



THE PHARMACY BENEFIT MANAGERS (PBMs) HAVE RAISED TOTALLY IRRELEVANT ARGUMENTS TO ATTEMPT TO DIVERT ATTENTION FROM THE REAL ISSUES RAISED IN HB 357, HB 374, HB 382, AND HB 539

**Position of Independent Pharmacies of MD: FAVORABLE for all four Bills, HB 357,374,382, and 539**

A. THE FOUR PHARMACY BILLS SEEK TO END ABUSIVE AND UNFAIR PRACTICES OF PBMs, PROVIDE FOR ADEQUATE COMPENSATION FROM PBMs, AND BRING PBMs FULLY UNDER THE JURISDICTION OF THE MD INSURANCE ADMINISTRATION:

- HB 382 seeks to require the PBM conglomerates to pay a reasonable professional dispensing fee to pharmacies; for Medicaid managed care, the PBMs on average pay 35 cents as a professional dispensing fee, well below the \$10.67 dispensing fee recognized by CMS, and guaranteeing a loss to the pharmacy on every managed care prescription.
- HB 357 seeks to bring all PBMs under the jurisdiction of the MD Insurance Administration, as allowed by the recent *Rutledge* U.S. Supreme Court decision; the PBMs wish to avoid MIA regulation of their practices;
- HB 539 seeks to prohibit steering and other deceptive practices of PBMs against pharmacies; these include mandatory use of PBM owned mail order pharmacies, copay requirements that discriminate against independent pharmacies to steer to PBM affiliated pharmacies, “spread pricing” where the PBM takes a portion of the pharmacy dispensing fee, and practices to keep independent pharmacies out of networks even where the pharmacies agree to accept all the terms of the network;
- HB 374 seeks to prohibit oppressive and unreasonable audit procedures against independent pharmacies; it places reasonable limits on audits, and reasonable documentation requirements.

B. IN RESPONSE, THE PBMs RAISE ARGUMENTS THAT ARE IRRELEVANT AND W/O MERIT:

- In response, the PBMs have asserted a totally irrelevant argument: the claim that the number of independent pharmacies in the U.S. has remained stable over a number of years.
- This argument is completely irrelevant on its face. The four bills supported by the independent pharmacies raise issues of unfair competition, steering, unfair and deceptive trade practices, and abuse of grossly unequal power to enrich PBMs at the expense of independent pharmacies.
- Claims of deceptive and unfair practices, and unfair trade practices, are routinely pursued by businesses which still operate and compete; there is absolutely no requirement, in established law or logic, that independent pharmacies must first be put out of business, in order to seek redress for the numerous abusive practices by PBMs, as is suggested.



- The PBMs are simply attempting to divert attention from the real issues raised by these bills, that is, the abusive conduct of the PBMs.
- In addition, the PBMs claim, as always, that any legislative reform to protect independent pharmacies from PBM abuse will raise the price of healthcare; they offer no evidence to support this claim; in fact, if the General Assembly wants to look at the cost of healthcare it might do better to look at the PBMs themselves: For example, just the CVS PBM Division (which does not include CVS pharmacies, CVS mail order, or its Aetna Insurance), had 2022 revenues in excess of \$169 Billion, an increase of 10.6% over the prior year. Particularly impressive, since the PBM does not take possession of drugs, or dispense a single prescription. Other major PBMs similarly rack up impressive financial figures.
- It is time for the MD General Assembly to adopt restrictions on abusive PBM practices, and provide for full oversight by the MD Insurance Administration.

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