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TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE

MARCH 31, 2022

SENATE BILL 823 – PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS AND PHARMACY
BENEFITS MANAGERS - CONTRACTS

POSITION: LETTER OF INFORMATION

Thank you for the opportunity to provide written comments on SB 823 .

SB 823, if enacted, would make certain technical and clarifying changes to the Pharmacy Services Administrative Organization (PSAO) requirements under Maryland law. Specifically, SB 823 revises the PSAO contract filing requirements under § 15-2010 of the Insurance Article to remove the requirement that a PSAO must file contracts between Pharmacy Benefit Managers (PBMs) and PSAOs with the Maryland Insurance Administration (MIA). Simultaneously, SB 823 will revise the PBM contract filing requirements under § 15-1628(b) of the Insurance Article to require PBMs to file the contracts between PBMs and PSAOs with the MIA. SB 823 also revises § 15-2004 to clarify that a PSAO is not required to register with the MIA in order to contract with a PBM, if the PSAO is not contracting with any independent pharmacies in Maryland. Finally, the bill makes a minor technical change to § 15-2011, to clarify that PSAOs are permitted to provide independent pharmacies electronic access to certain documents in lieu of physical copies.

Altering the contract filing requirements will address an unanticipated logistical and administrative challenge created by the existing law. For form filings, entities typically file template forms with the MIA which, when approved, can be used by the entity in contracting with any other party. Existing law requires each PSAO to file each contract made between that PSAO and a PBM. If PSAOs utilized contracting template forms, this obligation would be satisfied by a PSAO's submission of its template for review by the MIA. However, in practice, it is the PBM, not the PSAO, that develops and offers its contract templates to a PSAO. Therefore,

each PSAO has been required to file every single actual contract it proposes to enter into with each PBM, resulting in a very inefficient filing and review process for contracts between PSAOs and PBMs. This process is inconsistent with the way all other types of form filings are reviewed by the MIA, and it has required the MIA to devote a disproportionately large amount of resources to the review of PSAO filings, as compared to other form filings.

SB 823 will remedy this problem and significantly reduce the amount of contracts between PBMs and PSAOs that are filed with the MIA, while preserving the MIA's ability to ensure that these contracts comply with applicable Maryland law.

If enacted, the MIA will receive contracts between PBMs and PSAOs under the PBM contract filing requirement, rather than the PSAO contract filing requirement. Since the PBMs are the entities that have control over the drafting of these contracts, this will allow contract templates to be filed, rather than all of the actual contracts, which was unintentionally required under the existing law. Fewer state resources will now be required to review the contracts due to the reduction in the number of total filings, and because filings from PBMs are informational-only filings under Maryland law, while filings from PSAOs require the MIA to review the forms within 60 days and determine whether to disapprove the filings. Recategorizing these contracts as informational filings will allow the MIA to more effectively manage the workflow of all required form filings. This will allow MIA staff to be more efficient and productive in reviewing other types of form filings that are subject to significantly more regulatory standards than PSAO contracts. **The increased efficiencies in the review process are thus expected to benefit PBMs, PSAOs, and the MIA.**

The MIA has carefully examined the amendments made by the Senate, which would allow PSAOs to provide electronic or paper copies of contracts to independent pharmacies. The amendments raise no concerns.

The MIA thanks the committee for its attention to this information concerning SB 823.