

HOUSE BILL 1150

P4, C3

0lr3577

By: **Delegates Pendergrass and Cullison**

Introduced and read first time: February 6, 2020

Assigned to: Health and Government Operations and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **State Health and Welfare Benefits Program – Maryland Competitive Pharmacy**
3 **Benefits Manager Marketplace Act**

4 FOR the purpose of requiring the Department of Budget and Management to procure a
5 certain platform and associated services in a certain manner a certain period of time
6 before a certain reverse auction is scheduled to be completed; requiring that the
7 platform have certain capabilities; prohibiting a responsive offeror from proposing to
8 subcontract certain services; requiring the Department of Budget and Management
9 to consult with the Department of Information Technology in conducting a certain
10 procurement; prohibiting the Department of Budget and Management from
11 awarding a certain contract to certain entities; authorizing the Department of
12 Budget and Management to structure a certain contract in a certain manner;
13 requiring the Department of Budget and Management, in consultation with a certain
14 vendor, to specify certain terms of a certain participant bidding agreement;
15 prohibiting the terms of a certain agreement from being modified except under
16 certain circumstances; requiring the Department of Budget and Management to
17 select a pharmacy benefits manager for the State Health and Welfare Benefits
18 Program by conducting a certain reverse auction within a certain period of time
19 before the expiration of a certain contract; authorizing the Department of Budget
20 and Management to perform a certain market check during the term of a certain
21 contract for a certain purpose; requiring the Department of Budget and Management
22 to make certain payments within certain time periods based on a certain
23 adjudication; authorizing certain health plans to use a certain reverse auction
24 process in a certain manner; establishing that a certain health plan retains certain
25 autonomy but requiring the health plan to agree to accept a certain pricing plan;
26 requiring a certain pharmacy benefits manager to provide access to certain data for
27 certain purposes; authorizing a certain prospective bidder or offeror, a bidder, or an
28 offeror to submit a certain protest in a certain manner; authorizing a prescription
29 benefits manager to submit a contract claim in a certain manner under certain
30 circumstances; stating the intent of the General Assembly; defining certain terms;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



providing for the application of this Act; and generally relating to pharmacy benefits managers and the State Health and Welfare Benefits Program.

BY repealing and reenacting, without amendments,
Article – Insurance
Section 15–1601(l) and (m)
Annotated Code of Maryland
(2017 Replacement Volume and 2019 Supplement)

BY adding to
Article – State Personnel and Pensions
Section 2–502.2
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

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

Article – Insurance

15–1601.

(l) (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.

(m) “Pharmacy benefits manager” means a person that performs pharmacy benefits management services.

Article – State Personnel and Pensions

2–502.2.

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

(2) “MARKET CHECK” MEANS A TECHNOLOGY-DRIVEN EVALUATION OF PRESCRIPTION DRUG PRICING BASED ON BENCHMARKS DERIVED FROM PHARMACY BENEFITS MANAGERS’ REVERSE AUCTION PROCESSES CONDUCTED IN THE UNITED STATES OVER THE IMMEDIATELY PRECEDING 12 MONTHS.

(3) “PHARMACY BENEFITS MANAGER” HAS THE MEANING STATED IN § 15–1601 OF THE INSURANCE ARTICLE.

(4) “PRICE” MEANS THE PROJECTED COST OF A BID FOR PROVIDING SERVICES OVER THE DURATION OF THE CONTRACT.

(5) “REVERSE AUCTION” MEANS AN AUTOMATED BIDDING PROCESS CONDUCTED ONLINE THAT STARTS WITH AN OPENING PRICE AND ALLOWS QUALIFIED BIDDERS TO COUNTEROFFER A LOWER PRICE FOR MULTIPLE ROUNDS OF BIDDING.

(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO OPTIMIZE PRESCRIPTION DRUG SAVINGS BY THE STATE THROUGH:

(1) ADOPTION OF A REVERSE AUCTION PROCESS FOR THE SELECTION OF A PHARMACY BENEFITS MANAGER FOR THE PROGRAM;

(2) ELECTRONIC REVIEW AND VALIDATION OF PHARMACY BENEFITS MANAGER CLAIMS INVOICES AS THE FOUNDATION FOR RECONCILING PHARMACY

1 **BILLS; AND**

2 **(3) MARKET CHECKS OF THE INCUMBENT PHARMACY BENEFITS**
3 **MANAGER'S PRESCRIPTION DRUG PRICING.**

4 **(C) (1) AT LEAST 3 MONTHS BEFORE A PHARMACY BENEFITS MANAGER**
5 **REVERSE AUCTION IS SCHEDULED TO BE COMPLETED, THE DEPARTMENT SHALL**
6 **PROCURE, THROUGH A COMPETITIVE SEALED PROPOSAL CONDUCTED IN**
7 **ACCORDANCE WITH § 13-104 OF THE STATE FINANCE AND PROCUREMENT**
8 **ARTICLE, A TECHNOLOGY PLATFORM, AND ANY ASSOCIATED PROFESSIONAL**
9 **SERVICES NECESSARY TO OPERATE THE PLATFORM, TO:**

10 **(I) EVALUATE THE QUALIFICATIONS OF PROSPECTIVE**
11 **PHARMACY BENEFITS MANAGERS FOR THE PROGRAM; AND**

12 **(II) AUTOMATICALLY ADJUDICATE PRESCRIPTION DRUG**
13 **CLAIMS.**

14 **(2) THE PLATFORM PROCURED UNDER PARAGRAPH (1) OF THIS**
15 **SUBSECTION SHALL HAVE THE CAPABILITY TO:**

16 **(I) HOST AND CONDUCT AN ONLINE AUTOMATED REVERSE**
17 **AUCTION;**

18 **(II) AUTOMATE REPRICING OF DIVERSE AND COMPLEX**
19 **PHARMACY BENEFITS MANAGER PRESCRIPTION DRUG PRICING PROPOSALS TO**
20 **ENABLE DIRECT COMPARISONS OF THE PRICE OF BIDS USING ALL ANNUAL CLAIMS**
21 **DATA AVAILABLE FOR STATE-FUNDED HEALTH PLANS OR MULTIPLE HEALTH PLAN**
22 **PRESCRIPTION DRUG PURCHASING GROUPS USING CODE-BASED CLASSIFICATION**
23 **OF PRESCRIPTION DRUGS FROM NATIONALLY ACCEPTED DRUG SOURCES;**

24 **(III) PRODUCE AN AUTOMATED REPORT AND ANALYSIS OF BIDS,**
25 **INCLUDING THE RANKING OF BIDS BASED ON THE COMPARATIVE COSTS AND**
26 **QUALITATIVE ASPECTS OF THE COSTS WITHIN 48 HOURS AFTER THE CLOSE OF EACH**
27 **ROUND OF REVERSE AUCTION BIDDING; AND**

28 **(IV) AFTER THE CLOSE OF A REVERSE AUCTION, PERFORM**
29 **ELECTRONIC, LINE BY LINE, CLAIM BY CLAIM REVIEW OF ALL INVOICED PHARMACY**
30 **BENEFITS MANAGER CLAIMS WITHIN 12 HOURS OF RECEIPT AND IDENTIFY ALL**
31 **DEVIATIONS FROM THE SPECIFIC TERMS OF THE SERVICES CONTRACT RESULTING**
32 **FROM THE REVERSE AUCTION PROCESS.**

33 **(3) A RESPONSIVE OFFEROR UNDER PARAGRAPH (2) OF THIS**

SUBSECTION MAY NOT SUBCONTRACT ANY PART OF THE REVERSE AUCTION OR A REVIEW DESCRIBED UNDER PARAGRAPH (2)(IV) OF THIS SUBSECTION.

(4) THE DEPARTMENT SHALL CONSULT WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY IN CONDUCTING THE PROCUREMENT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(5) THE DEPARTMENT MAY NOT AWARD A CONTRACT UNDER PARAGRAPH (1) OF THIS SUBSECTION TO:

(I) A PHARMACY BENEFITS MANAGER;

(II) A SUBSIDIARY OR AFFILIATE OF A PHARMACY BENEFITS MANAGER; OR

(III) A VENDOR THAT IS MANAGED BY A PHARMACY BENEFITS MANAGER OR RECEIVES, DIRECTLY OR INDIRECTLY, REMUNERATION FROM A PHARMACY BENEFITS MANAGER FOR AGGREGATING CLIENTS INTO A CONTRACTUAL RELATIONSHIP WITH A PHARMACY BENEFITS MANAGER.

(6) THE DEPARTMENT MAY STRUCTURE A CONTRACT AWARDED UNDER THIS SUBSECTION TO REQUIRE THE PHARMACY BENEFITS MANAGER SELECTED UNDER SUBSECTION (E) OF THIS SECTION TO PAY THE COST OF THE TECHNOLOGY PLATFORM AND ASSOCIATED PROFESSIONAL SERVICES CONTRACTED UNDER THIS SUBSECTION BY ASSESSING A PER-PRESCRIPTION FEE PAID BY THE PHARMACY BENEFITS MANAGER DIRECTLY TO THE TECHNOLOGY PLATFORM VENDOR.

(D) (1) IN CONSULTATION WITH THE VENDOR SELECTED UNDER SUBSECTION (C) OF THIS SECTION, THE DEPARTMENT SHALL SPECIFY THE TERMS OF A PARTICIPANT BIDDING AGREEMENT, INCLUDING COMMON DEFINITIONS, PRESCRIPTION DRUG CLASSIFICATIONS, RULES, WHETHER THE VENDOR WILL BE ASSESSED A PLATFORM VENDOR FEE DESCRIBED UNDER SUBSECTION (C)(6) OF THIS SECTION, AND OTHER CONTRACT TERMS THAT ALL BIDDERS MUST ACCEPT AS A PREREQUISITE FOR PARTICIPATION IN THE REVERSE AUCTION.

(2) THE TERMS OF A PARTICIPANT BIDDING AGREEMENT SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE MODIFIED EXCEPT BY AFFIRMATIVE APPROVAL BY THE DEPARTMENT.

(E) NOT LATER THAN 6 MONTHS BEFORE THE EXPIRATION OF A CONTRACT FOR PHARMACY BENEFITS MANAGER SERVICES FOR THE PROGRAM, THE DEPARTMENT SHALL SELECT A PHARMACY BENEFITS MANAGER FOR THE PROGRAM

1 BY CONDUCTING A REVERSE AUCTION.

2 (F) (1) THE DEPARTMENT MAY PERFORM A MARKET CHECK OF
3 PHARMACY BENEFITS MANAGER SERVICES DURING THE TERM OF A PHARMACY
4 BENEFITS MANAGER CONTRACT TO ENSURE CONTINUING COMPETITIVENESS OF
5 PRESCRIPTION DRUG PRICING OVER THE LIFE OF THE CONTRACT.

6 (2) THE DEPARTMENT SHALL MAKE REGULAR, PERIODIC PAYMENT
7 OF INVOICES WITHIN THE TIME PERIODS SPECIFIED IN A CONTRACT BASED ON THE
8 AUTOMATED ADJUDICATION OF INVOICED CLAIMS USING THE TECHNOLOGY
9 PLATFORM TO VALIDATE THAT CLAIMS PAYMENTS COMPLY WITH THE TERMS OF THE
10 CONTRACT.

11 (G) (1) THE FOLLOWING HEALTH PLANS IN THE STATE MAY USE THE
12 REVERSE AUCTION PROCESS ESTABLISHED UNDER THIS SECTION INDIVIDUALLY OR
13 COLLECTIVELY AS A JOINT PURCHASING GROUP WITH THE PROGRAM:

14 (I) A STATE-FUNDED HEALTH PLAN OTHER THAN THE
15 PROGRAM;

16 (II) A SELF-FUNDED COUNTY, MUNICIPAL, OR OTHER LOCAL
17 GOVERNMENT EMPLOYEE HEALTH PLAN;

18 (III) A PUBLIC SCHOOL EMPLOYEE HEALTH PLAN; AND

19 (IV) A HEALTH PLAN OF A PUBLIC INSTITUTION OF HIGHER
20 EDUCATION.

21 (2) A HEALTH PLAN THAT PARTICIPATES IN A REVERSE AUCTION
22 PURCHASING GROUP UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL:

23 (I) RETAIN FULL AUTONOMY OVER DETERMINATION OF THE
24 ENTITY'S PRESCRIPTION DRUG FORMULARY AND PHARMACY BENEFIT DESIGNS; BUT

25 (II) AGREE, BEFORE PARTICIPATING IN THE REVERSE AUCTION,
26 TO ACCEPT THE PRESCRIPTION DRUG PRICING PLAN THAT IS SELECTED THROUGH
27 THE REVERSE AUCTION PROCESS.

28 (H) A PHARMACY BENEFITS MANAGER THAT SUBMITS A BID UNDER
29 SUBSECTION (E) OF THIS SECTION OR ENTERS INTO A CONTRACT WITH THE
30 DEPARTMENT OR A HEALTH PLAN DESCRIBED UNDER SUBSECTION (G)(1) OF THIS
31 SECTION SHALL PROVIDE THE DEPARTMENT AND HEALTH PLAN ACCESS TO
32 COMPLETE PHARMACY CLAIMS DATA NECESSARY FOR THE DEPARTMENT AND

1 HEALTH PLAN TO:

2 (1) CONDUCT THE REVERSE AUCTION; AND

3 (2) CARRY OUT ADMINISTRATIVE AND MANAGEMENT DUTIES.

4 (I) (1) A PROSPECTIVE BIDDER OR OFFEROR, A BIDDER, OR AN OFFEROR
5 MAY SUBMIT A PROTEST AS PROVIDED UNDER TITLE 15, SUBTITLE 2 OF THE STATE
6 FINANCE AND PROCUREMENT ARTICLE.

7 (2) IF THE PRESCRIPTION BENEFITS MANAGER SELECTED UNDER
8 SUBSECTION (E) OF THIS SECTION ASSERTS THAT THE DEPARTMENT HAS
9 UNDERPAID ON A CLAIM, THE PRESCRIPTION BENEFITS MANAGER MAY SUBMIT A
10 CONTRACT CLAIM AS PROVIDED UNDER TITLE 15, SUBTITLE 2 OF THE STATE
11 FINANCE AND PROCUREMENT ARTICLE.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
13 apply only prospectively and may not be applied or interpreted to have any effect on or
14 application to any contract for pharmacy benefits management services entered into before
15 the effective date of this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June
17 1, 2020.