIST" HAS THE MEANING STATED IN § 12-101 OF THE HEALTH OCCUPATIONS ARTICLE.

(F) "PHARMACY" HAS THE MEANING STATED IN § 12-101 OF THE HEALTH OCCUPATIONS ARTICLE.

(G) (1) "PHARMACY BENEFITS MANAGEMENT SERVICES" MEANS:

(I) THE PROCUREMENT OF PRESCRIPTION DRUGS AT A NEGOTIATED RATE FOR DISPENSATION WITHIN THE STATE TO BENEFICIARIES;

(II) THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG COVERAGE PROVIDED BY A PURCHASER FOR BENEFICIARIES; AND

(III) ANY OF THE FOLLOWING SERVICES PROVIDED WITH REGARD TO THE ADMINISTRATION OF PRESCRIPTION DRUG COVERAGE:

1. MAIL SERVICE PHARMACY;

2. CLAIMS PROCESSING, RETAIL NETWORK MANAGEMENT, AND PAYMENT OF CLAIMS TO PHARMACIES FOR PRESCRIPTION DRUGS DISPENSED TO BENEFICIARIES;

3. CLINICAL FORMULARY DEVELOPMENT AND MANAGEMENT SERVICES;

4. REBATE CONTRACTING AND ADMINISTRATION;

5. PATIENT COMPLIANCE, THERAPEUTIC INTERVENTION, AND GENERIC SUBSTITUTION PROGRAMS; OR

6. DISEASE MANAGEMENT PROGRAMS.

(2) "PHARMACY BENEFITS MANAGEMENT SERVICES" DOES NOT INCLUDE ANY SERVICE PROVIDED BY A NONPROFIT HEALTH MAINTENANCE ORGANIZATION THAT OPERATES AS A GROUP MODEL, PROVIDED THAT THE SERVICE:

(I) IS PROVIDED SOLELY TO A MEMBER OF THE NONPROFIT HEALTH MAINTENANCE ORGANIZATION; AND

(II) IS FURNISHED THROUGH THE INTERNAL PHARMACY OPERATIONS OF THE NONPROFIT HEALTH MAINTENANCE ORGANIZATION.

(H) "PHARMACY BENEFITS MANAGER" MEANS A PERSON THAT PERFORMS PHARMACY BENEFITS MANAGEMENT SERVICES.

(I) (1) "PURCHASER" MEANS THE STATE EMPLOYEE AND RETIREE HEALTH AND WELFARE BENEFITS PROGRAM, AN INSURER, A NONPROFIT HEALTH SERVICE PLAN, OR A HEALTH MAINTENANCE ORGANIZATION THAT:

(I) PROVIDES PRESCRIPTION DRUG COVERAGE OR BENEFITS IN THE STATE; AND

(II) ENTERS INTO AN AGREEMENT WITH A PHARMACY BENEFITS MANAGER FOR THE PROVISION OF PHARMACY BENEFITS MANAGEMENT SERVICES.

(2) "PURCHASER" DOES NOT INCLUDE A PERSON THAT PROVIDES PRESCRIPTION DRUG COVERAGE OR BENEFITS THROUGH PLANS SUBJECT TO ERISA AND THAT DOES NOT PROVIDE PRESCRIPTION DRUG COVERAGE OR BENEFITS THROUGH INSURANCE, UNLESS THE PERSON IS A MULTIPLE EMPLOYER WELFARE ARRANGEMENT AS DEFINED IN § 514(B)(6)(A)(II) OF ERISA.

15-1602.

~~THE PROVISIONS OF §§ 15-1008 AND 15-1009(B) OF THIS TITLE, SUBTITLE 10D OF THIS TITLE, AND § 27-303(2) OF THIS ARTICLE SHALL APPLY TO PHARMACY BENEFITS MANAGERS IN THE SAME MANNER THEY APPLY TO CARRIERS.~~

~~15-1603.~~

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) THE APPLICABLE TERMS, CONDITIONS, AND REIMBURSEMENT RATES;

(2) THE PROCESS AND PROCEDURES FOR VERIFYING PHARMACY BENEFITS AND BENEFICIARY ELIGIBILITY;

(3) THE DISPUTE RESOLUTION AND AUDIT APPEALS PROCESS;
AND

(4) THE PROCESS AND PROCEDURES FOR VERIFYING THE PRESCRIPTION DRUGS INCLUDED ON THE FORMULARIES USED BY THE PHARMACY BENEFITS MANAGER.

~~15-1604~~ 15-1603.

(A) THIS SECTION DOES NOT APPLY TO AN AUDIT THAT INVOLVES PROBABLE OR POTENTIAL FRAUD OR WILLFUL MISREPRESENTATION BY A PHARMACY OR PHARMACIST.

(B) A PHARMACY BENEFITS MANAGER SHALL CONDUCT AN AUDIT OF A PHARMACY OR PHARMACIST UNDER CONTRACT WITH THE PHARMACY BENEFITS MANAGER IN ACCORDANCE WITH THIS SECTION.

(C) A PHARMACY BENEFITS MANAGER MAY NOT SCHEDULE AN ONSITE AUDIT TO BEGIN DURING THE FIRST 5 CALENDAR DAYS OF A MONTH UNLESS REQUESTED BY THE PHARMACY OR PHARMACIST.

(D) WHEN CONDUCTING AN AUDIT, A PHARMACY BENEFITS MANAGER SHALL:

(1) IF THE AUDIT IS ONSITE, PROVIDE WRITTEN NOTICE TO THE PHARMACY OR PHARMACIST AT LEAST 2 WEEKS BEFORE CONDUCTING THE INITIAL ONSITE AUDIT FOR EACH AUDIT CYCLE;

(2) EMPLOY THE SERVICES OF A PHARMACIST IF THE AUDIT REQUIRES THE CLINICAL OR PROFESSIONAL JUDGMENT OF A PHARMACIST;

(3) FOR PURPOSES OF VALIDATING THE PHARMACY RECORD WITH RESPECT TO ORDERS OR REFILLS OF A DRUG THAT IS A CONTROLLED DANGEROUS SUBSTANCE, ALLOW THE PHARMACY OR PHARMACIST TO USE HOSPITAL OR PHYSICIAN RECORDS THAT ARE:

(I) WRITTEN; OR

(II) TRANSMITTED ELECTRONICALLY;

(4) AUDIT EACH PHARMACY AND PHARMACIST UNDER THE SAME STANDARDS AND PARAMETERS AS OTHER SIMILARLY SITUATED PHARMACIES OR PHARMACISTS AUDITED BY THE PHARMACY BENEFITS MANAGER;

(5) ONLY AUDIT CLAIMS SUBMITTED OR ADJUDICATED WITHIN THE 2-YEAR PERIOD IMMEDIATELY PRECEDING THE AUDIT, UNLESS A LONGER PERIOD IS PERMITTED UNDER FEDERAL OR STATE LAW;

(6) DELIVER THE PRELIMINARY AUDIT REPORT TO THE PHARMACY OR PHARMACIST WITHIN 120 CALENDAR DAYS AFTER THE COMPLETION OF THE AUDIT, WITH REASONABLE EXTENSIONS ALLOWED;

~~(7) ALLOW A PHARMACY OR PHARMACIST AT LEAST 30 WORKING DAYS FOLLOWING RECEIPT OF THE PRELIMINARY AUDIT REPORT, WITH REASONABLE EXTENSIONS ALLOWED, IN WHICH TO PRODUCE DOCUMENTATION TO ADDRESS ANY DISCREPANCY FOUND DURING THE AUDIT; AND~~

~~(8) DELIVER THE FINAL AUDIT REPORT TO THE PHARMACY OR PHARMACIST WITHIN 6 MONTHS AFTER DELIVERY OF:~~

~~(I) THE PRELIMINARY AUDIT REPORT; OR~~

~~(II) THE DECISION ON ANY APPEAL MADE THROUGH THE PROCESS PROVIDED UNDER SUBSECTION (G) OF THIS SECTION.~~

(7) IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION, ALLOW A PHARMACY OR PHARMACIST TO PRODUCE DOCUMENTATION TO ADDRESS ANY DISCREPANCY FOUND DURING THE AUDIT; AND

(8) DELIVER THE FINAL AUDIT REPORT TO THE PHARMACY OR PHARMACIST:

(I) WITHIN 6 MONTHS AFTER DELIVERY OF THE PRELIMINARY AUDIT REPORT IF THE PHARMACY OR PHARMACIST DOES NOT REQUEST AN INTERNAL APPEAL UNDER SUBSECTION (G) OF THIS SECTION; OR

(II) WITHIN 30 DAYS AFTER THE CONCLUSION OF THE INTERNAL APPEALS PROCESS UNDER SUBSECTION (G) OF THIS SECTION IF THE PHARMACY OR PHARMACIST REQUESTS AN INTERNAL APPEAL.

(E) A PHARMACY BENEFITS MANAGER MAY NOT USE THE ACCOUNTING PRACTICE OF EXTRAPOLATION TO CALCULATE OVERPAYMENTS OR UNDERPAYMENTS.

(F) THE RECOUPMENT OF A CLAIMS PAYMENT FROM A PHARMACY OR PHARMACIST BY A PHARMACY BENEFITS MANAGER SHALL BE BASED ON AN ACTUAL OVERPAYMENT OR DENIAL OF AN AUDITED CLAIM UNLESS THE

PROJECTED OVERPAYMENT OR DENIAL IS PART OF A SETTLEMENT AGREED TO BY THE PHARMACY OR PHARMACIST.

~~(G) (1) A PHARMACY BENEFITS MANAGER SHALL ESTABLISH AN APPEALS PROCESS, IN ACCORDANCE WITH THE PROVISIONS OF SUBTITLE 10D OF THIS TITLE, UNDER WHICH A PHARMACY OR PHARMACIST MAY APPEAL A DISPUTED CLAIM IN A PRELIMINARY AUDIT REPORT.~~

~~(2) IF THE PHARMACY BENEFITS MANAGER REVERSES OR MODIFIES ITS PRELIMINARY AUDIT REPORT AS A RESULT OF AN APPEAL OF A DISPUTED CLAIM BY A PHARMACY OR PHARMACIST, THE PHARMACY BENEFITS MANAGER SHALL DISMISS THE PRELIMINARY AUDIT REPORT OR THE UNSUBSTANTIATED PORTION OF THE PRELIMINARY AUDIT REPORT WITH NO FURTHER PROCEEDINGS.~~

(G) (1) A PHARMACY BENEFITS MANAGER SHALL ESTABLISH AN INTERNAL APPEALS PROCESS UNDER WHICH A PHARMACY OR PHARMACIST MAY APPEAL ANY DISPUTED CLAIM IN A PRELIMINARY AUDIT REPORT.

(2) UNDER THE INTERNAL APPEALS PROCESS, A PHARMACY BENEFITS MANAGER SHALL ALLOW A PHARMACY OR PHARMACIST TO REQUEST AN INTERNAL APPEAL WITHIN 30 WORKING DAYS AFTER RECEIPT OF THE PRELIMINARY AUDIT REPORT, WITH REASONABLE EXTENSIONS ALLOWED.

(3) THE PHARMACY BENEFITS MANAGER SHALL INCLUDE IN ITS PRELIMINARY AUDIT REPORT A WRITTEN EXPLANATION OF THE INTERNAL APPEALS PROCESS, INCLUDING THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON TO WHOM AN INTERNAL APPEAL SHOULD BE ADDRESSED.

~~(3)~~ (4) THE DECISION OF THE PHARMACY BENEFITS MANAGER ON AN APPEAL OF A DISPUTED CLAIM IN A PRELIMINARY AUDIT REPORT BY A PHARMACY OR PHARMACIST SHALL BE REFLECTED IN THE FINAL AUDIT REPORT.

(5) THE PHARMACY BENEFITS MANAGER SHALL DELIVER THE FINAL AUDIT REPORT TO THE PHARMACY OR PHARMACIST WITHIN 30 CALENDAR DAYS AFTER CONCLUSION OF THE INTERNAL APPEALS PROCESS.

(H) (1) A PHARMACY BENEFITS MANAGER MAY NOT RECOUP BY SETOFF ANY MONEYS FOR AN OVERPAYMENT OR DENIAL OF A CLAIM UNTIL 30 WORKING DAYS AFTER THE DATE THE FINAL AUDIT REPORT HAS BEEN ~~PROVIDED~~ DELIVERED TO THE PHARMACY OR PHARMACIST.

(2) A PHARMACY BENEFITS MANAGER SHALL REMIT ANY MONEY DUE TO A PHARMACY OR PHARMACIST AS A RESULT OF AN UNDERPAYMENT OF A CLAIM WITHIN 30 WORKING DAYS AFTER THE FINAL AUDIT REPORT HAS BEEN PROVIDED TO THE PHARMACY OR PHARMACIST.

(3) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION, A PHARMACY BENEFITS MANAGER MAY WITHHOLD FUTURE PAYMENTS BEFORE THE DATE THE FINAL AUDIT REPORT HAS BEEN PROVIDED TO THE PHARMACY OR PHARMACIST IF THE IDENTIFIED DISCREPANCY FOR ALL DISPUTED CLAIMS IN A PRELIMINARY AUDIT REPORT FOR AN INDIVIDUAL AUDIT EXCEEDS \$25,000.

~~(1) (1) A PHARMACY BENEFITS MANAGER SHALL ESTABLISH A REASONABLE INTERNAL PROCESS FOR A PHARMACY OR PHARMACIST TO REQUEST THE REVIEW OF AN UNDERPAYMENT OF A CLAIM.~~

~~(2) (1) A PHARMACY OR PHARMACIST MAY REQUEST A PHARMACY BENEFITS MANAGER TO REVIEW AN UNDERPAYMENT OF A CLAIM WITHIN 1 YEAR AFTER THE DATE THE CLAIM WAS PAID BY THE PHARMACY BENEFITS MANAGER.~~

~~(H) THE PHARMACY BENEFITS MANAGER SHALL GIVE WRITTEN NOTICE OF ITS REVIEW DECISION WITHIN 90 CALENDAR DAYS AFTER RECEIPT OF THE REQUEST FOR REVIEW.~~

~~(3) IF THE PHARMACY BENEFITS MANAGER DETERMINES THROUGH THE INTERNAL PROCESS THAT THE PHARMACY BENEFITS MANAGER UNDERPAID A PHARMACY OR PHARMACIST, THE PHARMACY BENEFITS MANAGER SHALL PAY ANY MONEY DUE TO THE PHARMACY OR PHARMACIST WITHIN 30 WORKING DAYS AFTER COMPLETION OF THE INTERNAL PROCESS.~~

~~(4) (1) IF THE PHARMACY OR PHARMACIST DISAGREES WITH THE PHARMACY BENEFITS MANAGER'S REVIEW OF AN UNDERPAYMENT OF A CLAIM THROUGH ITS INTERNAL PROCESS, THE PHARMACY OR PHARMACIST MAY FILE A COMPLAINT WITH THE COMMISSIONER FOR REVIEW OF THE UNDERPAYMENT BY THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE TO DETERMINE IF THE PHARMACY BENEFITS MANAGER'S CALCULATION OF THE PAYMENT AMOUNT WAS ARBITRARY AND CAPRICIOUS.~~

~~(H) A COMPLAINT FILED UNDER THIS SUBSECTION SHALL BE FILED WITHIN 30 WORKING DAYS AFTER RECEIPT OF WRITTEN NOTICE OF THE PHARMACY BENEFITS MANAGER'S REVIEW DECISION.~~

(I) (1) A PHARMACY BENEFITS MANAGER SHALL ESTABLISH A REASONABLE INTERNAL REVIEW PROCESS FOR A PHARMACY TO REQUEST THE REVIEW OF A FAILURE TO PAY THE CONTRACTUAL REIMBURSEMENT AMOUNT OF A SUBMITTED CLAIM.

(2) A PHARMACY MAY REQUEST A PHARMACY BENEFITS MANAGER TO REVIEW A FAILURE TO PAY THE CONTRACTUAL REIMBURSEMENT AMOUNT OF A CLAIM WITHIN 180 CALENDAR DAYS AFTER THE DATE THE SUBMITTED CLAIM WAS PAID BY THE PHARMACY BENEFITS MANAGER.

(3) THE PHARMACY BENEFITS MANAGER SHALL GIVE WRITTEN NOTICE OF ITS REVIEW DECISION WITHIN 90 CALENDAR DAYS AFTER RECEIPT OF A REQUEST FOR REVIEW FROM A PHARMACY UNDER THIS SUBSECTION.

(4) IF THE PHARMACY BENEFITS MANAGER DETERMINES THROUGH THE INTERNAL REVIEW PROCESS ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT THE PHARMACY BENEFITS MANAGER UNDERPAID A PHARMACY, THE PHARMACY BENEFITS MANAGER SHALL PAY ANY MONEY DUE TO THE PHARMACY WITHIN 30 WORKING DAYS AFTER COMPLETION OF THE INTERNAL REVIEW PROCESS.

(5) THIS SUBSECTION MAY NOT BE CONSTRUED TO LIMIT THE ABILITY OF A PHARMACY AND A PHARMACY BENEFITS MANAGER TO CONTRACTUALLY AGREE THAT A PHARMACY MAY HAVE MORE THAN 180 CALENDAR DAYS TO REQUEST AN INTERNAL REVIEW OF A FAILURE OF THE PHARMACY BENEFITS MANAGER TO PAY THE CONTRACTUAL AMOUNT OF A SUBMITTED CLAIM.

(J) ON REQUEST OF THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE, A PHARMACY BENEFITS MANAGER SHALL PROVIDE A COPY OF ITS AUDIT PROCEDURES OR INTERNAL APPEALS PROCESS.

~~(C) (K) (1) THE COMMISSIONER MAY ASSESS A CIVIL PENALTY NOT EXCEEDING \$10,000 FOR EACH VIOLATION OF THIS SECTION SUBTITLE.~~

~~(2) IN ADDITION TO OR INSTEAD OF ASSESSING A CIVIL PENALTY, THE COMMISSIONER MAY REQUIRE THE PHARMACY BENEFITS MANAGER TO MAKE RESTITUTION TO ANY PERSON WHO HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE VIOLATION OF THIS SECTION SUBTITLE.~~

Article - Health - General

(PPP) THE PROVISIONS OF TITLE 15, SUBTITLE 16 OF THE INSURANCE ARTICLE APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

SECTION 2. AND BE IT FURTHER ENACTED, That ~~this Act~~ the provisions of § 15-1602 of the Insurance Article, as enacted by Section 1 of this Act, shall apply to contracts entered into or renewed between a pharmacist or pharmacy and a pharmacy benefits manager on or after January 1, 2009.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to audits conducted by pharmacy benefits managers on or after January 1, 2009.

SECTION 4. AND BE IT FURTHER ENACTED, That nothing in this Act shall be construed to limit the applicability of §§ 15-1008, 15-1009(b), 27-303(2), 27-304(4), and 27-304(15) of the Insurance Article to claim denials made by or on behalf of an insurer, nonprofit health service plan, dental plan organization, or health maintenance organization.

SECTION ~~2~~ ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, April 24, 2008.