

**Joint Task Force on Affordable, Accessible Health Care
October 28, 2021**

Policy Option: Legislation Directed at Pharmacy Benefit Managers (PBMs)

Description

Pharmacy benefit managers (PBMs) are third-party administrators of prescription drug coverage for insurers and employers. PBM services include:

- developing and maintaining formularies,
- processing claims, and
- negotiating discounts and rebates between payers and manufacturers.

PBMs manage plans for millions of Americans who receive health coverage through commercial health plans, self-insured employer plans, Medicare Part D plans, state government employee plans, and Medicaid.¹

PBMs are a middleman between prescription-drug plans and pharmacies. PBMs reimburse pharmacies for the cost of drugs covered by prescription-drug plans. The amount that PBMs reimburse pharmacies is typically set by their contracts with pharmacies, according to a list specifying the maximum allowable cost for each drug. In turn, prescription-drug plans reimburse PBMs according to contracts between the particular plan and PBM.

Who will it affect, and how?

PBM regulation is gaining traction as many believe that the amount the PBM is reimbursed by prescription-drug plans differs from and (often) exceeds the amount the PBM reimburses the pharmacy, leaving the PBM with an inflated profit and helping to drive up the costs of prescription drugs. Vermont has previously enacted a series of regulations to increase transparency of PBM operations and reduce the impact of the PBM on local pharmacies.

This policy option would put forward additional legislation to regulate PBMs. House Bill 353,² based on the model developed by that National Association of Insurance Commissioners (NAIC), is currently pending before the Vermont Legislature aimed at consolidating PBM provisions across Vermont statutes and to give more teeth to the Department of Financial Regulation in regulating the PBMs, by requiring PBMs to be licensed in Vermont rather than just requiring them to be registered, creating a detailed regulatory framework for regulating the PBMs and limiting their activities in the state.

State Activities

The National Association for State Health Policy (NASHP) has been actively monitoring and encouraging state activities aimed at making prescription drugs more affordable. For detailed information on state activities – see its legislative tracker at: <https://www.nashp.org/rx-legislative-tracker/>

According to the National Conference of State Legislatures, nearly 1/3 of the nearly 675 pharmaceutical-related bills filed in state legislatures this year are focused on PBMs. The bills concern the licensing or

¹ National Conference of State Legislators, <https://www.ncsl.org/research/health/state-policy-options-and-pharmacy-benefit-managers.aspx>.

² <https://legislature.vermont.gov/Documents/2022/Docs/BILLS/H-0353/H-0353%20As%20Introduced.pdf>

registration of PBMs, requirements for more transparency in the drug supply chain, and protections for independent pharmacies, which have been exploited by the PBMs.³

In December 2020, the U.S. Supreme Court ruled unanimously that Arkansas’s Act 900, which “effectively requires PBMs to reimburse Arkansas pharmacies at a price equal to or higher than the pharmacy’s wholesale cost,” is not preempted by the Employee Retirement Income Security Act of 1974 (ERISA). (See *Rutledge v. Pharmaceutical Care Management Association*, 2020 WL 7250098 (U.S. 2020)).

In addition to the state legislation, there are also federal legislative proposals would prohibit spread pricing by PBMs in Medicaid managed care.⁴

³ Ollove, Michael, “Laws for Prescription Drug Brokers Could Soon Have Teeth, STATELINE ARTICLE, PEW, August 9, 2021. (accessible at: <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/08/09/laws-for-prescription-drug-brokers-could-soon-have-teeth>)

⁴ U.S. Senate Committee on Finance, Description of the Chairman’s Mark: The Prescription Drug Pricing Reduction Act (PDPRA) of 2019 (Senate Finance, July 2019), <https://www.finance.senate.gov/imo/media/doc/FINAL%20Description%20of%20the%20Chairman's%20Mark%20for%20the%20Prescription%20Drug%20Pricing%20Reduction%20Act%20of%202019.pdf>.