Act No. 127 (H.233). An act relating to licensure and regulation of pharmacy benefit managers

Subjects: Health; prescription drugs; health insurance; pharmacies; pharmacy benefit managers

This act creates a new chapter on pharmacy benefit managers (PBMs) that establishes standards and criteria for licensure and regulation of PBMs. It consolidates existing PBM-related provisions into the new chapter, creates a PBM licensure requirement, and authorizes the Department of Financial Regulation to regulate PBMs. The act establishes fees for PBM licensure and prohibits PBMs from using "spread pricing," in which a PBM charges more to an insurer or other payer for a prescription drug than the PBM reimburses the pharmacy for dispensing the drug and the PBM keeps the difference. The act requires PBMs and health insurers to attribute all amounts paid by or on behalf of a patient for a prescription drug, including coupons and discounts, toward the patient's deductible and out-of-pocket limits, except that third-party payments do not have to be counted if there is a generic version of the drug and there is not a specific reason why the patient needs to use the brand-name version of the drug.

The act adds PBMs to an existing law prohibiting misleading or deceptive health insurance marketing and advertising. The act prohibits health insurers and PBMs from attempting to regulate prescription drugs, pharmacies, or pharmacists in a manner that is more restrictive than or inconsistent with State or federal law or Vermont Board of Pharmacy rules. The act prohibits PBMs and pharmacies from directly contacting a patient without the patient's consent for the purpose of marketing the pharmacy's services, except under certain circumstances. The act also prohibits an insurer or PBM from changing a patient's prescription drug order or choice of pharmacy without the patient's consent but specifies that this prohibition does not affect Vermont's generic substitution law, which requires pharmacists to substitute a lower-cost generic drug in most instances when a brand-name drug is prescribed.

The act repeals existing PBM laws on July 1, 2029, and specifies that, to the extent that existing PBM laws and the act's PBM provisions conflict, the act's provisions will control. The act also sets forth additional implementation provision, creates three new positions at the Department of Financial Regulation to regulate PBMs, and appropriates $405,000.00 to the Department from its Insurance Regulatory and Supervision Fund in fiscal year 2025 for PBM regulation. And the act directs the Department to report to the General Assembly on or before January 15, 2025 whether the Department recommends creating a private right of action to enforce the new PBM chapter.

Effective Date: July 1, 2024