525 Clinton Street
Bow, NH 03304
Voice: 603-228-2830
Fax: 603-228-2464

BI-STATE PRIMARY CARE ASSOCIATION
SERVING VERMONT & NEW HAMPSHIRE

61 Elm Street
Montpelier, VT 05602
Voice: 802-229-0002
Fax: 802-223-2336

Written Testimony on H. 353 for the House Committee on Health Care
Mary Kate Mohlman, PhD, MS
Bi-State Primary Care Association
March 8, 2022

Mr. Chairperson, Members of the Committee, I am submitting these comments on H. 353, a bill for regulating pharmacy benefit managers, which is before your committee for review on March 9, 2022. These comments represent the perspective of Bi-State Primary Care Association members.

Bi-State Primary Care Association is nonprofit organization established in 1986 to advance access to comprehensive primary care and preventive services for anyone regardless of insurance status or ability to pay. Today, Bi-State represents 28 member organizations across both Vermont and New Hampshire. Our members include Federally Qualified Health Centers (FQHCs), Vermont Free and Referral Clinics, Area Health Education Center programs, and Planned Parenthood of Northern New England.

The part of this bill that I would like to address is the section that covers the 340B prescription drug program. Bi-State and its members support the existing language and request that the following language from Act 74 (2021) be added minus the sunset.

Act 74 of 2021

§ 9473. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES WITH RESPECT TO PHARMACIES

** * **

(d) A pharmacy benefit manager shall not:

(1) require a claim for a drug to include a modifier or supplemental transmission, or both, to indicate that the drug is a 340B drug unless the claim is for payment, directly or indirectly, by Medicaid; or

(2) restrict access to a pharmacy network or adjust reimbursement rates based on a pharmacy's participation in a 340B contract pharmacy arrangement.

Sec. E.227.2 REPEAL 18 V.S.A. § 9473(d) (pharmacy benefit managers; 340B entities) is repealed on January 1, 2023.

The Department of Financial Regulation supports extending this provision as stated in their Act 74 (2021) report on *National Activity Affecting Participation in the 340B Drug Pricing Program*. Specifically, they state on page 20 of the report:

Although it is a temporary measure scheduled for repeal on January 1, 2023, most stakeholders and the Department agree that this is an important first step to addressing issues with the 340B program. At least 16 other states have enacted similar laws, some significantly more expansive than Act No. 74.

The 340B program is essential to Bi-State members. It was created to allow certain providers, such as FQHCs, to stretch scarce federal dollars to provide patient care. With 340B funds, FQHCs across Vermont

are able to offer discounts on prescription drugs, dental services, nutrition services, school-based services, transportation, translation, and many other services to their patients, while remaining financially viable. Any erosion of this program means that FQHCs will have to scale back access and services to those least able to pay for health care. While Bi-State continues to work with Senators Leahy and Sanders, Congressman Welch, and the National Association of Community Health Centers (NACHC) on ways to protect this program for FQHCs and their safety net services at the federal level, we also support efforts by Vermont policy makers to add protections at the state level.

The language we are asking to be included in H. 353 extends beyond this year the Act 74 prohibition on flagging claims as 340B drugs and restricting access to a pharmacy network or adjusting reimbursement rates based on a pharmacy's participation in a 340B. These prohibitions address a seemingly benign practice of collecting data but will have long-term and significant consequences on the savings available to FQHCs through the 340B program. The specifics of why these prohibitions are needed quickly brings in the complexities of the PBM interactions with pharmacies, manufacturers, and rebates. However, to briefly summarize, should PBMs have access to data identifying which drugs are administered through the 340B program, they can reduce the number of 340B drugs they cover. They can also reduce the savings available to 340B covered entities through lower reimbursement and/or higher fees. This information also allows PBMs to exclude a pharmacy from their network based on 340B participation, which greatly decreases pharmacy access for patients of 340B covered entities.

To reiterate, any erosion of the 340B program will result in reduced safety net services and access to primary care, mental health, and oral health services. The requested amendment is supported by the Department of Financial Regulation and other stakeholders and would protect the ability 340B covered entities to maintain the services they currently offer to Vermonters regardless of insurance status or ability to pay. Again, thank you for the opportunity to comment, and I am happy to respond to any question either verbally or in writing.