

MEMORANDUM

TO: Senate Committee on Health and Welfare
FROM: Department of Financial Regulation
SUBJECT: H. 233, An act relating to pharmacy benefit management
DATE: April 17, 2024

The Department of Financial Regulation (the “DFR”) submits this written testimony as a follow-up to Assistant General Counsel Sebastian Arduengo’s in-person testimony last week. Generally, we refer back to our findings and suggestions outlined in our [Act 131 Report](#) on Pharmacy Benefit Managers.

As reflected in our report and previous testimony, DFR believes that strengthening our existing framework for PBM regulation will provide important transparency and consumer protections. There are three areas where we would like to suggest the committee consider revisions:

- 1) Section 3612, Subpara f: would prohibit spread pricing. We thoroughly studied spread pricing in the Act 131 report and found that it can benefit health plans so long as disclosures are adequate. The full cost impact of this change is unknown. If a spread pricing ban is desired, DFR recommends an actuarial study to determine cost impact before implementation. However, we acknowledge that data availability to support this analysis is limited.
- 2) Section 3613; subsection (b)(3) would allow that the Office of the Health Care Advocate can get copies of material submitted to or reviewed by DFR. We oppose this provision because it could compromise DFR’s investigation abilities and confidential nature of our examinations. We do not believe that the revision in draft 1.1 dated 4/16/24 addresses this issue. We suggest this subsection be struck.
- 3) Section 3613; Subsection e: would allow for a private right of action. DFR is neutral about this section, but wanted to note that it would be unique for Title 8 to allow for private right of action. This will result in private litigation and the cost of that litigation will likely be ultimately passed on to consumers.