

MedChi

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TO: The Honorable Joseline A. Pena-Melnyk, Chair
Members, House Health and Government Operations Committee
The Honorable Nicholas R. Kipke

FROM: Danna L. Kauffman
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RE: **SUPPORT** – House Bill 357 – *Pharmacy Benefits Managers – Definitions of Carrier, ERISA, and Purchaser*

The Maryland State Medical Society (MedChi), the largest physician organization in Maryland, **supports** House Bill 357. 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.