



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Acting Secretary

February 24, 2021

The Honorable Delores G. Kelley
Chair
Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 615 – Pharmacy Benefits Managers - Prohibited Actions – Letter of Information

Dear Chair Kelley and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of information on SB 615 – Pharmacy Benefits Managers - Prohibited Actions.

SB 615 would prohibit pharmacy benefits managers (PBMs) from engaging in certain activities by making § 15–1611(B) of the Insurance Article applicable to PBMs that contract with Medicaid Managed Care Organizations (MCOs). Among other requirements, PBMs would be prohibited from engaging in spread pricing; taking longer than 30 days to review an application from a pharmacy or pharmacist; denying a pharmacy the right to participate in a policy or contract if they agree to meet the terms of the policy or contract; or requiring a beneficiary to use a mail order pharmacy to fill a prescription.

The committee should be aware that SB 615's requirements would have a potentially substantial fiscal impact on MDH and undermine the marketplace. The legislation also reverses the General Assembly's previous policy direction¹ to MDH to have the MCOs administer the Medicaid pharmacy benefit to ensure access to prescription drugs by Marylanders and to manage skyrocketing drug costs. MDH further notes that legislation is not required to eliminate spread pricing from the MCOs' agreements with PBMs. MDH has already taken action on this issue and prohibited this practice as part of the MCOs' CY21 contracts. Further, MCO enrollees already have the ability to opt out of the use of mail order pharmacies under existing State regulations.²

The bill would effectively shift the PBMs to any willing provider model. Requiring PBMs to engage with any pharmacy if they agree to meet the terms of the PBMs policy or contract has the potential to significantly impact the PBM's ability to negotiate with drug manufacturers, resulting in the loss of savings realized today. MDH also anticipates that certain PBMs may not be able to meet the 30-day deadline for reviewing new applications from pharmacies and pharmacists,

¹ HB 1290 (2015); report available at:

<https://mmcp.health.maryland.gov/Documents/JCRs/MCOPharmacynetworksJCRfinal12-15.pdf>

² COMAR 10.67.06.04

increasing the administrative burden on the PBM, which will be passed on to the MCOs in the form of new costs. To the extent that costs to the PBMs, and by extension the MCOs, to deliver pharmacy benefits increase, these costs will be passed on to MDH and require payment of higher capitation rates to the MCOs.

I hope this information is useful. If you would like to discuss this further, please do not hesitate to contact me at webster.ye@maryland.gov / (410) 260-3190 or Heather Shek, Director of Governmental Affairs at heather.shek@maryland.gov and at the same phone number.

Sincerely,

A handwritten signature in blue ink, appearing to read "Webster Ye".

Webster Ye
Assistant Secretary, Health Policy