

H.233, An act relating to pharmacy benefit management and Medicaid wholesale drug distribution
Section-by-section summary as recommended by House Committee on Health Care, (draft 4.4)

Prepared by Jennifer Carbee, Office of Legislative Counsel

March 1, 2024

Sec. 1. Adds a new chapter on pharmacy benefit managers (PBMs), 18 V.S.A. chapter 77

- **§ 3601 – Purpose** – purpose of chapter is to establish standards and criteria for licensure and regulation of PBMs by protecting the public; promoting insurer solvency, consumer savings, and fairness; providing the Department of Financial Regulation (DFR) with authority; and setting penalties and fines for violations of PBM laws
- **§ 3602 – Definitions** – most definitions are the same as in existing law
- **§ 3603 – Rulemaking** – directs DFR to adopt rules, including a requirement that PBMs file their advertising materials with DFR for approval before distributing
- **§ 3604 – Reporting** – requires DFR to report to legislative committees annually on PBMs’ compliance with the PBM chapter
- **§ 3611 – Licensure** – PBM licensure requirement, including a \$2,500 application fee and a \$1,000 annual licensure fee
- **§ 3612 – PBM prohibited practices** – most are the same as in current law and relate to issues such as banning limits on what pharmacies can say to patients (“gag clauses”) and setting limits on what patients have to pay out-of-pocket for prescription drugs, except:
 - Co-pay accumulator language – requires PBM to attribute everything a patient pays for a prescription drug, and everything paid on the patient’s behalf, including coupons and discounts, toward the patient’s deductible and out-of-pocket limits, except third-party payments would 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
 - Ban on “spread pricing,” which is where a PBM charges the insurer/patient more for a drug than it pays the pharmacy for that drug and then keeps the difference
- **§ 3613 – Enforcement; right of action** – directs DFR to enforce compliance with the PBM chapter, provides confidentiality protections to PBMs’ information, gives the Office of the Health Care Advocate access to the information, allows DFR to impose administrative penalties on PBMs and insurers for violations of the PBM chapter, and provides a private right of action
- **§ 3614 – Compliance; consistency with federal law** – specifies that nothing in the PBM chapter should be construed to conflict with federal law
- **§ 3615 – Charges for examinations, applications, reviews, and investigations** – allows DFR to charge (“bill back”) PBMs for DFR’s reasonable expenses in regulating them
- **§ 3621 – Insurer audit of PBM activities** – same as current law; requires PBMs to allow insurers who have certain types of PBM contracts to access information necessary for audit purposes
- **§ 3622 – PBM required practices with respect to health insurers** – most is the same as current law and includes a requirement for PBMs to act in insurers’ best interests; the bill does not include a requirement for PBMs report on their “spread” (the amount the PBM keeps) in spread pricing because the bill would ban spread pricing
- **§ 3631 – PBM required practices with respect to pharmacies** – most is the same as current law and requires prompt payment of claims, requires the same reimbursement for non-affiliated pharmacies as for PBM affiliates, provides protections for 340B covered entities and patients
 - Only difference is specifically excluding Medicaid from certain 340B provisions

Sec. 2. Amends 8 V.S.A. § 4084, a statute about health insurance marketing and advertising

- Adds PBMs to an existing statute that prohibits health insurance marketing and advertising from being misleading or deceptive

Sec. 3. Amends 8 V.S.A. § 4089j, a statute about health insurance coverage of prescription drugs

- Adds co-pay accumulator language by prohibiting a health insurer or PBM from excluding any amount a patient pays for a prescription drug, or any amount paid on the patient's behalf, including coupons and discounts, when calculating amounts contributed toward the patient's deductible and out-of-pocket limits, except third-party payments would 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 have the brand-name version instead
- Prohibits 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
- 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
- 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 does not affect Vermont's generic substitution law requiring pharmacists to substitute a lower-cost generic drug when a brand-name drug is prescribed

Sec. 4. Repeals; controlling laws

- Repeals existing PBM laws on July 1, 2029, and specifies that, to the extent that existing PBM laws and the bill's PBM provisions conflict, the bill's provisions would control

Sec. 5. Applicability

- PBM provisions relating to contracting and benefit design would apply to a contract or health benefit plan issued on or after January 1, 2025, but in no event later than July 1, 2029
 - A PBM that uses spread pricing in its existing contracts must report on the spread at least annually through 2029
- PBMs operating in Vermont on or before January 1, 2025, would have 12 months to comply with licensure requirement

Sec. 6. PBM regulation; positions; appropriation

- Creates three new positions at DFR to regulate PBMs: one attorney and two investigators
- Appropriates \$405,000 to DFR from its Insurance Regulatory and Supervision Fund in FY2025 for PBM regulation

Sec. 7. Effective date

- Bill would take effect on July 1, 2024

Bill title: House Health Care recommends amending the bill title to be "An act relating to licensure and regulation of pharmacy benefit managers"