Dear Chair Houghton and members of the House Committee on Health Care,

Thank you for the opportunity to testify on HB 233 on Wednesday.

As noted in my comments the other day, we have several concerns with the bill and support the issues raised by PCMA and the health plans. However, it is paramount to underscore the cost and operational impact of the language added to subsection (e) of Section 3631, on page 22, of the bill – language that was expressly removed during this Committee's discussion of HB 353 in 2022.

Within HB 233, this subsection reads as follows (new language in highlight):

> (e) A pharmacy benefit manager shall not reimburse a pharmacy or pharmacist in this State an amount less than the amount the pharmacy benefit manager reimburses a pharmacy benefit manager affiliate for providing the same pharmacist services. The reimbursement amount shall be calculated on a per-unit basis based on the pharmacy's actual acquisition cost and shall include a professional dispensing fee that shall be not less than the professional dispensing fee established for the Vermont Medicaid program by the Department of Vermont Health Access in accordance with 42 C.F.R. Part 447.

A plain reading of this subsection indicates that PBMs must not only pay unaffiliated pharmacies more than it would pay any pharmacies with which it has an affiliation (this is prescribed today in existing law), but this reimbursement must now be calculated on a per-drug basis (vs. in the aggregate) and at the unaffiliated pharmacies "actual acquisition cost" plus a dispensing fee set by DVHA.

As noted in the Act 131 Report, the DVHA dispensing fee is set substantially higher than the dispensing fees used in the commercial market. This is generally because the ingredient cost paid by Medicaid is less than ingredient cost paid in the commercial market, and the higher dispensing fee is intended to account for some of that difference.

According to DVHA's Pharmacy Provider Manual, the retail pharmacy dispensing fee is $11.13. In contrast, PCMA estimates that the average dispensing fee in the commercial market is closer to $2. Therefore, the impact of this mandate would add an estimated $9.13 for every prescription dispensed in Vermont. For reference, according to the Kaiser Family Foundation, there were over 3M prescriptions dispensed and paid by commercial payers in Vermont in 2019 – meaning the cost of this provision would likely exceed $27M annually. Please note that this added cost would not only reflect in health insurance premium, but also member cost sharing when the member is in the deductible phase of their insurance benefit or the prescription is subject to coinsurance.

In addition to the cost impact, the new language added to subsection (e) presents operational and implementation concerns. As noted in my testimony, PBMs have no line-of-sight into a pharmacy's acquisition cost of a drug and the price of drugs – particularly generics – is static and changes throughout the year depending on market conditions (e.g. a manufacturer comes online or closes, underlying production costs change, etc.). This combined with the fact that

pharmacy claims are adjudicated in real-time makes this operationally impossible. Today, PBMs ensure compliance with the original language of subsection (e), by comparing reimbursements for affiliated and unaffiliated pharmacies in the aggregate and truing up payment retrospectively. A requirement that PBMs collect every pharmacy's acquisition cost and making a calculation on a per-unit basis is dilatory and needlessly complex to achieve the same policy goal.

Lastly, there are a couple policy concerns with this language. First, the language added to subsection (e) applies to all pharmacies. So, the added cost of this section borne by health plans and Vermont consumers accrues to other large chain pharmacies, big box stores with pharmacies, pharmacies operated by providers or hospitals, and online sellers. Second, creating a mandate to reimburse pharmacies at their acquisition cost, which is undefined in the bill, could create a foundation for poor purchasing behavior. As drafted, there is no regulation of wholesalers or PSAOs or protection in the bill to ensure that wholesale prices for medications do not rise because of this policy, and as drafted Vermont pharmacies would always be reimbursed at their acquisition cost regardless.

For these reasons, we would respectfully ask that the committee strike the second sentence of subsection (e) of Section 3631, on page 22, of the bill.

In closing, I just want to reiterate my commitment to work with the committee on the remaining portions of the bill, and answer any questions, to produce the best outcome for Vermonters.

Thanks,

Steven

Steven Larrabee (He.Him.His.) | Lead Director, State Government Affairs (MA, RI and VT)