



Testimony offered on behalf of:
EPIC PHARMACIES, INC.

IN OPPOSITION to:
HB 978 – Maryland Insurance Administration –
Pharmacy Services Administrative Organizations - Regulation

House Health and Government Operations Committee
Hearing 2/27 at 1:00 PM

EPIC Pharmacies **OPPOSES HB 978** – Maryland Insurance Administration – Pharmacy Services Administrative Organizations – Regulation. The bill as drafted is extremely broad and has the potential of creating unintended consequences that can dramatically impact the delivery of pharmacy services in Maryland. EPIC believes that HB 978 will have no impact in providing greater access to prescription drugs or provide enhanced affordability to purchase prescription drugs. The end result should HB 978 be enacted will be additional administrative and processing fees to independent community pharmacies.

House Bill 978 requires a “pharmacy services administrative organization” (PSAO) to register with the State Insurance Commissioner, beginning July 1, 2021, before providing services as a PSAO to independent pharmacies in the State. A PSAO that has not registered may not enter into an agreement or a contract with an independent pharmacy or a pharmacy benefits manager (PBM). The Commissioner may adopt implementing administrative regulations (COMAR).

PSAO means an entity operating within the State of Maryland that contracts with independent pharmacies to conduct business on their behalf with third-party payers, provides administrative services to independent pharmacies, or negotiates and enters into contracts with third-party payers or PBMs on behalf of independent pharmacies. PSAO includes an entity that performs one or more of the following administrative services for an independent pharmacy:

- claims assistance,
- audit assistance,
- centralized payment,
- special care programs certification,
- compliance support,
- flat fee setting for generic drugs,
- store layout assistance,
- inventory management,

- marketing support,
- payment and drug dispensing data management and analysis, or
- provision of resources for retail cash cards.

Under the bill, an applicant for registration as a PSAO must file an application and pay a registration fee set by the Commissioner. A registration expires on the second September 30 after its effective date. A PSAO may renew its registration for an additional two-year term if the PSAO is otherwise entitled to be registered, files a renewal application, and pays a renewal fee set by the Commissioner. Subject to the applicable hearing provisions, the Commissioner may deny a registration or refuse to renew, suspend, or revoke the registration of a PSAO on specified grounds.

Under the provisions of this bill, a PSAO is required to maintain adequate books and records regarding each independent pharmacy for which the PSAO provides services, as specified. The Commissioner may examine the affairs, transactions, accounts, and records of a registered PSAO.

A pharmacy services administrative contract (PSAC) or a contract between a PSAO, on behalf of an independent pharmacy, and a PBM or group purchasing organization (and related amendments to such contracts) may not become effective unless:

- the PSAO files the contract or amendment with the Commissioner at least 30 days before the contract or amendment is to become effective, and
- the Commissioner does not disapprove the filing within 30 days after the contract or amendment is filed.

The Commissioner must adopt regulations to establish the circumstances under which a contract may be disapproved.

A PSAC must require the PSAO to provide to an independent pharmacy a copy of any contracts, amendments, payment schedules, or reimbursement rates within three calendar days after the execution of a contract, or an amendment to a contract, signed on behalf of the independent pharmacy by the PSAO.

A contract between a PBM and a PSAO that authorizes a PBM to conduct audits of independent pharmacies for which the PSAO provides services must contain specific language that authorizes the PBM to obtain information from the PSAO regarding the independent pharmacy for purposes of the audit.

A PSAC must:

- require all remittances for claims submitted by a PBM or third-party payer on behalf of an independent pharmacy to be passed by the PSAO to the independent pharmacy within a reasonable amount of time, and
- specify the reasonable amount of time in which the PSAO is required to pass the remittances received from the PBM or third-party payer to the independent pharmacy.

A PSAO that owns or is owned by, in whole or in part, an entity that manufactures, sells, or distributes prescription drugs, biologics, or medical devices may not require, as a condition of entering into a PSAC, that an independent pharmacy purchase any drugs, biologics, or medical devices from the entity and must disclose to the Commissioner any agreement with an independent

pharmacy under which the independent pharmacy purchases prescription drugs, biologics, or medical devices from the entity.

Each PSAO must disclose to the Commissioner, an independent pharmacy, a third-party payer, or a PBM the extent of any ownership or control of the PSAO by any parent company, subsidiary, or other organization that provides pharmacy services, provides prescription drug or device services, or manufactures, sells, or distributes prescription drugs, biologics, or medical devices. Each PSAO must notify these entities within five calendar days after any material change in its ownership or control.

A PSAO that provides, accepts, or processes a discount, concession, or product voucher to reduce, directly or indirectly, an out-of-pocket expense for the order, dispensing, substitution, sale, or purchase of a prescription drug must submit to the Commissioner a specified annual report. The Commissioner must make the reports available to the public.

A PSAO may not:

- misrepresent pertinent facts or policy provisions that relate to an issue in a complaint or an appeal of a decision regarding a complaint;
- refuse to pay or reimburse an independent pharmacy or a PBM for an arbitrary or capricious reason based on all available information;
- fail to settle a dispute promptly whenever liability is reasonably clear under one part of a policy or contract, in order to influence settlements under other parts of the policy or contract; or
- fail to act in good faith.

If the Commissioner determines that a PSAO has violated any provision of the bill or related regulations, the Commissioner may issue an order that requires a PSAO to:

- cease and desist;
- take specific affirmative action to correct the violation;
- make restitution to a person that has suffered financial injury because of the violation; or
- pay a fine determined by the Commissioner.

In addition to any other enforcement action taken by the Commissioner, the Commissioner may impose a civil penalty of up to \$10,000 for each violation of the bill.

EPIC Pharmacies respectfully requests the Committee to render an **UNFAVORABLE Report on HB 978.**

Sincerely,

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