



Date: January 23, 2025

To: The Honorable Joseline Pena-Melnyk, Chair

From: Aliyah N. Horton, FASAE, CAE, Executive Director, MPhA, 240-688-7808

Cc: Members, Health and Government Operations Committee

Re: FAVORABLE - HB 321 - Pharmacy Benefits Managers - Definition of Purchaser and Alteration of Application of Law

The Maryland Pharmacists Association urges a **FAVORABLE report on HB 321 - Pharmacy Benefit Managers - Definition of Purchaser and Alteration of Application of Law.**

- HB 321 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 HB 321 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.

- 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.

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