



Testimony offered on behalf of:
EPIC PHARMACIES, INC.

IN SUPPORT OF:

HB 357 – Pharmacy Benefits Managers – Definitions of Carrier, ERISA, and Purchaser.

House Health and Government Operations Committee

Hearing 3/2 at 1:00 PM

EPIC Pharmacies, Inc. **SUPPORTS HB 357** – Pharmacy Benefits Managers - Definitions of Carrier, ERISA, and Purchaser.

We have been dealing with the repercussions of federal ERISA laws in Maryland as they related to PBMs for many years. The State and this committee have always taken the PBM assumption that their unscrupulous business practices were protected by ERISA laws as fact. Finally, federal cases have made their way through the court system and in 2020, the Supreme Court decided to hear *Rutledge v. PCMA*. This case was brought by the Arkansas Attorney General in defense of a 2015 law that regulates PBMs and mandates fair payments for all insurance plans they represent. In December of 2020, the court unanimously ruled on behalf of *Rutledge* and Arkansas. After that decision, we worked with the committee in 2021 to remove any mention or implication that ERISA preempted PBM legislation from MD law, but were discouraged by the committee's reluctance to broadly apply the ruling, choosing to only target reimbursement. Since 2021, it has become clear in an opinion from the Maryland Attorney General and a report from the Maryland Insurance Administration that the ruling most certainly should apply to all types of PBM regulation. HB 357 will clean up the MD statute and expand the regulation of PBMs to all plans and all sections of the law.

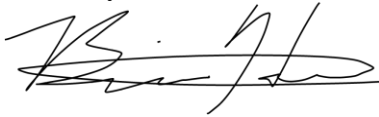
You will continue to hear from PCMA that this is not settled law, but in the most recent case from November of 2021, the 8th Circuit Court further upheld the Supreme Court ruling in the North Dakota case of *PCMA v. Wehbi*. This ruling went even further in rebuking the claims that PBMs cannot be regulated by allowing North Dakota's law to apply to Medicare Part D plans as well. The clear message from these decisions is that State Legislatures like this one can most certainly regulate the actions of PBMs. No matter what you may hear from PCMA today or going forward, this issue of ERISA preemption has been settled and they can no longer hide behind an almost 50 year old law.

In this Committee and Subcommittee hearings for as long as we can remember, we fought the efforts of PCMA to limit any State law regulating PBMs to a very small percentage of plans. The Supreme Court eliminated the ERISA excuse from this argument and has indicated that all PBM plans are subject to regulation by State Legislatures and committees such as this one. HB

357 will allow the State to enforce all current PBM laws in a way that more uniformly regulates the industry and allows for a more level playing field. This will ultimately benefits patients in Maryland.

I thank the committee for all the work they have done working through PBM legislation in the past and respectfully ask your support for HB 357.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian M. Hose". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian M. Hose, PharmD
EPIC PharmPAC Chairman
301-432-7223
brian.hose@gmail.com