

SB0898_FAV_MedChi_PBMs - Definitions of Carrier, E

Uploaded by: Danna Kauffman

Position: FAV

MedChi

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TO: The Honorable Melony Griffith, Chair
Members, Senate Finance Committee
The Honorable Justin Ready

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer
J. Steven Wise
Andrew G. Vetter
Christine K. Krone
410-244-7000

DATE: March 21, 2023

RE: **SUPPORT** – Senate Bill 898 – *Pharmacy Benefits Managers – Definitions of Carrier, ERISA, and Purchaser*

The Maryland State Medical Society (MedChi), the largest physician organization in Maryland, **supports** Senate Bill 898. Under Chapter 358 of 2021, certain provisions of law governing Pharmacy Benefits Managers (PBMs) applied only to PBMs that provide pharmacy benefits management services on behalf of a carrier. This bill expands the definition and makes the following provisions of the Insurance Article apply to all PBMs, including those providing services on behalf of self-funded plans and insured plans:

- information on and sales of prescription drugs (§ 15-1611);
- choice of pharmacy by a beneficiary (§ 15-1611.1);
- reimbursement for a pharmaceutical product or pharmacist service (§ 15-1612);
- pharmacy and therapeutics committee requirements (§ 15-1613 through § 15-1618);
- requirements before entering into a contract (§ 15-1623);
- rebate sharing contract requirements (§ 15-1624);
- audits by PBMs (§ 15-1629);
- review process requirements (§ 15-1630); and
- therapeutic interchange requirements (§ 15-1633.1 through § 15-1639).

It is important to note that there is a court case *Rutledge v. Pharmaceutical Care Management Association* that addressed the legal issues concerning the regulation of ERISA plans under state laws. The Maryland Insurance Administration (MIA) issued a report following the decision and stated

“Applying that standard to Maryland law, it is the view of the MIA that should the legislature determine to apply additional provisions of Title 15, Subtitle 16 to PBMs when providing services to an ERISA plan, ERISA would not preempt the MIA’s enforcement of those laws in that context.” While it could be argued by some that this bill protects pharmacies, MedChi believes that it is a consumer protection bill. Under this bill, patients will benefit from greater MIA oversight. PBMs have an increased role in patient care and are, in essence, determining whether patients receive necessary care through prior authorization and other policies. It is also important to note that many of the PBMs are owned by insurance companies, but are not regulated as such.

Therefore, MedChi believes that with the increasing role that PBMs play in determining the delivery of health care services that additional MIA oversight is appropriate and necessary. We urge a favorable vote.

NAIFAsb8982023.pdf

Uploaded by: Brett Lininger

Position: UNF



Senate Bill 898
Pharmacy Benefits Managers – Definition of Carrier, ERISA, and Purchaser
Position: Oppose

Dear Chair Griffith, Vice Chair Klausmeier and Members of the Senate Finance Committee.

NAIFA-MD (“The National Association of Insurance and Financial Advisors – Maryland Chapter”) appreciates the opportunity to submit written testimony on Senate Bill 898. NAIFA-MD is made up of insurance agents and advisors, financial advisors and financial planners, investment advisors, broker/dealers, multiline agents, health insurance and employee benefits specialists, and more. We are the closest to the consumer and employers by helping them navigate the complex arena of health benefits.

NAIFA-MD opposes Senate Bill 898 and its cross-file, HB 357¹ as they broadly expand Maryland’s regulation of pharmacy benefit managers working on behalf of self-funded large employers, counties, municipalities, unions and their respective employees. For nearly 50 years, ERISA has prevented state legislators from preempting federal laws governing self-funded plans. This means employers with self-funded plans could expect consistency across state lines. However, a 2020 U.S. Supreme Court decision in *Rutledge v. PCMA* has jeopardized those federal protections. The *Rutledge* decision upheld an Arkansas law that required PBMs to reimburse pharmacists at certain levels. The decision has emboldened a wave of state-level activism, such as this legislation, driven by stakeholders who are looking to increase their profits.

To understand the potential impact of this legislation, which is being opposed by employers in the State, including unions, counties, municipalities, and private employers, it is important to understand what legislation has been introduced previously in Maryland and around the country.

- Statutorily set reimbursement rates and dispensing fees
- prohibition on preferred mail order
- dismantling of specialty networks

Additionally, it was thought network design was part of benefit design but the MIA’s interpretation that §15-1611.1 is not plan design makes key decisions counties and municipalities make to manage cost by tailoring their networks fair game. Passing this legislation means guaranteeing profits for a small number of pharmacies over keeping benefits affordable and available for employees across the State.

¹ As introduced and as amended and passed out of the House.

As the State looks to lower prescription drug costs through the Prescription Drug Affordability Board (“PDAB”), the legislature should also be thoughtful and intentional about not driving up the cost of prescription drug benefits through bills such as this.

We urge an unfavorable report.

SB 898 Victoria Leonard LIUNA (UNFAV).docx.pdf

Uploaded by: Victoria Leonard

Position: UNF

March 20, 2023

The Honorable Melony Griffith, Chair
The Honorable Katherine Klausmeier, Vice Chair
Finance Committee
2 West, Miller Senate Office Building
Annapolis, Maryland 21401

Testimony of Victoria Leonard
on SB 898: Pharmacy Benefits Managers – Definition of Carrier, ERISA, and Purchaser
Position: UNFAVORABLE

Chair Griffith, Vice Chair Klausmeier, and Members of the Senate Finance Committee,

LiUNA appreciates the opportunity to offer testimony on SB 898.

My name is Victoria Leonard. I am the Political and Legislative Director for the Baltimore Washington Laborers' District Council (BWLDC), an affiliate of the Laborers' International Union of North America, or LiUNA for short. The BWLDC represents more than 7,500 members across Maryland, Virginia, and the District of Columbia. Our members are proudly employed on many infrastructure construction projects across the region. More than half of our members are Maryland residents.

LiUNA opposes Senate Bill 898 and its cross-file, HB 357 as they broadly expand Maryland's regulation of pharmacy benefit managers working on behalf of self-funded large employers, counties, municipalities, unions and their respective employees.

One of the most important fringe benefits a LiUNA member receives is health insurance coverage. This legislation, SB 898, has the potential to adversely impact the cost and type of coverage our members are provided.

SB 898 would upend a long body of case law and a long legislative history of the State not regulating self-funded or ERISA health insurance plans. SB 898 has been supported by pharmacies for the sole purpose of increasing their remuneration at the expense of union members. The proponents incorrectly assert, that this legislation is constitutional under the 2020 Supreme Court decision in *Rutledge v. PCMA*.

If passed this legislation would result in employers and unions with self-funded plans would have inconsistent rules across state lines. SB 898 would result in additional costs for employers and or union members. The increased costs will be borne directly by the employer or our union members in the forms decreased benefits or increased co-pays for prescription drugs.

Specifically, SB 898 may change current negotiated health care plans and coverages in the following manner:

- 1) Increasing prescription dispensing fees;
- 2) Altering the terms and costs of mail order pharmacy dispensing;
- 3) Altering current networks; and
- 4) Eliminating protections from price gouging for specialty drugs.

We urge this committee to protect our current benefits and allow our plans to be treated consistently nationwide. We strongly oppose the legislation and respectfully ask for an unfavorable report. Should the committee have any questions please reach out to our legislative counsel, Bill Kress.

Senate Bill 898 MABE Oppose.pdf

Uploaded by: William Kress

Position: UNF



INSURANCE PROGRAMS

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BILL: Senate Bill 898

TITLE: Pharmacy Benefits Managers – Definition of Carrier, ERISA, and Purchaser

DATE: February 21, 2023

POSITION: UNFAVORABLE

COMMITTEE: Finance Committee

CONTACT: Milton E. Nagel, CPA, Insurance Program Administrator

The Maryland Association of Boards of Education's Pharmacy Purchasing Collaborative, is an innovative project between MABE and Keenan Pharmacy Services, recognized as an expert in pharmacy benefit management and improvement strategies. Geared toward ensuring high-cost medications are dispensed at the lowest net cost possible for counties and school systems throughout Maryland, **the MABE Pharmacy Purchasing Collaborative can save Maryland counties and school systems an impressive 10% to 30% on their prescription drug program costs.**

The Collaborative also is unique in that it includes full-service pharmacy benefits and consulting, as well as performance guarantees. The MABE Pharmacy Purchasing Collaborative means fully disclosed pricing, active physician engagement, and clear communication about lower-priced alternatives. Strengths like these are needed more than ever by counties and school systems that are understandably mindful of budget, while also eager to incorporate not only considerable savings but greater clarity and accountability in their prescription drug-related programs."

MABE opposes Senate Bill 898 and it's cross-filed, HB 357 as they broadly expand Maryland's regulation of pharmacy benefit managers working on behalf of the Maryland Public School Boards insurance and pharmacy purchasing collaborative.

SB 898 would open the door and allow the State to regulate health insurance plans and pharmacy benefits. SB 898 has been supported by pharmacies for the sole purpose of increasing their remuneration at the expense of employers. While MABE strongly support our local independent pharmacies by ensuring they can and do participate to serve our employees, MABE does not support imposing regulations that would remove our ability to negotiate pricing, benefits, and networks to best serve the school systems and our employees.

If passed, SB 898 would result in additional costs for our school systems and our employees. The increased costs will be borne directly by the school systems or our employees through decreased benefits or increased co-pays for prescription drugs. We conservatively estimate that this will increase costs by 5 to 7%.

Specifically, SB 898 may change current negotiated prescription purchasing plans and coverages in the following manner:

- Altering the terms and costs of mail order pharmacy dispensing;
- Increasing prescription dispensing fees;
- Eliminating protections from price gouging for specialty drugs; and
- Altering current networks

We urge this committee to take a more measured approach that considers the impact to all stakeholders and reject this legislation. If you have any questions contact me or our legislative counsel, Bill Kress.

SB0898 - MIA - LOI - FINAL.pdf

Uploaded by: Andrew Tress

Position: INFO

WES MOORE
Governor

ARUNA MILLER
Lt. Governor



Maryland
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Date: March 21, 2023

Bill # / Title: Senate Bill 898 – Pharmacy Benefits Managers - Definitions of Carrier, ERISA, and Purchaser

Committee: Senate Finance Committee

Position: Letter of Information (LOI)

The Maryland Insurance Administration (MIA) appreciates the opportunity to provide information regarding Senate Bill 898.

Senate Bill 898 amends the pharmacy benefit manager (PBM) subtitle within the Insurance Article to make the entire subtitle applicable to PBMs when providing services on behalf of self-funded plans. Currently, the subtitle as a whole applies to PBMs when providing services on behalf of a carrier. In 2021, legislation was passed to apply selected provisions of the subtitle to PBMs when acting for self-funded plans. Under Senate Bill 898, the provisions of the subtitle would now also apply to PBMs providing services to self-funded plans with respect to prohibitions on gag clauses, choice of pharmacy rights, the prohibition on a PBM reimbursing a pharmacy less than it would itself or an affiliate, pharmacy and therapeutics committee requirements, financial disclosures and reports between PBMs and purchasers, PBM audits of pharmacies, the internal review process related to reimbursements on claims, and requirements for therapeutic interchanges. Under the bill, the MIA will gain jurisdiction over PBMs providing services to self-funded plans in certain situations, and will be required to evaluate PBM compliance with the additional laws through complaint investigations and market conduct activities.

As drafted, Senate Bill 898 gives rise to a potential ERISA challenge. This is due to the elimination of the definition of “carrier” from § 15-1601, and the replacement of all references to “carrier” throughout the subtitle with the term “purchaser” which is defined to include ERISA self-funded plans. Some sections of the subtitle, specifically §§ 15-1606, 15-1628, and 15-1628.3, currently impose affirmative obligations on carriers, rather than on PBMs. By changing the references in these sections to “purchaser” (which includes ERISA self-funded plans), these sections of the law now place a direct obligation on the self-funded plan, and would likely be subject to an ERISA challenge. The MIA understands that it is not the intent of the sponsor to directly regulate the plans themselves, but to regulate the PBMs.

The MIA notes two options for avoiding this potential challenge: (1) retain the definition of “carrier” in § 15-1601, and revert references to “purchaser” in §§ 15-1606, 15-1628, and 15-1628.3 back to “carrier.” Or, (2) delete references to “purchaser” in these three sections, because it is unusual for the PBM subtitle to include requirements specifically applicable to carriers, which may be more appropriately addressed in a different subtitle of Title 15. Please note that even if one of these changes is made in the bill language, and the “purchaser” references are deleted or changed back to “carrier,” the law would still prohibit the PBM itself from engaging in the specified activities in these sections when acting on behalf of a self-funded plan or insured plan, even if the obligation is removed from plan directly.

Thank you for the opportunity to provide this letter of information. The MIA is available to provide additional information and assistance to the Committee.