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Health and Government
Operations Committee

Subcommittees

Government Operations and
Health Facilities

Insurance and Pharmaceuticals

Rules and Executive
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Joint Committee on
Legislative Ethics

Joint Committee on Cybersecurity,
Information Technology,
and Biotechnology



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SPONSOR TESTIMONY – SUPPORT

HB321/SB303 - Pharmacy Benefits Managers - Definition of Purchaser
and Alteration of Application of Law

Chairman, Vice Chairman, and members of the committee thank you for the opportunity to present HB321/SB303 - Pharmacy Benefits Managers - Definition of Purchaser and Alteration of Application of Law.

This bill passed the Health & Government Operations Committee 22-0 and the House of Delegates 137-0 last year. Unfortunately, it was among a group of bills that ran out of time in the Senate Finance Committee last year.

What the bill does is extend all the laws that we have passed over the years to all entities providing prescription drug coverage or benefits in the State, not just a small percentage such as those in the Individual Group market. Previously it was believed that Small Group and Self-Insured policies were off limits to our laws because of the Employee Retirement Income Security Act (known as ERISA), a federal law in the United States that was enacted in 1974. However, in 2020 the Supreme Court of the United States took up a case out of Arkansas called Rutledge v. PCMA. The Court unanimously upheld an Arkansas law, Act 900, which required pharmacy benefits managers ("PBMs") to reimburse pharmacies at a price equal to or higher than what the pharmacy paid to buy the drug. To be brief the court ruled that if the state laws do not interfere with plan design, the laws can apply to policies formerly believed to be "off limits" to state law.

The provisions of current state law that expands under this bill are:

- information on and sales of prescription drugs (S 15-1611);
- choice of pharmacy by a beneficiary (S 15-1611.1);

- reimbursement for a pharmaceutical product or pharmacist service (5 15-1612);
- pharmacy and therapeutics committee requirements (55 15-1613 through 15-1618);
- requirements before entering into a contract (5 15-1623);
- rebate sharing contract requirements (5 15-1624);
- audits by PBMs (5 15-1629); and
- internal review process requirements (5 15-1630).

As I think you'll agree with me these provisions protect patients and independent pharmacies like Mike's Pharmacy in my district but also pharmacies like those at Giant Foods or even large retailers such as Costco. Think about it, if a pharmacy has an experience with a PBM that violates provisions of the Maryland PBM laws, they report them to the MIA but are often told the MIA has no enforcement authority as state law does not apply to that policy. Unfortunately, less than 20% of policies are subject to our protections without this law, so many pharmacists just give up on filing complaints.

The protections extended by this bill are not arduous or complicated, they have been tested in our state with thousands of policies in our individual group market and our own state employee's health insurance plans. I hope that we can finally move this bill into law and extend fairness to all plans in the state of Maryland.

Yours truly,



Nic Kipke