Testimony on H. 233
(An act relating to pharmacy benefit management and Medicaid wholesale drug distribution)

Theo Kennedy, Esq., JD/MPH for the Vermont Retail Druggists, Inc. (VRD) and the Vermont Pharmacists' Association (VPA)
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House Committee on Health Care

2021-2022 Biennium Act 131 (H. 353):

https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT131/ACT131%20Act%20Summary.pdf

"This act expresses legislative intent to make prescription drugs more affordable and accessible by increasing State regulation of pharmacy benefit managers (PBMs) and to stabilize and safeguard against the loss of more independent and community pharmacies. The act directs the Department of Financial Regulation (DFR) to monitor the cost impacts of PBM regulation and recommend changes as needed to promote health care affordability. The act specifies that PBMs owe a fiduciary duty to their health insurer clients, prohibits certain provisions in PBM contracts with health insurers, and limits the amount a PBM can require a covered person to pay for a drug. It expands prohibitions on "gag clauses" in PBM contracts with pharmacies and pharmacists, in which pharmacists are restricted from providing information to patients about costs, treatments, insurance practices, and other matters, and prohibits PBM contracts from restricting the information that pharmacies and pharmacists can provide to DFR, law enforcement, or State or federal government officials. The act requires PBMs to allow pharmacies certain appeal rights, prohibits PBMs from discriminating against 340B covered entities, and extends until April 1, 2024, an existing prohibition on PBMs imposing certain requirements on pharmacies related to 340B drugs. The act also prohibits PBMs from reimbursing pharmacies and pharmacists in Vermont less than they would reimburse PBM affiliates for the same services, prohibits PBMs from imposing limitations or requirements on a licensed pharmacy that exceed those from the Vermont Board of Pharmacy or in other State or federal law, and requires a PBM to provide notice to participating pharmacies before changing its prescription drug formulary. The act provides additional rights to pharmacies during a PBM audit and requires PBMs to allow participating network pharmacies to perform all pharmacy services within the statutory scope of practice for pharmacy. It prohibits PBMs from requiring covered persons to use mail-order pharmacies or PBM affiliates or from increasing out-of-pocket costs when a covered person does not use mail-order pharmacy or PBM affiliate. The act prohibits PBMs from having network requirements that are more restrictive than or inconsistent with State or federal law, Board of Pharmacy rules, or guidance from the Board of Pharmacy or drug manufacturers or that would limit or prohibit a pharmacy or pharmacist from dispensing or prescribing drugs. The act also prohibits health insurers and PBMs from requiring that a pharmacy that they designate dispense a medication directly to a patient for the patient to bring to the provider's office to be administered there, or that a pharmacy that they designate dispense a medication directly to a provider's office to be administered to the patient in the provider's office. The act requires DFR, in consultation with interested stakeholders, to consider issues including PBM licensure, spread pricing, pharmacist dispensing fees, and, with the Board of Pharmacy, issues regarding pharmacist scope of practice. DFR's findings and recommendations are due to the legislative committees of jurisdiction by January 15, 2023."

https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT131/ACT131%20As%20Enacted.pdf

Vermont Department of Financial Regulation (DFR) Report (required by Act 131):

https://legislature.vermont.gov/assets/Legislative-Reports/DFR-Act-131-Report-on-PBMs.pdf

2023-2024 Biennium (H. 233):

https://legislature.vermont.gov/Documents/2024/Docs/BILLS/H-0233/H-0233%20As%20Introduced.pdf

VPA and VRD supports H. 233 As Introduced to enact a licensing and regulatory model for PBMs in Vermont based on the National Association of Insurance Commissioners' Model Act (DFR has expressed support for this provided staff resources are allocated to DFR to be able to do so).

VPA's and VRD's "ask" is for a Minimum Dispensing Fee - we are open to having that process include reimbursement for ingredient costs as well – so long as there is an objective and transparent methodology for pharmacy reimbursement and payment. While we encourage the elimination of spread pricing; if retained, we support full transparency at the specific prescription level so policy makers can make decisions about the cost/benefit of spread pricing based on all available financial data.

Starting on page 27, H. 233 also contemplates a state wholesale model which will streamline drug acquisition, supply, and distribution, reduce consumer costs, and allow pharmacists to focus solely on the clinical practice of pharmacy and not the drug marketplace. To that end, the VPA and VRD respectfully ask that an off-session group of stakeholders be convened to research and report back on the cost/benefit and possible design of such a model.

Initial research was done on a wholesale model when reimportation from Canada was being considered through S.175/Act 133 in the 2017-2018 session and may serve as a basis for study language and further work on this topic.

https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT133/ACT133%20As%20Enacted.pdf

https://legislature.vermont.gov/assets/Legislative-Reports/AHS-12-31-2018-Wholesale-Importation-of-Drugs.pdf