

Hello, Sen. Sears and Members of the Committee,

I am writing on behalf of CVS Health regarding the private right of action in H.233 - specifically found in subsection 3613(e) of the bill. CVS Health has among its family of companies CVS Caremark, a pharmacy benefit manager (PBM). CVS Health thanks you and the Committee for considering this specific issue within H.233.

Proposed subsection 3613(e) would provide a statutory cause of action for a pharmacy, pharmacist, or other person against a pharmacy benefit manager. CVS Health is unaware of any similar provision in the Vermont health care sector.

This provision raises several concerns and potential consequences, including the introduction of costs into health care and prescription drugs in Vermont. This provision would, for example, encourage pharmacies (which can include national and regional chains, health care entity-owned pharmacies, and independent pharmacies) — some who may be market competitors of PBMs and health plans — to file lawsuits aimed at disrupting the business operations of payors. Further, these lawsuits could impact the normal contracting process in place in Vermont. It would be favoring one discrete special interest group to the detriment of PBMs. This can result in higher plan costs stemming from frequent litigation, and higher premiums or narrower benefits for beneficiaries in Vermont. CVS Health suggests this provision needs careful consideration of potential consequences before it is invoked.

The bill provides a new licensing framework for PBMs with the Department of Financial Regulation (DFR); a provision CVS Health does not oppose. With DFR regulation comes the full enforcement powers of DFR, which includes fines and penalties, suspension or revocation of a license, and the ability to seek and obtain restitution on behalf of parties harmed by violations. It may also make sense to allow this new licensing system to unfold before a private right of action might be considered.

CVS Health asks you to strike this provision from the bill, and allow the existing judicial process to address any conflicts. Thank you for considering.

Jamie Feehan  
Primmer Piper Eggleston & Cramer PC  
On behalf of CVS Health

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