

Comparison of H.233 and existing PBM laws

H.233 section	Topic	Relation to existing law	Notes
Sec. 1, 18 V.S.A. § 3602(6)	Definition of “maximum allowable cost”	Same definition as in 18 V.S.A. § 9471	
Sec. 1, 18 V.S.A. § 3602(10)	Definition of “pharmacy”	Definition differs from definitions of “pharmacy” in V.S.A. – more descriptive than most, some similarities to definition in regulated drugs chapter at 18 V.S.A. § 4201(22)	New definition comes from NCOIL model legislation
Sec. 1, 18 V.S.A. § 3602(11)	Definition of “pharmacy benefit management”	Similar to definition in 18 V.S.A. § 9471	
Sec. 1, 18 V.S.A. § 3603	DFR rulemaking	DFR has limited rulemaking authority in 18 V.S.A. § 9421	H.233 rulemaking authority is broader and would include PBM advance filing of marketing materials with DFR
Sec. 1, 18 V.S.A. § 3604	DFR annual reporting on PBM compliance	No existing provision	
Sec. 1, 18 V.S.A. § 3611	PBM licensure requirement, including \$100 application fee and \$500 annual licensure fee	18 V.S.A. § 9421 requires PBMs to register with DFR Commissioner and allows DFR to charge PBMs for DFR’s reasonable expenses in administering the section	

<p>Sec. 1, 18 V.S.A. § 3612</p>	<p>PBM prohibited practices with respect to pharmacies and pharmacists – prohibits PBM from:</p> <ul style="list-style-type: none"> • Prohibiting pharmacy/ist from disclosing health care information, including nature of treatment, risks, alternatives; availability of alternate therapies, consultations, tests; decision of utilization reviewers to authorize or deny services; process used to authorize or deny services; or information on insurer’s financial incentives and structures • Prohibiting pharmacy/ist from discussing total cost of pharmacist services for a drug, providing cost-sharing information to beneficiary, disclosing cash price for drug, or selling more affordable alternative, if available • Prohibiting pharmacy/ist from disclosing information to DFR, law enforcement, or State or federal government • Terminating contract with or penalizing pharmacy/ist for disclosing information about PBM practices (except trade secrets) or sharing contract with DFR for compliance purposes • Requiring beneficiary to pay more than lesser of: <ul style="list-style-type: none"> ○ cost-sharing amount under plan, ○ MAC, or ○ cash price • Using spread pricing <p>Requires PBM to attribute any amount paid by or on behalf of patient toward deductible and out-of-pocket maximums (co-pay accumulator)</p>	<ul style="list-style-type: none"> • Same as 18 V.S.A. § 9473(b) • Same as 18 V.S.A. § 9473(c)(2) – (4) • Same as 18 V.S.A. § 9473(d) • Same as 18 V.S.A. § 9473(e) • Same as 18 V.S.A. § 9472(f) • No similar provision in current law <p>No similar provision in current law</p>	
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Sec. 1, 18 V.S.A. § 3613	DFR enforcement of chapter	18 V.S.A. § 9474 is existing section on enforcement of PBM laws – gives authority to DFR but also deems violation of subchapter to be violation of Vermont Consumer Protection Act and has role for Attorney General	Existing enforcement provisions are entirely different from H.233 enforcement
Sec. 1, 18 V.S.A. § 3614	Compliance; consistency with federal law	No similar provision	
Sec. 1, 18 V.S.A. § 3615	Charges for examinations, applications, reviews, and investigations	18 V.S.A. § 9421 allows DFR to charge PBMs for the Department’s reasonable expenses in administering the section	Current provision is limited to administering 18 V.S.A. § 9421 only; H.233 would be for entire chapter
Sec. 1, 18 V.S.A. § 3621	Insurer audit of PBM activities to verify full pass through of rebates and discounts	Same as 18 V.S.A. § 9421(c)	
Sec. 1, 18 V.S.A. § 3622	PBM required practices with respect to health insurers, including: <ul style="list-style-type: none"> • Fiduciary duty • Provide access to information • Notice of conflicts of interest • Notice of dispensing of substitute drug • Full pass through of any volume-based payments • Disclosure of arrangements between PBM and manufacturer relating to plan beneficiaries • Disclosure of amount of any spread pricing • Contract cannot reserve discretion to PBM to move drug to higher tier or remove drug from formulary more than twice per year 	18 V.S.A. § 9472 is PBM required practices with respect to health insurers, including: <ul style="list-style-type: none"> • Same • Same • Same • Same • Same • Same • Same • Same 	Reference to disclosing spread pricing should probably be removed, as H.233, Sec. 1, 18 V.S.A. § 3612 bans spread pricing

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Sec. 1, 18 V.S.A. § 3631	PBM required practices with respect to pharmacies, including: <ul style="list-style-type: none"> • Pay claim or provide notice of contest/denial within 14 days • No clawback • Maximum allowable cost (MAC) for each drug must be accessible, not dependent on specific beneficiary or benefit stage, updated at least weekly, have robust appeals process • If PBM denies appeal without identifying alternative purchasing option and reimbursement amount is less than pharmacy’s acquisition cost plus dispensing fee, insurer to reimburse balance • PBM cannot reimburse unaffiliated pharmacies less than reimburses PBM affiliates for same services <i>and reimbursement amount must be based on actual acquisition cost plus dispensing fee at least as much as in Medicaid</i> • No restrictions or requirements on pharmacies in excess of those required by State or federal law • Notice to participating pharmacies before changing formulary • Protections for 340B covered entities/patients 	18 V.S.A. § 9473 is PBM required practices with respect to pharmacies, including: <ul style="list-style-type: none"> • Same • Same • Same • No similar provision • PBM cannot reimburse unaffiliated pharmacies less than reimburses PBM affiliates for same services • Same • Same • Same 	
Sec. 2, 18 V.S.A. § 4804	Adds PBMs to existing prohibition on use of advertising practices related to insurance that are materially misleading or deceptive	Additions to existing statute	
Sec. 3, 8 V.S.A. § 4089j	<ul style="list-style-type: none"> • Prohibits insurers and PBMs from excluding amounts paid by/on behalf of covered person from deductible or out-of-pocket maximums (i.e., requires co-pay accumulator) 	New provisions added to existing statute on filling of prescriptions	

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	<ul style="list-style-type: none"> Prohibits insurers and PBMs from regulating prescription drugs, pharmacies, or pharmacists in manner more restrictive than or inconsistent with State or federal law or Board of Pharmacy rules Prohibits PBMs and pharmacies from directly soliciting insureds in most circumstances Prohibits insurers and PBMs from altering patient's prescription drug order or choice of pharmacy without patient's consent 		
Sec. 4, 33 V.S.A. § 2011	Directs AHS, with stakeholder group, to conduct competitive bidding process and administer program for wholesale drug distributor(s) who would be sole source to distribute drugs to community and outpatient pharmacies for Medicaid beneficiaries	None	Similar language proposed in H.353 of 2022 as introduced and S.140 of 2017
Sec. 5	Repeals	Repeals 18 V.S.A. §§ 9421 and 9471-9474	These provisions are incorporated into and/or replaced by new PBM regulation chapter
Secs. 6 and 7	Applicability and effective date – act would take on July 1, 2023, but Sec. 1 would apply to contracts plans issued, offered, or renewed on or after Jan. 1, 2024 and PBMs operating in Vermont on that date would have six months to come into compliance with the licensure and regulation requirements		Effective date needs updating – bill was introduced in 2023