

2023 Maryland General Assembly Legislative Report
National Association of Benefits and Insurance Professionals of Maryland (NABIP MD)

The 2023 legislative session in Maryland began on January 11th, and NABIP MD kicked things off with a continuing education program in Annapolis on the subject of pharmacy benefits managers (PBMs). Normally, our members are familiar with PBMs only in their capacity to provide pharmacy benefits and administrative services that employer groups subject to ERISA may need. Because the Supreme Court brought PBMs partially within the regulatory scope of state laws two years ago, states like Maryland have tested the limits of this Supreme Court precedent (known as the *Rutledge* case) by introducing various bills seeking expanded authority to regulate PBMs. One such bill this year was House Bill 357. For the first time, NABIP MD weighed in with testimony opposing this bill (see our list of all written testimony on behalf of NABIP MD in 2023 on the website) and were joined by interests as diverse as the Maryland Chamber of Commerce, unions, county and municipal governments, and others. We were successful in killing this bill in the Senate Finance Committee.

Another bill returned NABIP MD advocacy to a familiar subject: Maryland small group. Since 2022, we have been deeply involved in efforts by the Maryland Health Benefit Exchange (MHBE) to create and nurture a viable small group market within the Exchange. NABIP MD members know that we staunchly defended our unique group health insurance distribution system in Maryland, beginning with the passage of the Affordable Care Act. We have also supported efforts by the legislature to continuously reduce the number of persons in Maryland without health insurance. Senate Bill 59/House Bill 107 was intended to move us closer to our goal by providing specific, significant subsidies to promote the small group market. Unfortunately, the legislation ran afoul of fiscal realities and funding for this effort became unavailable. We look forward to pursuing the same goal in 2024, and your NABIP MD Legislative Committee will be providing specific recommendations to both MHBE and legislators to accomplish our goal.

Another well-intended but potentially costly legislative initiative was Senate Bill 308/House Bill 305. This bill would have largely eliminated the ability of a health plan to engage in the practice of “prior authorization” – a practice which requires a health plan to authorize a medical service or prescription before the service or prescription can be provided. “Prior auth” is a longstanding tool used by health plans to ensure that physicians and other providers are performing in accordance with the terms of the plan. The legislation would have made sweeping changes in this practice, and the fiscal note writers noted that it would be expensive for literally all group health insurance purchasers in the State. NABIP MD joined other industry representatives in expressing our strong opposition in writing to the House and Senate Committees that heard the bill. Ultimately, the bill did not pass.

Some familiar legislation from past sessions again surfaced in 2023. One such bill (House Bill 604/Senate Bill 500) would have exempted from small group statutory requirements health plans issued through PEOs, or Professional Employer Organizations. We have argued against such legislation in the past on the basis that it would create an unfair exemption for certain small groups under State laws that are intended to apply to all small groups. As in the past, legislators recognized this hazard and the bill did not pass. Another such bill (House Bill 658/Senate Bill 415) would have authorized policy issuance through multiple employer trusts. As with the PEO legislation, this bill did not pass.



February 16, 2023

The Honorable Joseline A. Pena-Melnyk
Chair, House Health and Government Operations Committee
Room 241, House Office Building
Annapolis, MD 21401

RE: House Bill 107 - Maryland Health Benefit Exchange – Small Employers – Special Enrollment Period and Marketing - FWA

Dear Chair Pena-Melnyk and Members of the Committee,

On behalf of the Maryland Association of Health Underwriters (MAHU), I wish to express our support for House Bill 107, with amendments. MAHU is a trade association comprised of several hundred licensed health insurance producers in Maryland who represent both businesses and individuals in analyzing their need for health insurance and advising clients on health insurance coverage. MAHU members have traditionally served as the consumer representatives for small businesses participating in the small employer health insurance market; today, MAHU members increasingly serve individuals enrolled in individual health insurance as well, both on and off the Maryland Health Benefit Exchange.

You may recall that in 2022 MAHU supported Senate Bill 632/HB 709 (*Maryland Health Benefit Exchange - Small Business and Nonprofit Health Insurance Subsidies Program – Workgroup*) with the study that was required by Senate Bill 632 as enacted.

I was pleased to serve as Co-Chair of the Workgroup established under Senate Bill 632. The study process directed by that bill undertook a thorough examination of small business and nonprofit health insurance markets with recommendations to further develop outreach efforts to small employers and their employees. While the decision was not to implement small employer subsidies as anticipated under Senate Bill 632 at the present time, the workgroup did recognize the need for employers to better understand their options. House Bill 107 provides funding for further study and implementation of methods and techniques to bring more Marylanders under coverage.

One change in House Bill 107 that MAHU advocates is to eliminate the special enrollment period called for under the bill. We note that Senate Bill 632 last year did not propose a special enrollment period, and that subject was not addressed by the Workgroup established under Senate Bill 632. MAHU believes that the well-funded outreach effort is sufficient to give effect to the legislative intent of encouraging uninsured persons to enroll, and that a special enrollment period is unnecessary at this time.

We note that individual health insurance enrollment in Maryland is approaching 200,000 individuals – a significant achievement for our State's policy of actively encouraging our citizens to participate in the health insurance market. MAHU is pleased to be part of that effort. We respectfully request a favorable report on House Bill 107, with the amendment we have suggested.

Very truly yours,

A handwritten signature in black ink that reads "Jon S. Frank". The signature is written in a cursive style.

Jon S. Frank
301-502-8522

cc: Bryson F. Popham
Nancy Colaianne, President MAHU



March 27, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: House Bill 357 - Pharmacy Benefits Managers - Definition of Purchaser and Alteration of Application of Law - UNFAVORABLE

Dear Chair Griffith and Members of the Senate Finance Committee,

On behalf of the Maryland Association of Health Underwriters (MAHU), I wish to express our opposition to House Bill 357.

MAHU is a trade association comprised of several hundred licensed health insurance producers in Maryland who represent both businesses and individuals in analyzing their need for health insurance and advising clients on health insurance coverage and benefits. MAHU members have traditionally served as the representatives for small and medium-sized businesses in the negotiation of health benefit plans for the employees of those businesses.

An important part of the services provided by MAHU members is assisting employer clients in evaluating the cost of benefits and coverages. One area where both the cost and benefit design offer employers a number of options is in the area of pharmacy benefits. MAHU members typically use the services of pharmacy benefits managers (PBMs) to provide these services, and PBMs compete vigorously for this business.

Traditionally, PBMs have not been subject to State law requirements because they have operated under the federal law known as ERISA. Senate Bill 357 would remove this exemption, and subject pharmacy benefit plans to more restrictive State law requirements. This will have the effect of removing options currently available to these employers, and for that reason MAHU opposes the provisions of House Bill 357.

MAHU does not see a consumer benefit that would be achieved by the passage of this legislation. We are aware of no serious complaints by either employers or persons covered under employer-based health plans who use PBM services. For these reasons, we respectfully request an unfavorable report on House Bill 357.

Very truly yours,

A handwritten signature in black ink that reads "Jon S. Frank".

Jon S. Frank
301-502-8522

cc: Bryson F. Popham
Nancy Colaianne, President MAHU



February 21, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

The Honorable Joseline Pena-Melnyk
Chair, House Health and Government Operations Committee
Room 241, House Office Building
Annapolis, MD 21401

RE: Senate Bill 308/House Bill 305 - Health Insurance - Utilization Review – Revisions

Dear Chair Griffith and Chair Pena-Melnyk,

On behalf of the Maryland Association of Health Underwriters (MAHU), I am writing to you with respect to Senate Bill 308 and House Bill 305, which were heard in your respective Committees this week. We take this unusual step of communicating on pending legislation following the bill hearings for the reasons expressed below. We are sending this letter to each individual member of your Committees.

MAHU is a trade association comprised of several hundred licensed health insurance producers in Maryland who represent both businesses and individuals in analyzing their need for health insurance and advising clients on health insurance coverage. MAHU members have traditionally served as the consumer representatives for small businesses participating in the small employer health insurance market.

MAHU and its members have a history of constructive participation in Maryland health policy. From the creation of the small group health insurance market under House Bill 1359 in 1993, through the implementation of the Federal Affordable Care Act beginning with Governor O'Malley's Executive Order in 2010, and through our participation in the workgroup formed under Senate Bill 632/House Bill 709 last year on the subject of subsidies on the small group market, MAHU has repeatedly demonstrated its advocacy on behalf of those who incur the cost of health coverage: employers, employees and individuals who may buy their own coverage.

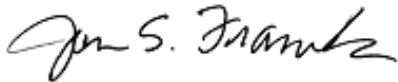
We write now to express a concern that has just arisen with the publication of the fiscal note on these bills. Two items on pages 10 and 11 of the fiscal note cause our concern. First, cost increases to the State (Health) Plan are projected to increase between \$36 million and \$96 million for medical costs. The fiscal note advises a similar potential increase for prescription drugs. While we understand the vital role of utilization review generally, and prior authorization of certain healthcare services and prescription drugs specifically, we believe the policy implications of both are an issue best left to health plans, providers and the elected officials who must balance their interests. It is the cost increases associated with the policy changes proposed under these bills that are our concern.

Increases in the State Plan may or may not translate into increases in health insurance premiums for the small businesses that comprise a substantial portion of the market that MAHU members serve. The fiscal note goes on to say, however, that "premiums for small businesses that purchase fully insured health benefit plans may increase." We believe, based on experience, that additional compliance costs for large businesses will filter

through, substantially unchanged, to small businesses. We also note that in one of the bill hearings on this legislation, a witness for health insurers was asked who would bear the burden of these additional costs. The answer given was that it would not be health insurance carriers. That could only mean that additional costs would be incurred by health insurance purchasers.

This prospect of unknown but substantial cost increases is alarming. Our members advise that they are expecting substantial rate increases in the small group market in 2023 already. MAHU's experience working with the Maryland General Assembly on health insurance issues has taught us that complex issues such as those set forth in House Bill 305 and Senate Bill 308 require careful legislative analysis before action is taken. Therefore, MAHU wishes to lend its support to those who are advocating a thorough study of these issues before legislative action is taken. We recommend amending the legislation to create such a study, and we will lend our resources to assist in the conduct of such a study.

Very truly yours,

A handwritten signature in black ink, appearing to read "John S. Frank". The signature is fluid and cursive, written in a professional style.

Maryland Association of Health Underwriters

cc: Members of the House Health and Government Operations Committee
Members of the Senate Finance Committee
Bryson Popham