TO THE HONORABLE SENATE:

The Committee on Health and Welfare to which was referred House Bill No. 353 entitled “An act relating to pharmacy benefit management” respectfully reports that it has considered the same and recommends that the Senate propose to the House that the bill be amended as follows:

First: By adding a new section to be Sec. 1a to read as follows:

Sec. 1a. 18 V.S.A. § 9421 is amended to read:

§ 9421. PHARMACY BENEFIT MANAGEMENT; REGISTRATION; INSURER AUDIT OF PHARMACY BENEFIT MANAGER ACTIVITIES

* * *

(f) The Department of Financial Regulation shall monitor the cost impacts on Vermont consumers of pharmacy benefit manager regulation pursuant to this section and to subchapter 9 of this chapter and shall recommend appropriate modifications to the laws as needed to promote health care affordability in this State.

(g) As used in this section:

* * *
Second: In Sec. 2, 18 V.S.A. chapter 221, subchapter 9, in § 9471, following the ellipses after subdivision (2), by adding a new subdivision to be subdivision (7) to read as follows:

(7) “Pharmacy benefit manager affiliate” means a pharmacy or pharmacist that, directly or indirectly, through one or more intermediaries, is owned or controlled by, or is under common ownership or control with, a pharmacy benefit manager.

Third: By striking out Sec. 4, 8 V.S.A. § 4089j, in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 8 V.S.A. § 4089j is amended to read:

§ 4089j. RETAIL PHARMACIES; FILLING OF PRESCRIPTIONS

(a) As used in this section:

* * *

(4) “Pharmacy benefit manager affiliate” means a pharmacy or pharmacist that, directly or indirectly, through one or more intermediaries, is owned or controlled by, or is under common ownership or control with, a pharmacy benefit manager.

(5) “Drug” or “prescription drug” has the same meaning as “prescription drug” in 26 V.S.A. § 2022 and includes:

(A) biological products, as defined in 18 V.S.A. § 4601;
(B) medications used to treat complex, chronic conditions, including medications that require administration, infusion, or injection by a health care professional;
(C) medications for which the manufacturer or the U.S. Food and Drug Administration requires exclusive, restricted, or limited distribution; and
(D) medications with specialized handling, storage, or inventory reporting requirements.

* * *

(b) A health insurer and/or pharmacy benefit manager doing business in Vermont shall permit a retail pharmacist licensed under 26 V.S.A. chapter 36 to fill prescriptions for all prescription drugs in the same manner and at the same level of reimbursement as they are filled by mail-order pharmacies and any other pharmacist or pharmacy, including a mail-order pharmacy or a pharmacy benefit manager affiliate, with respect to the quantity of drugs or days’ supply of drugs dispensed under each prescription.

(c) Notwithstanding any provision of a health insurance plan to the contrary, if a health insurance plan provides for payment or reimbursement that is within the lawful scope of practice of a pharmacist, the insurer may provide payment or reimbursement for the service when the service is provided by a pharmacist.
(d)(1) A health insurer or pharmacy benefit manager shall permit a
beneficiary of a plan offered by the health insurer to fill a prescription for a
drug at the in-network pharmacy of the beneficiary’s choice and, except with
respect to pharmacies owned or operated, or both, by a health care facility, as
defined in 18 V.S.A. § 9432, shall not impose differential cost-sharing
requirements based on the choice of pharmacy or otherwise promote the use of
one pharmacy over another.

(2) A health insurer or pharmacy benefit manager shall permit a
participating network pharmacy to perform all pharmacy services within the
lawful scope of the profession of pharmacy as set forth in 26 V.S.A.
chapter 36.

(3) A health insurer or pharmacy benefit manager shall not do any of the
following:

(A) Require a covered individual, as a condition of payment or
reimbursement, to purchase pharmacist services, including prescription drugs,
exclusively through a mail-order pharmacy or a pharmacy benefit manager
affiliate.

(B) Offer or implement plan designs that require a covered individual
to use a mail-order pharmacy or a pharmacy benefit manager affiliate.
(C) Order a covered individual, orally or in writing, including through online messaging, to use a mail-order pharmacy or a pharmacy benefit manager affiliate.

(D) Establish network requirements that are more restrictive than or inconsistent with State or federal law, rules adopted by the Board of Pharmacy, or guidance provided by the Board of Pharmacy or by drug manufacturers that operate to limit or prohibit a pharmacy or pharmacist from dispensing or prescribing drugs.

(E) Offer or implement plan designs that increase plan or patient costs if the covered individual chooses not to use a mail-order pharmacy or a pharmacy benefit manager affiliate. The prohibition in this subdivision (E) includes requiring a covered individual to pay the full cost for a prescription drug when the covered individual chooses not to use a mail-order pharmacy or a pharmacy benefit manager affiliate.

(4) The provisions of this subsection shall not apply to Medicaid.

Fourth: By adding a new section to be Sec. 4a to read as follows:

Sec. 4a. 8 V.S.A. § 4089k is added to read:

§ 4089k. PRESCRIPTION DRUGS DISPENSED BY HEALTH INSURER-DESIGNATED PHARMACIES FOR ADMINISTRATION TO PATIENTS IN A HEALTH CARE SETTING

(a) As used in this section:
(1) “Health care professional” means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33, an individual licensed as a naturopathic physician pursuant to 26 V.S.A. chapter 81, an individual licensed as a physician assistant under 26 V.S.A. chapter 31, or an individual licensed as an advanced practice registered nurse under 26 V.S.A. chapter 28.

(2) “Health care setting” means a health care professional’s office or a hospital or clinic at which a health care professional practices.

(3) “Health insurer” has the same meaning as in 18 V.S.A. § 9402.

(b)(1) A health insurer shall not, by contract, written policy, or written procedure, require that a pharmacy designated by the health insurer dispense a medication directly to a patient with the expectation or intention that the patient will transport the medication to a health care setting for administration by a health care professional.

(2)(A) A health insurer may enter into an agreement with a health care professional under which a pharmacy designated by the health insurer dispenses one or more medications directly to a specific patient for the patient to transport to a health care setting for the health care professional to administer to the patient.

(B) A health insurer that enters into an agreement pursuant to this subdivision (2) shall attest to the Department of Financial Regulation, in a form and manner determined by the Department, that:
(i) the health insurer provides an expedited, patient-specific exception process for cases in which the health care professional certifies that it is unsafe for an individual patient to receive medication directly from the health insurer-designated pharmacy;

(ii) the health insurer-designated pharmacy provides for same-day delivery of medications to patients;

(iii) the health insurer-designated pharmacy is accredited by a national pharmacy accreditation organization;

(iv) the health insurer-designated pharmacy has the ability to deliver medications to the patient’s home in a clinically appropriate dosage and in a ready-to-administer form;

(v) the health insurer-designated pharmacy utilizes cold chain logistics or other means to ensure that each medication remains at the appropriate temperature through all stages of supply, storage, and delivery;

(vi) the health insurer-designated pharmacy provides a medication’s pedigree to certify to the health care professional that the medication was handled appropriately throughout the supply chain;

(vii) the health insurer-designated pharmacy demonstrates expertise and reliability in risk evaluation and mitigation strategy that comply with U.S. Food and Drug Administration reporting requirements; and
(viii) the health insurer or the health insurer-designated pharmacy, or both, make access to a pharmacist or nurse available 24 hours per day, seven days per week.

(c)(1) A health insurer shall not, by contract, written policy, or written procedure, require that a pharmacy designated by the health insurer dispense a medication directly to a health care setting for a health care professional to administer to a patient.

(2)(A) A health insurer may enter into an agreement with a health care professional under which a pharmacy designated by the health insurer dispenses one or more medications for a specific patient directly to a health care setting for the health care professional to administer to the patient.

(B) A health insurer that enters into an agreement pursuant to this subdivision (2) shall attest to the Department of Financial Regulation, in a form and manner determined by the Department, that:

(i) the health insurer provides an expedited, patient-specific exception process for cases in which a health care professional certifies that it is unsafe for an individual patient’s medication to come directly from the health insurer-designated pharmacy;

(ii) the health insurer-designated pharmacy provides for same-day delivery of medications from the health insurer-designated pharmacy to the health care setting;
(iii) the health insurer-designated pharmacy is accredited by a national pharmacy accreditation organization;

(iv) the health insurer-designated pharmacy has the ability to deliver medications to the health care setting in a clinically appropriate dosage and in a ready-to-administer form;

(v) the health insurer-designated pharmacy utilizes cold chain logistics or other means to ensure that each medication remains at the appropriate temperature through all stages of supply, storage, and delivery;

(vi) the health insurer-designated pharmacy provides a medication’s pedigree to certify to the health care professional that the medication was handled appropriately throughout the supply chain;

(vii) the health insurer-designated pharmacy demonstrates expertise and reliability in risk evaluation and mitigation strategy that comply with U.S. Food and Drug Administration reporting requirements;

(viii) the health insurer or the health insurer-designated pharmacy, or both, make access to a pharmacist available 24 hours per day, seven days per week; and

(ix) the health insurer offers payment policies that reimburse for office-administered medications at the same rates, regardless of whether the medications were obtained from a pharmacy designated by the insurer or by the health care professional or health care setting, which payment shall include
the costs for the health care professional or health care setting to intake, store,
compound, and dispose of the medications.

(d) A health insurer shall not, by contract, written policy, or written
procedure, require:

(1) sterile compounding by a health care professional in a health care
setting without providing reimbursement to the health care professional for that
service; or

(2) a medication with a patient-specific dosage requirement to be based
on lab or test results on the day of the patient visit to be distributed from a
health insurer-designated pharmacy to a health care setting for administration.

(e) A health insurer may offer coverage for, but shall not require the use of:

(1) a home-infusion pharmacy to dispense sterile intravenous drugs
prescribed by a treating health care professional to a patient in the patient’s
home; or

(2) an infusion site other than the treating health care professional’s
office or a hospital or clinic at which the health care professional practices.

Fifth: By adding a new section to be Sec. 4b to read as follows:

Sec. 4b. 18 V.S.A. chapter 91, subchapter 5 is added to read:

Subchapter 5. Preferential Drug Pricing

§ 4671. INTERFERENCE WITH PREFERENTIAL DRUG PRICING

PROGRAMS PROHIBITED
(a) A hospital or health clinic in this State that is entitled to preferential pricing on outpatient prescription drugs under federal or State law or by contract may purchase such drugs at preferential prices and arrange for their shipment to a duly licensed pharmacy under contract with the hospital or clinic for purposes of dispensing the drugs on the hospital’s or clinic’s behalf.

(b) No manufacturer or supplier of outpatient prescription drugs for which a hospital or health clinic in this State is entitled to preferential pricing under federal or State law or by contract shall deny shipment of such drugs to the hospital’s or clinic’s contract pharmacy or place conditions or restrictions on the sale of the drugs.

Sixth: In Sec. 5, Department of Financial Regulation; pharmacy benefit management; report, in subsection (a), by adding a new subdivision to be subdivision (3) to read as follows:

(3) the cost impacts of pharmacy benefit manager licensure and related regulatory measures in other states that have enacted such legislation;

and by renumbering the remaining subdivisions to be numerically correct

(Committee vote: ____________)

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Senator _________________

FOR THE COMMITTEE