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April 27, 2022

Senate Committee on Health and Welfare
Room 17
Vermont State House
115 State Street
Montpelier, VT 05633-5301

Re: H.353 Additional Testimony

The Department of Financial Regulation is writing to express its concerns with the language of H.353 as it is currently being considered by the Committee. As the "common counterparty with health plans, retail pharmacies, and drug manufacturers[,]" pharmacy benefit managers (PBMs) are at the center of an opaque and complex system for financing prescription drugs.[1] This system accounts for approximately 11.2% of commercial insurance premiums in Vermont, according to a 2021 report prepared by the Green Mountain Care Board.[2] Given the impact that prescription drugs have on commercial insurance premiums, the Department strongly supports regulation of the PBM industry.

Two weeks ago, at the committee's invitation, the Department worked with Legislative Counsel to draft an amendment to H.353 intended to clarify the extension of mail order parity—the requirement that retail pharmacies be permitted to fill prescriptions "in the same manner and at the same level of reimbursement" as mail order pharmacies—to specialty drugs.[3] Mail order parity has been in law since Act 173 of 2016, and is well understood by health insurers and PBMs. Importantly, the Department has seen no evidence that mail order parity has increased prescription drug prices and anticipates that the same would be true with respect to specialty drugs.

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[1] Allison Dabbs Garrett and Robert Garis, *Leveling the Playing Field in the Pharmacy Benefit Management Industry*, 42 Val. U. L. Rev. 33, 61 (2007).
[2] Green Mountain Care Board, Impact of Prescription Drug Costs on Health Insurance Premiums (June 11, 2021), *available at* https://gmcboard.vermont.gov/sites/gmcb/files/documents/Act193_2021Report_PostedJune2021.pdf.
[3] *See* 8 V.S.A. § 4089j.

As drafted, however, the amendment includes language relating to prescription drugs dispensed for administration in a health care setting, also known as "white bagging" or "brown bagging", (Sec. 4a) and preferential drug pricing programs (Sec. 4b). The Department was not consulted about this language beforehand and cannot support its inclusion in this legislation.

The Department appreciates the safety concerns implicated by having a pharmacist dispense a medication to a patient with the expectation that the patient will then have the medication administered by a provider in a health care facility. For that reason, the Department believes that those concerns would be better addressed by adopting the language proposed by the Office of Professional Regulation on April 13. Such an approach would protect patients without lending legal recognition to the concept of "specialty pharmacy" or non-governmental pharmacy accreditations.

The Department also appreciates the concerns implicated by preferential drug pricing programs. As required by Act 74 of 2021, the Department issued a report on one such program, the 340B drug pricing program, which allows certain health care providers to purchase covered outpatient prescription drugs from participating drug manufacturers at significantly discounted prices.[4] Among other things, the Department found that Vermont hospitals are almost completely dependent on the program for their financial stability. As noted in the report, however, the Department believes that the most appropriate way to ensure continued access to prescription drugs through preferential pricing programs at this time is to increase oversight of PBMs and transparency into the complex web of prescription drug financing.

To assure parity among all health plans and all consumers are afforded the same opportunity to access prescription drugs, the Department requests subsection (d)(1) be struck from Section 4 on the H.353 amendment. The language is duplicative of the Department's proposed language in subsection 3 of Section 4 and is not in line with the requirement to allow individuals to access their prescriptions at a pharmacy of their choice.

Finally, the Department urges the committee to push the effective date of H.353 to January 1, 2023, at the earliest. Requiring health insurers to make substantive changes to their operational processes in the middle of a plan year would be difficult in a normal year. But this is not a normal year. In addition to the continued effects of the COVID-19 pandemic, insurers and providers are struggling to come into compliance with the federal No Surprises Act, which went into effect on January 1, 2022. More importantly, without any time to develop processes and procedures, the Department itself would not be prepared to enforce H.353 effective July 1, 2022. Because sufficient lead time before a substantive change in the law goes into effect is critical to ensuring that it works as intended, the Department cannot support the current effective date of July 1, 2022.

[4] The Department's report is available at: https://dfr.vermont.gov/sites/finreg/files/doc_library/dfr-legislative-report-act74-340b-program.pdf.

The Department would support additional language to clarify that pharmacy benefit managers and health insurers are not required to reimburse retail pharmacies more than they reimburse affiliates or other pharmacies in their specialty network. The Department would also support conforming the statutory language to the National Association of Insurance Commissioners (NAIC) model wherever possible, for instance, removing references to discount pricing in Sec. 2 with respect to the maximum a PBM can require a person to pay for a covered prescription drug.

The Department would be happy to answer any follow-up questions the committee has, either in-person or in writing.

Thank you,

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