



NATIONAL ASSOCIATION OF  
CHAIN DRUG STORES



MARYLAND ASSOCIATION  
OF CHAIN DRUG STORES

**NACDS and MACDS Testimony to the Maryland General Assembly House Health and  
Government Operations Committee**

Thursday, March 2, 2023

**Support HB 539, HB 357, HB 374, HB 382, and HB 650– Delegated Pharmacy Acts**

Chair Pena-Melnyk, Vice-Chair Kelly and members of the House Health and Government Operations Committee, thank you for the opportunity to testify in support of HB 539, HB 357, HB 374, HB 382, and HB 650. Delegate Kipke, Delegate Morgan, Delegate S. Johnson and Delegate A. Johnson, thank you for your leadership in sponsoring these bills that would establish important guardrails around the business practices of pharmacy benefit managers (PBMs) – entities which administer patients’ pharmacy benefits on behalf of private health plans and the state Medicaid program.

While private health plans and state Medicaid programs contract with PBMs to manage patients’ pharmacy benefits and connect them to needed care, in reality, PBMs engage in many abusive practices that do just the opposite. From limiting which pharmacies can provide care to certain patients, to pushing patients to use pharmacies outside of their communities, to reimbursing pharmacies at rates that do not cover the cost of the medications they dispense, to then overcharging the health plan for covered drugs and pocketing the difference, these practices altogether impede Marylanders’ ability to access pharmacy care from their chosen neighborhood pharmacies.

Widescale reforms are needed to address the lack of transparency and guardrails that exist now in the prescription drug market, which is largely controlled and manipulated by the three largest PBMs. We urge Maryland lawmakers to seize this opportunity to pass needed legislation that will instill increased transparency and accountability in PBM practices to help ensure economic viability of pharmacies and increased access to care for the patients they serve. In doing so, Maryland would

join a growing list of states taking that have already taken or are currently considering similar actions, including several nearby states (West Virginia, Kentucky, Ohio, and New York).

Importantly, HB 539, HB 357, HB 374, HB 382, and HB 650 each advance needed reforms in the following ways:

**HB539 Pharmacy Benefits Managers - Prohibited Actions**

- Would prohibit “spread pricing” – a practice where a PBM negotiates the amount a health plan will pay for a prescription drug, pays the pharmacy less than that negotiated amount to fill the prescription, and pockets the difference.
- Would ensure that pharmacies who wish to participate in a contract with a PBM would be permitted to do so without restrictions beyond the terms and conditions of the contract. Would also limit the time PBMs have to review pharmacies’ applications to participate in a contract to no more than 30 days.
- Would prohibit a PBM from setting different cost-sharing fees that patients may pay under their health plan (copays) based on whether the pharmacist or pharmacy is independent or part of a larger chain of pharmacies.

**HB357 Pharmacy Benefits Managers - Definitions of Carrier, ERISA, and Purchaser**

- Would clarify that certain Maryland state laws are not expressly related to, thus not preempted by, the federal Employee Retirement Income Security Act (ERISA). This would allow Maryland to regulate PBM actions in relation to employer-sponsored health insurance plans.

### **HB374 Health Insurance – Pharmacy Benefits Managers – Audits of Pharmacies and Pharmacists**

- Establishes PBM auditing practices and gives oversight authority of those practices to the Maryland Insurance Commissioner.

### **HB382 Pharmacy Benefits Administration - Maryland Medical Assistance Program and Pharmacy Benefits Managers**

- Would ensure a minimum payment (“rate floor”) for prescription drugs based on a nationally recognized, standard pricing methodology plus a professional dispensing fee paid to pharmacies to cover the cost of doing business. This payment methodology would not extend to PBM-affiliated pharmacies or mail order services.

### **HB650 Health Insurance - Reimbursement and Use of Specific Pharmacies and Dispensaries – Prohibitions**

- Would limit the ways PBMs can designate medications as “specialty drugs” to ensure that pharmacies who are willing and able to fill prescriptions are not unnecessarily barred from doing so based on arbitrary drug classifications.

NACDS and MACDS thank the Committee for the opportunity to provide our perspective on PBM reform and our support for this important work. We implore you to support each of these pieces of legislation to ensure proper safeguards are established to protect pharmacies and Marylanders from harmful PBM practices and to promote transparency and accountability in the prescription drug market. For questions or further discussion, please contact Jill McCormack, Director of State Government Relations at NACDS, at [JMcCormack@nacds.org](mailto:JMcCormack@nacds.org), or [Cailey Locklair](#), President, Maryland Retailers Association.