Date: February 5, 2025
To: The Honorable Pamela Beidle, Chair
From: Aliyah N. Horton, FASAE, CAE, Executive Director, MPhA, 240-688-7808
Cc: Members, Senate Finance Committee
Re: **FAVORABLE - SB 303 – Pharmacy Benefits Managers – Definition of Purchaser and Alteration of Application of Law**

The Maryland Pharmacists Association and the Maryland Pharmacy Coalition urges a **FAVORABLE report on SB 303 – Pharmacy Benefit Managers – Definition of Purchaser and Alteration of Application of Law.**

- SB 303 is critical legislation that provides technical corrections to the Insurance statute to ensure the broad applicability of important pharmacy benefit manager (PBM) reforms.

- The impetus for these changes comes from the landmark Supreme Court decision in Rutledge v. PCMA (2020). The decision clarified states' authority to regulate PBMs, particularly concerning Employee Retirement Income Security Act of 1974 (ERISA) preemption.

- The bill's expansion of oversight beyond carrier-contracted PBMs aligns with Rutledge's recognition of broad state regulatory authority of PBM practices, without fear of automatic ERISA preemption challenges, which had previously limited state enforcement efforts.

- The ruling distinguished between state laws that directly regulate health benefit plans (which are preempted by ERISA) and those that regulate PBMs as healthcare cost intermediaries (which are not).
    - The exemption for certain nonprofit HMOs in SB 303 recognizes consideration of when PBM regulation is and is not appropriate.

- The bill is critical in removing the phrase "on behalf of a carrier" from multiple sections of the Insurance Article to ensure that hard-fought consumer protections and pharmacy rights previously passed by the General Assembly apply to ALL PBM contracts.

- A few of the provisions that would be enforced include:

    - Removal of gag clauses – which prohibit pharmacists from discussing prescription drug prices and less expensive alternatives with patients. All Marylanders should have access to price transparency regardless of what PBM their contract is with.

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- Audit transparency – all pharmacy audits would follow fair standards including proper notice, reasonable documentation requirements and an appeals process. Currently, PBMs can conduct audits without these basic protections.

- PBM steering and unfair advantage – would not allow a PBM to require a patient to use a pharmacy that is owned by or affiliated with the PBM or allow the PBM to reimburse a pharmacy less than one that it owns or is affiliated with.

- The broader application of PBM regulations to all other arrangements will benefit most Maryland pharmacies and patients.

- The General Assembly must ensure that these provisions are implemented across the board, so that patients, pharmacists, and pharmacies are protected and not penalized.

MARYLAND PHARMACISTS ASSOCIATION - Founded in 1882, MPhA is the only state-wide professional society representing all practicing pharmacists, pharmacy technicians and student pharmacists in Maryland. Our mission is to strengthen the profession of pharmacy, advocate for all Maryland pharmacists and promote excellence in pharmacy practice.

MARYLAND PHARMACY COALITION - The MPC provides a forum for discussion and understanding between Maryland's pharmacy associations on issues impacting the practice of pharmacy and the public's health.

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- Maryland Pharmaceutical Society
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