



SB 626/ HB 726 (2024)

Pharmacy Benefit Managers- Definition of Purchaser and Alteration of Application of Law

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 other PBMs must already comply with.**
- Passage of this bill is important to independent pharmacies, as it will finally require ERISA PBMs to: (1) eliminate gag clauses, where PBMs prohibit pharmacies from giving information on the costs of drugs to consumers which could save consumers money; (2) allow choice of a pharmacy by the consumer instead of allowing PBM pharmacies to require consumers to use PBM affiliated pharmacies; (3) equalize reimbursement between independent and PBM affiliated pharmacies (one study prepared by the Georgia Pharmacy Association, demonstrated the vast discrimination and lower rates that PBMs pay independent pharmacies in that state); (4) put reasonable pharmacy audit rules in place; (5) require certain disclosures to purchasers that offer drug plans in the state; and (6) mandate an internal PBM review process for pharmacies to challenge unpaid claims by PBMs.
- **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 erroneous claims by the PBMs that the *Rutledge* decision 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. MIA report at page 17, emphasis added.
- This bill will eliminate the carve-outs given to PBMs in the 2021 session due to the misstatement of the law by the PBMs, and apply provisions of the Insurance Code equally to all PBMs. It will help the independent community pharmacies throughout MD be treated more fairly by PBMs, and help them survive from the predatory practices of the financially huge PBMs.
- This identical bill was passed by the House in the 2023 session of the General Assembly. It was not voted on in Senate Finance.