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H.591

Introduced by Representative Wizowaty of Burlington

Referred to Committee on

Date:

Subject: Health; insurance; transparency; pharmacy benefit managers

Statement of purpose: This bill proposes to increase transparency of contract terms between pharmacy benefit managers and health plans.

An act relating to pharmacy benefit managers

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. § 9472 is amended to read:

§ 9472. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES

(a) A pharmacy benefit manager that provides pharmacy benefit management for a health plan shall discharge its duties with reasonable care, skill, prudence, and diligence and ~~be fair and truthful under the circumstances then prevailing that a pharmacy benefit manager acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In the case of a health benefit plan offered by a health insurer as defined by subdivision 9471(2)(A) of this title, the health insurer shall remain responsible for administering the health benefit plan in accordance with the health insurance policy or subscriber contract or plan and~~

1 ~~in compliance with all applicable provisions of Title 8 and this title in~~  
2 accordance with the standards of conduct applicable to a fiduciary in an  
3 enterprise of a like character and with like aims.

4 (b) A pharmacy benefit manager shall provide notice to the health insurer  
5 ~~that the terms contained in subsection (c) of this section may be included in the~~  
6 ~~contract between the pharmacy benefit manager and the health insurer in~~  
7 writing of any activity, policy, or practice of the pharmacy benefits manager  
8 that directly or indirectly presents any conflict of interest with the duties  
9 imposed by this subchapter.

10 (c) ~~Unless the contract provides otherwise, a~~ A pharmacy benefit manager  
11 that provides pharmacy benefit management for a health plan shall:

12 (1) Provide all financial information, including negotiated prices,  
13 rebates, and other such financial benefits, and utilization information requested  
14 by a health insurer relating to the provision of benefits to beneficiaries through  
15 that health insurer's health plan and all financial and utilization information  
16 relating to services to that health insurer. A pharmacy benefit manager  
17 providing information under this subsection may designate that material as  
18 confidential. Information designated as confidential by a pharmacy benefit  
19 manager and provided to a health insurer under this subsection may not be  
20 disclosed by the health insurer to any person without the consent of the

1 pharmacy benefit manager, except that disclosure may be made by the health  
2 insurer:

3 (A) in a court filing under the consumer fraud provisions of chapter  
4 63 of Title 9, provided that the information shall be filed under seal and that  
5 prior to the information being unsealed, the court shall give notice and an  
6 opportunity to be heard to the pharmacy benefit manager on why the  
7 information should remain confidential;

8 (B) when authorized by chapter 63 of Title 9;

9 (C) when ordered by a court for good cause shown; or

10 (D) when ordered by the commissioner as to a health insurer as  
11 defined in subdivision 9471(2)(A) of this title pursuant to the provisions of  
12 Title 8 and this title.

13 (2) Notify a health insurer in writing of any proposed or ongoing  
14 activity, policy, or practice of the pharmacy benefit manager that presents,  
15 directly or indirectly, any conflict of interest with the requirements of this  
16 section.

17 (3)(A) With regard to the dispensation of a substitute prescription drug  
18 for a prescribed drug to a beneficiary in which the substitute drug costs more  
19 than the prescribed drug and the pharmacy benefit manager receives a benefit  
20 or payment directly or indirectly, disclose to the health insurer the cost of both

1 drugs and the benefit or payment directly or indirectly accruing to the  
2 pharmacy benefit manager as a result of the substitution.

3 (B) transfer in full to the health insurer any benefit of payment  
4 received in any form by the pharmacy benefits manager as a result of a  
5 prescription drug substitution described in subdivision (3)(A) of this  
6 subsection, and of a generic substitution required by section 4605 of this title.

7 (4) If the pharmacy benefit manager derives any payment or benefit for  
8 the dispensation of prescription drugs within the state based on volume of sales  
9 for certain prescription drugs or classes or brands of drugs within the state,  
10 pass that payment or benefit on in full to the health insurer.

11 (5) Disclose to the health insurer all financial terms and arrangements  
12 for remuneration of any kind that apply between the pharmacy benefit manager  
13 and any prescription drug manufacturer as defined in section 4631a of this title  
14 that relate to benefits provided to beneficiaries under or services to the health  
15 insurer's health plan, including formulary management and drug-switch  
16 programs, educational support, claims processing, and pharmacy network fees  
17 charged from retail pharmacies and data sales fees. A pharmacy benefit  
18 manager providing information under this subsection may designate that  
19 material as confidential. Information designated as confidential by a pharmacy  
20 benefit manager and provided to a health insurer under this subsection may not  
21 be disclosed by the health insurer to any person without the consent of the

1 pharmacy benefit manager, except that disclosure may be made by the health  
2 insurer:

3 (A) in a court filing under the consumer fraud provisions of chapter  
4 63 of Title 9, provided that the information shall be filed under seal and that  
5 prior to the information being unsealed, the court shall give notice and an  
6 opportunity to be heard to the pharmacy benefit manager on why the  
7 information should remain confidential;

8 (B) when authorized by chapter 63 of Title 9;

9 (C) when ordered by a court for good cause shown; or

10 (D) when ordered by the commissioner as to a health insurer as  
11 defined in subdivision 9471(2)(A) of this title pursuant to the provisions of  
12 Title 8 and this title.

13 \* \* \*

14 Sec. 2. 18 V.S.A. § 9421 is amended to read:

15 § 9421. PHARMACY BENEFIT MANAGEMENT; REGISTRATION;

16 AUDIT

17 (a) A pharmacy benefit manager shall not do business in this state without  
18 first registering with the commissioner on a form and in a manner prescribed  
19 by the commissioner.

20 (b) In accordance with rules adopted by the commissioner, pharmacy  
21 benefit managers operating in the state of Vermont and proposing to contract

1 for the provision of pharmacy benefit management shall notify health insurers  
2 when the pharmacy benefit manager provides a quotation of the information  
3 required to be disclosed under subchapter 9 of chapter 221 of this title and that  
4 a quotation for an administrative-services-only contract with full pass through  
5 of negotiated prices, rebates, and other such financial benefits which would  
6 identify to the health insurer external sources of revenue and profit is generally  
7 available and whether the pharmacy benefits manager offers that type of  
8 arrangement. Quotations for an administrative-services-only contract shall  
9 include a reasonable fee payable by the health insurer which represents a  
10 competitive pharmacy benefit profit. This subsection shall not be interpreted  
11 to require a pharmacy benefits manager to offer an  
12 administrative-services-only contract.

13 (c) In order to enable periodic verification of pricing arrangements ~~in~~  
14 ~~administrative services only contracts~~, pharmacy benefit managers shall allow  
15 access, in accordance with rules adopted by the commissioner, by the health  
16 insurer who is a party to ~~the administrative services only~~ a contract with the  
17 pharmacy benefit manger to financial and contractual information necessary to  
18 conduct a complete and independent audit designed to verify the following:

19 (1) full pass through of negotiated drug prices and fees associated with  
20 all drugs dispensed to beneficiaries of the health plan in both retail and mail

1 order settings or resulting from any of the pharmacy benefit management  
2 functions defined in the contract;

3 (2) full pass through of all financial remuneration associated with all  
4 drugs dispensed to beneficiaries of the health plan in both retail and mail order  
5 settings or resulting from any of the pharmacy benefit management functions  
6 defined in the contract; and

7 (3) any other verifications relating to the pricing arrangements and  
8 activities of the pharmacy benefit manager required by the contract ~~if required~~  
9 ~~by the commissioner~~ or by subchapter 9 of chapter 221 of this title.

10 \* \* \*

11 Sec. 3. EFFECTIVE DATES

12 This act shall take effect on July 1, 2010. The act shall apply to all  
13 contracts between health benefit plans and pharmacy benefit managers on and  
14 after October 1, 2010, and to existing contracts on the date that the contract is  
15 renewed or amended, but in no event later than October 1, 2011.