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To: Pamela Beidle, Chair
Senate Finance Committee

From: Heather Forsyth, Deputy Director, Health Education and Advocacy Unit

RE: SB0 626 – Pharmacy Benefits Managers – Definition of Purchaser and Alteration of Application of Law (**Support**)

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports Senate Bill 626, which allows the State to apply various pharmacy benefit consumer protections (and independent pharmacy protections) to the activities of Pharmacy Benefit Managers (PBMs) in accordance with the U.S. Supreme Court decision in *Rutledge v. Pharmaceutical Care Management Association*, 1415 S. Ct. 474 (2020).

Currently the majority of Maryland's PBM laws do not apply to self-funded plans; instead, Maryland laws only apply to PBMs when they are acting on behalf of a carrier. Following a successful Supreme Court decision in *Rutledge* finding ERISA did not preempt Arkansas's law regulating PBMs, the MIA studied Maryland's laws and concluded current statutory requirements would not be preempted by ERISA because the PBM provisions do not relate to "who" receives benefits or "what" benefits are received, in keeping with the decisions in *Rutledge* and subsequent lower court decisions. In other words, as long as state laws do not direct the decisions of the ERISA plan itself, state laws may regulate PBMs even if such laws happen to impact ERISA plan costs and design structure.

This legislation expands the protections the General Assembly has provided for pharmacy benefits. For example, the bill would not allow a PBM to prohibit a pharmacy or pharmacist from telling consumers the retail price of a prescription drug or if a more affordable

drug is available, nor require a consumer to use a specific pharmacy if the PBM has an ownership interest in the pharmacy, nor allow a PBM to reimburse a pharmacy less than it would itself or an affiliate.

For these reasons, we urge a favorable report from the committee for SB 626.