

March 2, 2023

The Honorable Joseline Pena-Melnyk
Chair, Health and Government Operations Committee
241 Taylor House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: Support for HB 357

Dear Chair Pena-Melnyk and Members of the Committee:

The National Community Pharmacists Association (NCPA) is writing to express its strong support of the effort to clarify definitions of carrier and purchaser as crafted in HB 357. NCPA represents the interest of America's community pharmacists, including the owners of more than 19,400 independent community pharmacies across the United States and more than 330 independent community pharmacies in Maryland. These pharmacies employed more than 4,000 individuals and they filled nearly 21 million prescriptions in 2021.

With the definition clarifications found in HB 357, the State of Maryland is more closely aligning itself with recent court decisions clarifying a state's ability to regulate pharmacy benefit managers (PBMs) administering benefits for health plans that fall within the scope of federal law known as the Employee Retirement Income Security Act (ERISA). In *Rutledge v. PCMA*, the Supreme Court held the federal law, the Employee Retirement Income Security Act of 1974 does not prevent states from enacting laws regulating the abusive payment practices of pharmacy benefit managers, the controversial middlemen that manage prescription drug benefits for health insurers, employers and some government programs.¹ *Rutledge* clarified that States may regulate PBMs even when they serve ERISA plans, and ERISA preemption is concerned primarily with State laws only when they "requir[e] payment of specific benefits" or "bind plan administrators to specific rules for determining beneficiary status."² Typical State laws regulating PBMs do neither of these things—even if they are extended to apply to PBMs when they are serving ERISA plans.

If enacted, HB 357 will ensure both consistency with the highest law of our land and fair reimbursement to community pharmacies in the face of egregious PBM practices recognized by the State's 2021 enactment of HB 601. Further, as noted by the Maryland Insurance Administrator in its 2022 report required by HB 601:

It is the view of the MIA that, should the legislature elect to make all of the current provisions of Title 15, Subtitle 16 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

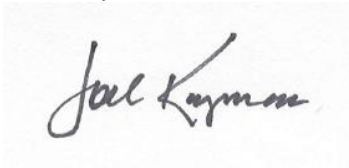
¹ [18-540 Rutledge v. Pharmaceutical Care Management Assn. \(12/10/2020\) \(supremecourt.gov\)](#)

² *Rutledge*, 141 S. Ct. at 480.

impermissible connection with or an impermissible reference to ERISA plans. The laws in question are concerned primarily with PBM-pharmacy relationships. They do not require an ERISA plan to pay specific benefits or bind plan administrators to specific rules for determining beneficiary status, adopt particular benefits, force ERISA plans to report detailed information, or otherwise control the benefit design and administration of an ERISA plan. And, they apply whether the PBM is contracted to an ERISA plan or a non-ERISA plan.³

We respectfully seek your support of HB 357. Thank you for your time and consideration of this important issue. If you have any questions, please do not hesitate to contact me at joel.kurzman@ncpa.org.

Sincerely,

A handwritten signature in black ink that reads "Joel Kurzman". The signature is written in a cursive style and is centered within a light gray rectangular box.

Joel Kurzman
Director, State Government Affairs

³ <https://insurance.maryland.gov/Consumer/Appeals%20and%20Grievances%20Reports/Report-of-the-MIA-on-Rutledge-vs-Pharmaceutical-Care-Mgt-Assn-and-its-impact-on-Title-15-MSAR-13329.pdf>