

BRIAN E. FROSH
Attorney General

WILLIAM D. GRUHN
Chief
Consumer Protection Division

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

Writer's Direct Fax No.
(410) 576-6571

Writer's Direct Email:
pocannon@oag.state.md.us



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

Writer's Direct Dial No.
(410) 576-6515

March 30, 2021

To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: The Office of the Attorney General's Health Education and Advocacy Unit

Re: House Bill 601 (Pharmacy Benefits Managers - Definition of Purchaser and ERISA): Support

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports House Bill 601 which would repeal the current exclusion of ERISA plans from the definition of the term "purchaser" in Maryland's registration and regulatory scheme regarding pharmacy benefits managers (PBMs).

Maryland is one of many states that have enacted legislation in recent years to curb abusive prescription drug reimbursement practices by PBMs, who make money on the spread between the rates at which they reimburse pharmacies and the drug prices they charge health plans. The Pharmaceutical Care Management Association (PCMA), a PBM trade association, launched litigation across the country to invalidate these state laws intended to address escalating prescription drug prices. PCMA contended that state regulation of PBMs generally, and state drug-reimbursement regulations specifically, were categorically preempted by ERISA. Maryland's current PBM law does not apply to health benefit plans subject to ERISA. Md. Code Ann., Ins. § 15-1601(i).

PCMA challenged an Arkansas law requiring a PBM to reimburse pharmacies for prescription drugs at a rate equal to or higher than the pharmacy's acquisition cost. The PCMA litigation ended unfavorably for PBMs when the Supreme Court recently ruled 8-0 that "ERISA does not pre-empt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage." *Rutledge v. Pharmaceutical Care Management Association*, 592 U.S. , 141 S.Ct. 474 (2020). The Court concluded the Arkansas law is "merely a

form of cost regulation” without an impermissible connection to an ERISA plan because the law would not effectively dictate plan choices. *Id.* at 481. In addition, because the law did not act “immediately and exclusively upon ERISA plans or where the existence of ERISA plans is essential to the law’s operation,” the Court concluded the law did not impermissibly “refer to” ERISA and upheld the law. *Id.*

This bill removes the blanket ERISA exclusion, but conservatively leaves in place carve-outs for such plans to allow time to study the ramifications of *Rutledge*. We acknowledge and are grateful for the efforts of the Health and Government Operations subcommittee, and the Insurance Commissioner and staff, to address questions about the *Rutledge* ruling’s impact that were raised in multiple meetings by various stakeholders, and to begin the process of expanding Maryland’s regulation of pharmacy benefits managers without an ERISA exemption.

We urge the committee to give House Bill 601 a favorable report.

cc: Sponsor