

H.353, An act relating to pharmacy benefit management
Section-by-section summary as recommended by Senate Health & Welfare Committee
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Sec. 1. Intent

- 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 statute)

- 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. chapter 221, subchapter 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 with respect to 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
- **§ 9473: PBMs; required practices with respect to pharmacies**
 - Expands prohibitions on “gag clauses” in PBM contracts with pharmacies and pharmacists, in which pharmacists are restricted from providing information to patients about costs, treatments, insurance practices, and other matters
 - Prohibits PBM contracts from restricting pharmacies and pharmacists from disclosing information to DFR, law enforcement, or State or federal government officials, with specific provisions regarding treatment of confidential information
 - Prohibits PBMs from penalizing a pharmacist or 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 they would reimburse a non-340B covered entity or from discriminating against 340B covered entities in a manner that would prevent or interfere with a patient’s choice to get their medication from a 340B covered entity
 - Prohibits PBMs from reimbursing pharmacies and 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 the statutory scope of practice for pharmacy in Title 26
- Prohibits PBMs from requiring covered persons to use mail-order pharmacies or PBM affiliates 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 issues including:
 - PBM licensure, including costs in other states
 - Spread pricing
 - Dispensing fees
 - With Board of Pharmacy, issues regarding pharmacist scope of practice
- DFR’s findings and recommendations due by January 15, 2023

Sec. 6. Applicability

- Specifies that Sec. 2 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 pharmacy’s related to 340B drugs

Sec. 8. Effective dates

- PBM regulation sections take effect on January 1, 2023
- All other sections take effect on passage