



DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

March 16, 2022

The Honorable Delores G. Kelley
Chair, Senate Finance Committee
3 East Miller Office Building
Annapolis, MD 21401-1991

RE: SB 689 – Pharmacy Benefits Managers – Prohibited Actions – Letter of Information

Dear Chair Kelley and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of information on Senate Bill (SB) 689 – Pharmacy Benefits Managers – Prohibited Actions. SB 689 will make §15–1611(B) of the Insurance Article applicable to Pharmacy Benefits Managers (PBM) that contract with Medicaid managed care organizations (MCOs). Among other requirements, PBMs will be prohibited from engaging in spread pricing; taking longer than 30 days to review an application from a pharmacy or pharmacist; denying a pharmacy the right to participate in a policy or contract if they agree to meet the terms of the policy or contract; or requiring a beneficiary to use a mail order pharmacy to fill a prescription.

The requirements in SB 689 will have an indeterminate, but potentially significant, fiscal impact on MDH. The bill will effectively shift PBMs to an any willing provider model. Requiring PBMs to engage with any pharmacy if they agree to meet the terms of the PBMs policy or contract has the potential to significantly impact the PBM's ability to negotiate with drug manufacturers, resulting in the loss of savings realized today. MDH also anticipates that certain PBMs may not be able to meet the 30-day deadline for reviewing new applications from pharmacies and pharmacists, increasing the administrative burden on the PBM, which will be passed on to the MCOs in the form of new costs. To the extent that costs to the PBMs, and by extension the MCOs, to deliver pharmacy benefits increase, these costs will be passed on to MDH and require payment of higher capitation rates to the MCOs.

SB 689 will also reverse the General Assembly's previous policy direction to MDH to have the MCOs administer the Medicaid pharmacy benefit to ensure access to prescription drugs by Marylanders and to manage skyrocketing drug costs.¹ MDH further notes that legislation is not required to eliminate spread pricing from the MCOs' agreements with PBMs. MDH has already taken action on this issue and prohibited this practice as part of the MCOs' contracts since

¹ HB 1290 (2015); report available at:

<https://mmcp.health.maryland.gov/Documents/JCRs/MCopharmacynetworksJCRfinal12-15.pdf>

calendar year 2021. Further, MCO enrollees already have the ability to opt out of the use of mail order pharmacies under existing State regulations.²

If you have any questions, please contact Heather Shek, Director of Governmental Affairs, at heather.shek@maryland.gov or (410) 260-3190.

Sincerely,

A handwritten signature in cursive script that reads "Dennis R. Schrader".

Dennis R. Schrader
Secretary

² COMAR 10.67.06.04