

I appreciate your diligence as you consider H. 233.

In follow up, I did want to express that the amendment proposed today by Rutland Pharmacy is substantive. As currently drafted, the bill makes no changes to existing state law on “maximum allowable cost” or the regulation of MAC lists, so there has been no reason to provide testimony to your committee on this issue. If the Committee is considering this language and changes to MAC laws, it would seem appropriate to provide impacted parties with the opportunity to provide testimony and comment.

To that end, as drafted, the language of the proposed amendment intends to bring brand drugs into existing state regulation around “maximum allowable cost” or MAC lists and MAC pricing. If you recall from our conversations around Act 131 when new MAC regulations were adopted, MAC lists are used to set reimbursement for *generic* medications, not brands. These lists are used because the price of generic drugs are volatile and are produced by multiple manufacturers (“multisource”). The [Act 131](#) report acknowledged this: “Because the list prices that pharmacies set for generic drugs tend to be significantly higher than their acquisition cost because of pricing volatility caused by ingredient shortages, supply disruptions, and manufacturer consolidation, PBMs overwhelmingly use MAC pricing as the basis of pharmacy reimbursement to avoid overpayment for generic drugs” (page 30).

As noted in the Act 131 report, many states have adopted MAC regulations and Vermont law requires PBMs that set MAC lists to:

- Make the MAC available to pharmacists in a format that is readily accessible and understandable, including the source used to determine the MAC;
- Update the MAC at least once every seven days and ensure that prescription drugs subject to MAC pricing are widely available for purchase by Vermont pharmacies;
- Have an administrative process to allow pharmacies to contest a listed MAC price;
- Give pharmacists 10 days from the date its claim for reimbursement is submitted to file an appeal; and
- Respond to pharmacies within 10 days of receiving an appeal.

Act 131 further expands MAC appeal rights:

- Allowing pharmacies to appeal more than 10 days after a claim is submitted if the claim is the subject of an audit initiated by the PBM;
- Requiring PBMs to provide the reason for a denied appeal and identify the national drug code (NDC) and a Vermont-licensed wholesaler “of an equivalent drug product that may be purchased by contracted pharmacies at or below the [MAC price;]” and
- For appeals in which the pharmacy prevails, require the PBM to change the MAC price for the drug product at issue and allow the appealing pharmacy to reverse and rebill the claim in question” (pages 31-32).

In contrast, brand medications are produced by single-source manufacturers. Consequently, the reimbursement rate for brand medications is much more stable and is negotiated in contracts with pharmacies using a known benchmark [e.g. a negotiated percentage of average wholesale price or AWP].

By adding brand drugs into the definition of “maximum allowable cost,” brand reimbursement would be subject to all of the Vermont regulation on MAC lists above , effectively tearing up any contracted rates negotiated and agreed to by pharmacies. To use an analog with medical service reimbursements negotiated between providers and health plans, this would be like creating a state law allowing a provider to appeal reimbursement rates for a particular service that have been negotiated in a contract with an insurer.

Please keep in mind, the impact of this change would not be limited to PBM contracts with independent pharmacies, but also chain pharmacies, big box store pharmacies and online pharmacies licensed and operating in Vermont. Lastly, this change would make Vermont an outlier, as I am not aware of any state that has conflated the regulation of MAC lists (i.e. generic reimbursement) with the contracted and negotiated rates of brand medications.

For the reasons stated above, I hope that the Committee would not adopt this proposed amendment.

Thank you for your attention.
Steven

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