

Overview of Act 131 of 2022:
An act relating to pharmacy
benefit management

Jennifer Carbee, Office of Legislative Counsel

March 30, 2023

Secs. 1 (Intent) and 1a (DFR Cost Monitoring)

- Sec. 1 expresses legislative intent to:
 - Make prescription drugs more affordable and accessible by increasing State regulation of pharmacy benefit managers (PBMs)
 - Stabilize and safeguard against the loss of more independent and community pharmacies
- Sec. 1a (18 V.S.A. § 9421 (PBM registration) directs Department of Financial Regulation (DFR) to monitor the cost impacts of PBM regulation and recommend changes as needed to promote health care affordability

Sec. 2: 18 V.S.A. ch. 221, subch. 9 (PBM Regulation)

- **§ 9471: Definitions**
 - Removes Vermont Medicaid from the scope of the PBM regulation subchapter
 - Adds definition of “pharmacy benefit manager affiliate”
- **§ 9472: PBMs; required practices regarding health insurers and covered persons**
 - Specifies that PBMs owe a fiduciary duty to their health insurer clients
 - Prohibits PBM contracts with health insurers from allowing PBM to unilaterally move a drug to higher tier or remove drug from formulary more than twice per year
 - Limits amount PBM can require covered person to pay for a drug to lesser of:
 - The cost-sharing amount under the health insurance plan
 - The “maximum allowable cost” for the drug, which is the amount the PBM will reimburse the pharmacy for the drug
 - The amount the person would pay if paying the cash price
 - Requires amount covered person pays to be counted toward their deductible and out-of-pocket maximum under their health insurance plan

Sec. 2: PBM Regulation (continued)

- **§ 9473: PBMs; required practices with respect to pharmacies**
 - Expands prohibitions on “gag clauses” in PBM contracts with pharmacies/pharmacists
 - Prohibits PBM contracts from restricting pharmacies/pharmacists from disclosing information to DFR, law enforcement, or State or federal government officials
 - Prohibits PBMs from penalizing a pharmacist/pharmacy for disclosing information about PBM practices or for sharing a PBM contract with DFR
 - Requires PBMs to allow pharmacies certain appeal rights
 - Prohibits PBMs from reimbursing 340B covered entities less for pharmacy-dispensed drugs than non-340B entities or discriminating against 340B covered entities in manner that would prevent/interfere with patient’s choice to get medication from 340B entity
 - Prohibits PBMs from reimbursing pharmacies/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 Vermont Board of Pharmacy or in other State or federal law
 - Requires PBMs to provide notice to participating pharmacies before changing formulary

Sec. 3: 18 V.S.A. § 3802 (Pharmacy Rights During an Audit)

- Specifies pharmacy rights for an audit conducted remotely
- Reduces period of time for delivery of preliminary and final audit reports to pharmacies
- Requires pharmacies to be provided with all payment data related to audited claims

Sec. 4: 8 V.S.A. § 4089j

(Retail Pharmacies; Filling of Prescriptions)

- Adds definition of “pharmacy benefit manager affiliate”
- Defines “prescription drugs” to specifically include so-called specialty drugs
- Requires PBMs to allow participating network pharmacies to perform all pharmacy services within statutory scope of practice for pharmacy in Title 26
- Prohibits PBMs from requiring covered persons to use mail-order pharmacy or PBM affiliate or increasing out-of-pocket costs for not using mail-order pharmacy or PBM affiliate
- 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 that would limit or prohibit a pharmacy or pharmacist from dispensing or prescribing drugs
- Prohibits health insurers or PBMs from requiring that a pharmacy they designate dispense a medication directly:
 - to a patient for the patient to bring to the provider’s office to be administered there, or
 - to a provider’s office to be administered to the patient

Sec. 5: DFR PBM Report

- Requires DFR, in consultation with interested stakeholders, to consider:
 - Whether PBMs should be required to be licensed, including cost impacts in other states that have enacted licensure requirements
 - Whether PBMs should be prohibited from using spread pricing
 - With Board of Pharmacy, issues regarding pharmacist scope of practice
 - Whether there should be minimum dispensing fees
 - How pharmacies should be reimbursed for a claim if a PBM denies an appeal
 - Whether there is a problem in Vermont of pharmacies soliciting health plan beneficiaries directly to market pharmacy services and how best to address
 - Other PBM-related issues
- DFR's findings and recommendations due by January 15, 2023
 - ([Click here for DFR PBM report](#))

Secs. 6 (Applicability), 7 (Sunset Extension), and 8 (Effective Dates)

- Sec. 6 (applicability):
 - Specifies that Sec. 2 (PBM regulation) applies to contracts and health plans on and after January 1, 2023
 - Gives PBMs doing business in Vermont on or before January 1, 2023 six months to come into compliance with Sec. 2
- Sec. 7 (sunset extension) extends until April 1, 2024 an existing prohibition on PBMs imposing certain requirements on pharmacies related to 340B drugs
- Sec. 8 (effective dates):
 - PBM regulation sections take effect on January 1, 2023
 - All other sections take effect on passage (May 24, 2022)