NAIFA
MARYLAND

Senate Bill 565

Pharmacy Benefits Managers – Health Insurance Pharmacy Benefits Managers – Audits of Pharmacies and Pharmacists

Position: Oppose

Dear Chair Griffith, Vice Chair Klausmeier and Members of the Senate Finance Committee.

NAIFA-MD ("The National Association of Insurance and Financial Advisors – Maryland Chapter") appreciates the opportunity to submit written testimony on Senate Bill 898. NAIFA-MD is made up of insurance agents and advisors, financial advisors and financial planners, investment advisors, broker/dealers, multiline agents, health insurance and employee benefits specialists, and more. We are the closest to the consumer and employers by helping them navigate the complex arena of health benefits.

NAIFA-MD opposes Senate Bill 565 not for its content pertaining to audits but rather the precedent in applying PBM related legislation to self-funded plans. For nearly 50 years, ERISA has prevented state legislators from preempting federal laws governing self-funded plans. This means employers with self-funded plans could expect consistency across state lines. However, a 2020 U.S. Supreme Court decision in Rutledge v. PCMA has jeopardized those federal protections. The Rutledge decision upheld an Arkansas law that required PBMs to reimburse pharmacists at certain levels. The decision has emboldened a wave of state-level activism, such as this legislation, driven by stakeholders who are looking to increase their profits.

To understand the potential impact of setting a precedent on a narrowly focused bill pertaining to audits, it is important to understand what legislation has been introduced previously in Maryland and around the country.

- Statutorily set reimbursement rates and dispensing fees.
- Eliminating the ability of self-funded plans to incentivize shopping at pharmacies with lower prices. Employers and PBMs work to drive down costs by using lower co-pays to encourage patients to visit pharmacies that sell drugs at lower prices. Several states have already outlawed the use of those incentives, using government control to rewrite private contracts.
- Eliminating protections from price gouging for specialty drugs and at specialty pharmacies. Physician-owned pharmacies can overcharge on specialty drugs.

- Attacking incentives for mail-order delivery of drugs and access to mail-order. Mail-order is cheaper and, in many cases, healthier for patients, who are more likely to adhere to their prescribed medications if they are delivered to their homes at regular intervals.
- Regulating employers with self-funded plans as if they are PBMs. Some states have introduced legislation that forces employers to deal with the same regulations and red tape meant to regulate pharmacy benefit managers, increasing their costs and administrative burdens.

We urge an unfavorable report.