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Maryland Senate
Finance Committee
Miller Senate Office Building Room 3
Annapolis, MD 21401

Re: Senate Bill 823 Pharmacy Services Administrative Organizations

Dear Senators,

On behalf of my client EPIC Pharmacy Network, Inc., this letter constitutes testimony submitted in favor of Senate Bill 823, entitled "Pharmacy Services Administrative Organizations and Pharmacy Benefit Managers – Contracts". This bill will amend the Pharmacy Services Administrative Organizations registration law enacted in year 2020 as Subtitle 20 of Title 15 in the Insurance Article (the "PSAO Law"), as well as the contract filing requirements in Subtitle 16 of Title 15 of the Insurance Article, which regulates the relationships between Pharmacy Benefit Managers (each a "PBM") and Maryland's independent pharmacies (the "PBM Law").

EPIC Pharmacy Network, Inc. is a wholly owned subsidiary of EPIC Pharmacies, Inc., a Maryland corporation that is solely owned by about 1,500 independent pharmacies as a cooperative. Each independent pharmacy owns one share of EPIC stock, and each of EPIC's directors and its chief executive officer are independent pharmacy owners and licensed pharmacists. I have been outside general counsel to EPIC and its subsidiaries since calendar year 2015.

EPIC Pharmacy Network, Inc. functions as the contracting agent for its member pharmacies. The primary value of EPIC's contracting services is that it enables the pharmacies to gain access to PBM''s selective networks, which otherwise would be difficult for independents located in populous regions. This is particularly true with the regard to the networks run by the three large PBMs, who are Caremark (owned by CVS Health, Inc.), Express Scripts, Inc., and OptumRx, (owned by the health conglomerate Optum, Inc.), which collectively manage the pharmacy benefits for at least eight percent

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(80%) of Americans. While EPIC is able to negotiate reimbursement rates with the PBMs to a limited degree on behalf of the pharmacies, otherwise the PBMs control the terms and conditions under which the pharmacies agree to dispense medications to the people whose benefits the PBM manages – whether those terms and conditions are established through a contract that EPIC signs on the pharmacies' behalf, or in a document that the pharmacy signs directly with the PBM.

Therefore, the existing language of Section 2010 of the PSAO Law, prohibiting contracts between a PBM and a PSAO or an amendment thereto from becoming effective until the PSAO files the proposed agreement with the Maryland Insurance Administration ("MIA") and then received MIA''s approval, turns this contracting process between a PBM and a PSAO on its head. The PBMs prepare and largely control those contracts, and the PBMs should be the parties to file those contracts with MIA and then make any changes that MIA requires to comply with Maryland law – which Senate Bill 823 will accomplish, by moving the MIA filing and approval process from the PSAO Law to Section 1628 of the PBM law.

My experience representing EPIC in applying for and obtaining PSAO registration approval from MIA demonstrates the need for the amendments. The process of supplying information to MIA about EPIC, and its standard agreement with its member pharmacies, went smoothly. The MIA required EPIC to make amendments to its agreement with the pharmacies to comply with the PSAO law and that are beneficial to Maryland independent pharmacies.

However, the process of EPIC filing each of the agreements that it has signed with a PBM, on behalf of the pharmacies, was much more fraught. The administrative burden on EPIC in identifying and submitting each such contract was substantial. Then, in response to EPIC's filing, before approving those contracts MIA required EPIC to prepare a form of PBM agreement amendment that mostly covers the obligations of the PBM to comply with the PBM Law in its dealings with EPIC's Maryland members.

EPIC received MIA approval of the form of PBM Maryland addendum last week from MIA, completing the last stage of the initial registration. In the coming weeks EPIC will be sending the addendum to each PBM and it to permit the addendum to become effective for Maryland pharmacies. It is unclear whether the PBM will permit this and what EPIC's appropriate response is if the PBM refuses to accept the addendum. If the latter occurs, then EPIC's member pharmacies in Maryland could face being excluded from significant patient care networks, particularly those run by Caremark, Express Scripts and Optum.

If Maryland enacts Senate Bill 823, then the likely result is that the MIA will require the PBMs to agree to add a Maryland-specific addendum to its agreements with PSAOs, so that each PBM specifically promises to comply with the PBM Law in its dealings with the Maryland pharmacies. Such a contractual addendum, signed by the PBM as well as the PSAO (as each pharmacy's representative) will be of great value in furthering compliance with the legislature's will in passing the PBM Law. The provisions of Senate Bill 823 will enable the MIA to achieve this important objective, while also giving PBMs control over the process of obtaining approval of proposed amendments to their agreements with PSAOs. Accordingly, EPIC supports this bill.

Sincerely,

/ David L. Cahn /

David L. Cahn

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