



Testimony offered on behalf of:
EPIC PHARMACIES, INC.

IN SUPPORT OF:

HB 726 – Pharmacy Benefits Managers – Definitions of Purchaser and Alteration of Application of Law.

Health Government Operations Committee
Hearing 2/29 at 1:00 PM

EPIC Pharmacies, Inc. **SUPPORTS HB 726** – Definitions of Purchaser and Alteration of Application of Law.

If we leave the attorneys and other smart people to debate about Supreme Court and circuit court decisions, let us look at exactly which parts of the insurance code we are expanding to include previously defined ERISA entities, and really examine whether these already reasonable compromised pieces of legislation will really raise prices on employers and their beneficiaries. The specific insurance articles that are affected and a brief summary of those sections are as follows:

- 15-1601: Definitions only: Should have no financial impact on anyone.
- 15-1611: Transparency section allowing a pharmacist to share the retail price of a prescription as compared to the copay cost share defined by a PBM. This section was enacted because of payers, specifically like Cigna with Baltimore County employees, that would mandate the pharmacy charge a very high copay (higher than the pharmacies traditional retail price), and the PBM would capture most of that copay back. The PBM was surreptitiously collecting money from the patient by way of claw backs from the pharmacy. This is different from DIR/GERs which are also prohibited.
- 15-1611.1: Prevents a PBM from self-dealing and restricting patients to only use a chain or mail order pharmacy that is part of the same corporation or company as the PBM.
- 15-1612: Prevents a PBM from reimbursing other pharmacies less than it reimburses its own pharmacies (pharmacies owned by the same corporation as the PBM). Specialty and mail order drugs are excluded. A PBM can still game the system on those claims.
- 15-1613: Pharmacy and Therapeutics Committee incomplete sentence. It's almost as if this section was started and never finished. Regardless, this section should not have any effect on cost for employers or patients.
- 15-1622: **15-1623, 15-1624: These sections are protections for the employer and payer that provide detailed rebate transparency** whereby the PBM must share PBM revenue information regarding rebates they received from manufacturers and pharmacies

with the payer or employer. These insurance article sections are referenced in this bill but not shown. I have included these sections at the end of my testimony.

- 15-1629: Common sense pharmacy audit rules that took years of negotiation and compromise. These pharmacy audit rules do not protect pharmacies as a result of probably or potential pharmacy fraud. The PBMs have never claimed that these audit rules have ever prevented them from performing comprehensive and reasonable audits in Maryland. Furthermore, PBMs claim that pharmacy audits are a learning and educational tool for their pharmacy network. They have always denied that they use pharmacy audits as a money grab. If that is indeed true, expanding this section to formerly ERISA plans should have no financial consequence to employers or patients.

EPIC Pharmacies thanks the sponsor, Delegate Kipke and other members of this committee that unanimously supported this bill last year, and respectfully requests the Committee's **FAVORABLE SUPPORT FOR HB726 this year.**

Should the Committee require any additional information, please contact me or Caitlin McDonough, caitlin.mcdonough@mdlobbyist.com or 410-366-1500.

Respectfully,



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Maryland Code, Insurance § 15-1623 Current as of December 31, 2021 | Updated by FindLaw Staff (<https://www.findlaw.com/company/our-team.html>)

- (a) Before entering into a contract with a purchaser, a pharmacy benefits manager: (1) as applicable, shall inform the purchaser that the pharmacy benefits manager may:
- i solicit and receive manufacturer payments;
 - (i) pass through or retain the manufacturer payments depending on the contract terms with a purchaser; (i) sel aggregate utilization information; and (iv) share aggregate utilization information with other entities; and
 - (2) shall offer to provide to the purchaser a report that contains the:
 - (i) net revenue of the pharmacy benefits manager from sales of prescription drugs to purchasers made through the pharmacy benefits manager's network of contractually affiliated retail pharmacies or through hte pharmacy benefits manager's mail order pharmacies, with respect ot the pharmacy benefits manager's entire client base of purchasers; and
 - (i) amount of al manufacturer payments earned by the pharmacy benefits manager.
- (b)(1) fi a purchaser requests the information described ni subsection (a)(2) of this section, a pharmacy benefits manager shal provide the information before entering into a contract with the purchaser.
- (2) Notwithstanding the provisions of paragraph (1) of this subsection, fi a pharmacy benefits manager requires a nondisclosure agreement under which a purchaser agrees that the information described ni subsection (a)(2) of this section si proprietary information, the pharmacy benefits manager may not be required ot provide the information until the purchaser has signed the nondisclosure agreement.

Maryland Code, Insurance § 15-1624

(a) If a purchaser has a rebate sharing contract, a pharmacy benefits manager shall offer to provide the purchaser a report for each fiscal quarter and each fiscal year that contains the amount of the:

(1) net revenue of the pharmacy benefits manager from sales of prescription drugs to purchasers made through the pharmacy benefits manager's network of contractually affiliated retail pharmacies or through the pharmacy benefits manager's mail order pharmacies, with respect to the pharmacy benefits manager's entire client base of purchasers;

(2) total prescription drug expenditures applicable to the purchaser;

(3) total manufacturer payments earned by the pharmacy benefits manager during the applicable reporting period; and

(4) total rebates applicable to the purchaser during the applicable reporting period.

(b) If the exact amount of each item to be reported under subsection (a) of this section is not known by the pharmacy benefits manager at the time of its report, the pharmacy benefits manager shall offer to provide:

(1) its current best estimate of the amount of each item; and

(2) an updated report containing the exact amount of each item immediately after it becomes available.

(c)(1) A pharmacy benefits manager shall provide the information described in subsections (a) and (b) of this section if requested by the purchaser.

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(2) Notwithstanding the provisions of paragraph (1) of this subsection, if a pharmacy benefits manager requires a nondisclosure agreement under which a purchaser agrees that the information in subsections (a) and (b) of this section is proprietary information, the pharmacy benefits manager may not be required to provide the information until the purchaser has signed the nondisclosure agreement.

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