



Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

March 2, 2023

The Honorable Joseline A. Peña-Melnyk  
Chair, House Health and Government Operations Committee  
Room 241, House Office Building  
Annapolis, MD 21401-1991

**RE: HB 539 – Pharmacy Benefit Managers- Prohibited Actions – Letter of Concern**

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of concern for House Bill (HB) 539 - Pharmacy Benefit Managers – Prohibited Actions. HB 539 will make §15–1611(B) of the Insurance Article applicable to PBMs that contract with Medicaid Managed Care Organizations (MCOs). Among other requirements, PBMs will be prohibited from engaging in spread pricing; taking longer than 30 days to review an application from a pharmacy; denying a pharmacy the right to participate in a policy or contract under certain circumstances; or requiring a beneficiary to use a mail order pharmacy.

HB 539 will potentially undermine the marketplace and have a substantial fiscal impact on MDH. Additionally, the bill reverses the General Assembly’s previous policy direction<sup>1</sup> to MDH to have MCOs administer the Medicaid pharmacy benefit to ensure access to prescription drugs and manage skyrocketing drug costs. HB 539 will effectively shift the MCOs’ PBMs to an 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. MDH also anticipates that certain PBMs may not be able to meet the 30-day deadline for reviewing new applications, 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.

MDH further notes that legislation is not required to eliminate spread pricing from the MCOs’ agreements with PBMs. MDH has already acted on this issue and prohibited this practice as part of the MCOs’ contracts since Calendar Year 2021. Further, MCO enrollees already have the ability to opt out of the use of mail order pharmacies under existing State regulations and MCOs

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HB 1290 (2015); report available at:  
<https://mmcp.health.maryland.gov/Documents/JCRs/MCOpharmacynetworksJCRfinal12-15.pdf>

do not charge differential copays based on whether a pharmacy is affiliated with a chain or independent pharmacy.<sup>2</sup>

If you need more information, please contact Megan Peters, Acting Director of Governmental Affairs, at [Megan.Peters@maryland.gov](mailto:Megan.Peters@maryland.gov) or (410) 260-3190.

Sincerely,

A handwritten signature in blue ink, appearing to read "LH Scott".

Laura Herrera Scott, M.D., M.P.H.  
Secretary

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<sup>2</sup> COMAR 10.67.06.04



## DEPARTMENT OF HEALTH

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