

Comparison of H.353 and existing PBM laws

H.353 section	Topic	Relation to existing law	Notes
Sec. 1, 18 V.S.A. § 3602(6)	Definition of “maximum allowable cost”	Same definition as in 18 V.S.A. § 9471	
Sec. 1, 18 V.S.A. § 3602(10)	Definition of “pharmacy”	Definition differs from definitions of “pharmacy” in V.S.A. – more descriptive than most, some similarities to definition in regulated drugs chapter at 18 V.S.A. § 4201(22)	New definition comes from NCOIL model legislation
Sec. 1, 18 V.S.A. § 3602(11)	Definition of “pharmacy benefit management”	Same definition as in 18 V.S.A. § 9471	
Sec. 1, 18 V.S.A. § 3603	DFR rulemaking	DFR rulemaking in 18 V.S.A. § 9421	
Sec. 1, 18 V.S.A. § 3604	DFR annual reporting on PBM compliance	No existing provision	
Sec. 1, 18 V.S.A. § 3611	PBM licensure requirement, including \$100 application fee and \$500 annual licensure fee	18 V.S.A. § 9421 requires PBMs to register with DFR Commissioner and allows DFR to charge PBMs for the Department’s reasonable expenses in administering the section	
Sec. 1, 18 V.S.A. § 3612	<p>PBM prohibited practices with respect to pharmacies and pharmacists – prohibits PBM from:</p> <ul style="list-style-type: none"> Prohibiting pharmacy/ist from disclosing health care information, including nature of treatment, risks, alternatives; availability of alternate therapies, consultations, tests; decision of PBM to authorize or deny services; process used to authorize or deny services; or information on insurer’s financial incentives and structures 	<p>18 V.S.A. § 9473 prohibits PBM from:</p> <ul style="list-style-type: none"> Prohibiting pharmacy/ist from providing information to insured about insured’s cost-sharing amount 	H.353 is generally broader re info that must be allowed to be provided to insured. It does not specifically address existing prohibition on passing through some/all of co-pay to PBM or other payer, or prohibiting pharmacy/ist from providing information to insured about insured’s cost-sharing amount.

H.353 section	Topic	Relation to existing law	Notes
	<ul style="list-style-type: none"> • Prohibiting pharmacy/ist from discussing total cost of pharmacist services for a drug, providing cost-sharing information to beneficiary, disclosing cash price for drug, or selling more affordable alternative, if available • Prohibiting pharmacy/ist from disclosing information to DFR, law enforcement, or State or federal government • Terminating contract with or penalizing pharmacy/ist for disclosing information about PBM practices (except trade secrets) or sharing contract with DFR for compliance purposes • Requiring beneficiary to pay more than lesser of: <ul style="list-style-type: none"> ○ cost-sharing amount under plan, ○ MAC, or ○ cash price • Using spread pricing 	<ul style="list-style-type: none"> • Prohibiting pharmacy/ist from disclosing cash price to insured or selling lower cost drug to insured, if available • Imposing higher co-payment for drug than co-payment for that type of drug under insured’s plan • Imposing higher co-payment than MAC for drug 	
Sec. 1, 18 V.S.A. § 3613	DFR enforcement of chapter	18 V.S.A. § 9474 is existing section on enforcement of PBM laws – gives authority to DFR but also deems violation of subchapter to be violation of Vermont Consumer Protection Act and has role for Attorney General	Existing enforcement provisions are completely different from H.353 enforcement
Sec. 1, 18 V.S.A. § 3621	Insurer audit of PBM activities to verify full pass through of rebates and discounts	Same as 18 V.S.A. § 9421(c)	
Sec. 1, 18 V.S.A. § 3622	PBM required practices with respect to health insurers, including: <ul style="list-style-type: none"> • Fiduciary duty • Provide access to information 	18 V.S.A. § 9472 is PBM required practices with respect to health insurers, including: <ul style="list-style-type: none"> • Duty of reasonable care, diligence • Provide access to information 	Reference to spread pricing should probably be removed, as Sec. 1, 18 V.S.A. § 3612 bans spread pricing

H.353 section	Topic	Relation to existing law	Notes
	<ul style="list-style-type: none"> • Notice of conflicts of interest • Notice regarding dispensing of substitute drug • Full pass through of any volume-based payments • Disclosure of arrangements between PBM and manufacturer relating to plan beneficiaries • Disclosure of amount of any spread pricing 	<ul style="list-style-type: none"> • Notice of conflicts of interest • Notice regarding dispensing of substitute drug • Full pass through of any volume-based payments, <i>unless the contract provides otherwise</i> • Disclosure of arrangements between PBM and manufacturer relating to plan beneficiaries • Disclosure of amount of any spread pricing 	
<p>Sec. 1, 18 V.S.A. § 3623</p>	<p>PBM required practices with respect to pharmacies, including:</p> <ul style="list-style-type: none"> • Pay claim or provide notice of contest/denial within 14 days • No clawback • Maximum allowable cost (MAC) for each drug must be accessible, <i>not dependent on specific beneficiary or benefit stage</i>, updated at least weekly, have robust appeals process • PBM cannot reimburse unaffiliated pharmacies less than reimburses PBM affiliates for same services • No restrictions or requirements on pharmacies in excess of those required by State or federal law • Notice to participating pharmacies before changing formulary • Protections for 340B covered entities and their patients 	<p>18 V.S.A. § 9473 is PBM required practices with respect to pharmacies, including:</p> <ul style="list-style-type: none"> • Pay claim or provide notice of contest/denial within 14 days • No clawback • Maximum allowable cost (MAC) for each drug must be accessible, updated at least weekly, have robust appeals process • Until January 1, 2023, certain 340B-related provisions apply 	
<p>Sec. 2, 18 V.S.A. § 3802</p>	<p>Pharmacy rights during an audit</p>	<p>Amends existing law to address audits conducted remotely, speed up delivery of the audit reports, and provide pharmacies with access to all payment data related to audited claims</p>	

H.353 section	Topic	Relation to existing law	Notes
Sec. 3, 8 V.S.A. § 4089j	Patient and pharmacy protections regarding filling of prescriptions, including choice of pharmacy, scope of practice, adherence to State and federal requirements, limits on direct solicitation of plan beneficiaries	New provisions added to existing statute on filling of prescriptions	
Sec. 4, 33 V.S.A. § 2011	Directs AHS, with stakeholder group, to conduct competitive bidding process and administer program for wholesale drug distributor(s) who would be sole source to distribute drugs to community and outpatient pharmacies for Medicaid beneficiaries	None	Similar language was introduced in a bill sponsored by then-Senator Kevin Mullin in S.140 of 2017
Sec. 5	Repeals	Repeals 18 V.S.A. §§ 9421 and 9471-9474	These provisions are incorporated into and/or replaced by new PBM regulation chapter
Secs. 6 and 7	Applicability and effective date – act would take on July 1, 2021, but PBMs operating in Vermont on that date would have six months to come into compliance with the licensure and regulation requirements		Effective date needs updating – bill was introduced in 2021