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TO: The Honorable, Joseline A. Peña-Melnyk, Chair
Health and Government Operations Committee

FROM: Irnise F. Williams, Deputy Director, Healthcare Education and Advocacy Unit

RE: House Bill 0321-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 House Bill 0321, which expands the protection afforded consumers and independent pharmacies, by extending certain protections afforded under section 15-1600, et seq. of the Insurance Article to include Pharmacy Benefit Managers (PBMs) that serve Employee Retirement Income Security Act (ERISA) plans. Expanding protections to include PBMs that serve ERISA plans aligns with a recent Supreme Court ruling that found that ERISA did not preempt Arkansas's law regulating PBMs in *Rutledge v. Pharmaceutical Care Management Association*. This Supreme Court decision prompted the MIA to study Maryland's laws to see if additional protections may be warranted. As a result of that study, the MIA concluded that there would be no ERISA preemption of the statutory requirements identified in this bill because the PBM provisions do not relate to "who" receives benefits or "what" benefits are received, in keeping with the decision in *Rutledge*.

This legislation expands the protections the General Assembly has provided for pharmacy benefits including rising costs, limited formularies, and nontransparent pricing structures. For example, the bill would not allow a PBM (1) to prohibit a pharmacy or pharmacist from telling consumers the retail price of a prescription drug or that a more affordable drug is available, (2) to require a consumer to use a specific pharmacy if the PBM has an ownership interest in the pharmacy, or (3) to reimburse a pharmacy in an amount that is lower than the amount that it would reimburse itself or an affiliate. Over the years the General Assembly has passed numerous protections to quell the actions of PBMs profiting at the expense of patients and independent pharmacies. See newly released [FTC Report](#) criticizing PBMs. This bill adds an essential tool to Maryland's toolbox to apply those protections more broadly.

We urge a favorable report.