



HB 357 (2023)

Pharmacy Benefit Managers- Definitions of Carrier, ERISA, and Purchaser

Position of Independent Pharmacies of Maryland (IPMD): FAVORABLE

WHAT THIS BILL DOES:

- **This Bill will subject ERISA Pharmacy Benefit Managers (PBMs) to all of the provisions of the Insurance Code, set out in Title 15, subtitle 16, that non-ERISA PBMs must already comply with.** Under this bill, all of the provisions of the Insurance Code dealing with PBMs will apply equally to ERISA PBMs. This bill will treat and regulate PBMs equally under the Insurance Code.
- **This Bill is legally supported by the decision of the U.S. Supreme Court in *Rutledge v. Pharmaceutical Care Management Association*, 141 S. Ct. 474 (2020).** *Rutledge* held, unanimously, that states have broad authority to regulate ERISA PBMs. As a result, states throughout the country are placing ERISA PBMs under state regulation.
- In the 2021 session, in Chapter 358, the General Assembly carved out or exempted ERISA PBMs from several sections of Title 15, subtitle 16 of the Insurance Code, because of claims by the PBMs that the *Rutledge* decision was very limited and did not allow full application of the Insurance Code to ERISA PBMs. To clarify the issue, the General Assembly wisely required an MIA study.
- **The resulting MIA study completely rejected the position of the PBMs that ERISA preemption would prohibit or restrict application of Title 15, subtitle 16, to ERISA PBMs:**
“It is the view of the MIA that, should the legislature elect to make all of the current provisions of Title 15, Subtitle 16 [of the Insurance Code] applicable to PBMs when contracted with an ERISA plan, the enforcement of those laws by the MIA would not be preempted by ERISA. Relying on *Rutledge*, we conclude that none of the Maryland PBM laws if applied to a PBM contracted to an ERISA plan would have an impermissible connection with or an impermissible reference to ERISA plans.” MIA report at page 17, emphasis added.
- Passage of this bill is important to independent pharmacies, as it will finally require ERISA PBMs to comply with the same rules as non-ERISA PBMs. As the Fiscal and Policy Note states, passage of this bill will: eliminate gag clauses, where PBMs prohibit pharmacies from giving information on the costs of drugs to consumers; allow choice of a pharmacy by the consumer; equalize reimbursement between independent and PBM affiliated pharmacies; deal with rebate sharing contract requirements; put pharmacy audit rules in place; and other reforms relating to PBM conduct.
- This bill will eliminate the carve-outs and favorable treatment given to PBMs in the 2021 session that were given due to the misstatement of the law by the PBMs, and apply provisions of the Insurance Code equally to ERISA PBMs, as is now clearly permitted by the unanimous decision of the U.S. Supreme Court in *Rutledge*.