



House Bill 357
Pharmacy Benefits Managers – Definition of Carrier, ERISA, and Purchaser
Position: Unfavorable

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 House Bill 357. 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 House Bill 357¹ as it broadly expands 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 self-funded plans 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.