

H. 233

An act relating to pharmacy benefit management and Medicaid wholesale drug distribution

<https://legislature.vermont.gov/Documents/2024/Docs/BILLS/H-0233/H-0233%20As%20Introduced.pdf>

I) ENFORCEMENT OF PRESENT LAW

(Please Note: There are sections of H. 233 “As Introduced” that are already current law but are nonetheless underlined, not because they contain new language, as is convention, but because they are being better organized/moved within the Vermont statutes at Legislative Counsel’s discretion and direction.)

For those areas of the bill that are current law, VT pharmacies and pharmacists respectfully ask simply that those provisions (along with all other prior adopted VT PBM statutes) be fully implemented, overseen and enforced, while further recognizing that, if the VT Department of Financial Regulation (DFR) becomes the Pharmacy Benefit Manager (PBM) licenser, as the bill contemplates, DFR’s jurisdiction over PBMs will be better defined to the ultimate benefit of all Vermonters.

Areas of concern for fuller implementation, oversight and enforcement of current law include:

- A) Generic and biosimilar substitution noncompliance created by rebate incentives;
- B) ‘Specialty’ network designation and mail order parity noncompliance created by administrative hurdles and patient/beneficiary steering - with preferred reimbursement for owned network(s) and forced network participation through Pharmacy Services Administrative Organization (PSAO) contracts;
- C) Deductible-phase reimbursement ‘violations’;
- D) MAC appeals non-compliance – data withheld;
- E) Reimbursements below acquisition cost and less than PBM affiliate; and
- F) Audit non-compliance.

For reference and background, please see Act 131 from the 2021-2022 legislative biennium on pharmacy benefit managers (PBMs) and the DFR Report required by Act 131:

<https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT131/ACT131%20As%20Enacted.pdf>

<https://legislature.vermont.gov/assets/Legislative-Reports/DFR-Act-131-Report-on-PBMs.pdf>

For further reference and background, please see Meghna Chakrabarti On Point on PBMs (12/14/23):

<https://www.wbur.org/radio/programs/onpoint/archive>

<file:///C:/Users/Theo.THEO->

<PC/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/6LO629KY/Trish%20-%20ABA%20PBM%20Panel%20-%20June%202022%20final.pdf>

II) ENACTMENT OF NEW LAW

A) THE LICENSURE MODEL (Section 1 of H.233 As Introduced):

Pharmacies and pharmacists strongly support the not-yet-enacted provisions of H. 233 As Introduced that contemplate a new licensing and regulatory model for PBMs in Vermont, largely based on the National Association of Insurance Commissioners' (NAIC) Model Act.

DFR has already expressed support for taking on this role in its prior House Committee on Health Care testimony on H.233, provided however that appropriate staff resources are allocated to DFR to be able to do so. Pharmacies and pharmacists support an ongoing appropriation to support DFR in its new role, recognizing too that new PBM application, licensure and renewal fees in the bill can help defray those costs.

B) WHOLESALE ACQUISITION (Section 4 of H. 233 As Introduced at Page 27):

Pharmacies and pharmacists strongly support the not-yet-enacted provisions of H. 233 As Introduced that contemplate a state wholesale model which will streamline drug acquisition, supply, and distribution, reduce consumer costs, and allow pharmacists to focus solely on the clinical practice of pharmacy and not the drug marketplace.

To that end, pharmacies and pharmacists respectfully ask that a group of stakeholders pick up the work left off by the Department of Vermont Health Access (DVHA) in 2018 and be reconvened to develop and submit an RFP to implement the model.

Please See: [Sec.11a-Act-193-Prescription-Drug-Cost-Savings-and-Price-Transparency.pdf \(vermont.gov\)](https://www.vermont.gov/doc/legislation/act/2019/2019-11a-act-193-prescription-drug-cost-savings-and-price-transparency.pdf)

In 2018, DVHA's recommendations were: "The U.S. outpatient drug channels are extremely complicated, and DVHA believes that both savings and transparency can be achieved through channel simplification. ...DVHA sees value in continuing to explore potential opportunities with wholesalers."

In lieu of an RFP requirement in statute if it's too heavy lift, possible bill language could read:

"The Vermont Department of Financial Regulation, in cooperation with the committees of jurisdiction in the legislature shall convene a Task Force, between June-December 2024, to research and report back on the cost/benefit and possible design of a prescription drug wholesale model in Vermont as outlined in H. 233 (pages 27 -31). The Task Force would contrast the wholesale model with the existing system in terms of cost savings and increased access to consumers. The Task Force will consult with all interested stakeholders as necessary to ensure all perspectives inform their findings."

A report required under Act 133 in 2018 on a possible wholesale importation model for VT may also serve as a basis for further work on this topic.
<https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT133/ACT133%20As%20Enacted.pdf>

<https://legislature.vermont.gov/assets/Legislative-Reports/AHS-12-31-2018-Wholesale-Importation-of-Drugs.pdf>

There are private entities successfully expanding in the streamlined acquisition space including Mark Cuban's Cost-Plus Drugs, Amazon, & JPMorgan.

C) **SPREAD PRICING BAN** (at Page 12 of 31 at (f) of H. 233 As Introduced)

Pharmacies and pharmacists strongly support the not-yet-enacted provision of H. 233 As Introduced that prohibits PBMs from conducting or participating in spread pricing in Vermont. While we encourage the elimination of spread pricing, if retained, we support full transparency at the specific prescription level so policy makers can make decisions about the cost/benefit of spread pricing based on all available financial data. We also support pass-through of all rebates in such a way that premiums are as low as possible due to pharmacy costs, and when possible, to benefit consumers at the point of sale

D) **ACQUISITION COST PLUS**: (at Page 22 of 31 at (e) of H. 233 As Introduced)

Pharmacies and pharmacists strongly support the not-yet-enacted provision of H. 233 As Introduced that contemplates an objective and transparent methodology, including reimbursement for ingredient costs, for pharmacy reimbursement and payment (a dispensing fee). "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."

E) **COPAY ACCUMULATOR ADJUSTMENT PROGRAMS** (at p. 11 (3), p. 26 (F))

With copay accumulator adjustment programs PBMs exclude the value of drug manufacturer patient financial assistance from counting toward beneficiary deductibles and out-of-pocket maximums. DFR testified to the committee last year that the copay accumulator issue is live and hanging out there in Vermont despite existing statutory language that impliedly bans copay accumulator adjustment programs. H.233 would take Vermont from having an implied and unenforced ban on copay accumulator adjustment programs to having an explicit ban. Section 3612(e)(3) would require PBMs to "attribute any amount paid by or on behalf of a covered person ... including third party payments, financial assistance, discounts or coupons" to a beneficiary's deductibles and out-of-pocket maximums. Separately, Sec. 3 of H.233, which amends 8 V.S.A. § 4089(d)(2) to include a new subsection (F), prohibits a PBM from excluding any amount paid by or on behalf of a beneficiary, including third party payment in the form of financial assistance and coupons, from a beneficiary's contribution to a deductible or out-of-pocket maximum.

III) **COMMUNITY PHARMACY**

Even while pharmacies continue to close in our communities, pharmacists and pharmacies remain at the tip of the spear of our communities' clinical healthcare teams' delivery system,

and they are accessible to and trusted by Vermonters. The “clinical practice of pharmacy” needs to continue to allow pharmacists to practice at the top of their licenses. To that end pharmacists and pharmacies strongly support passage of H. 290 As Introduced by Rep. Cordes concerning scope of practice and the expansion of workforce/pharmacy technicians.
<https://legislature.vermont.gov/Documents/2024/Docs/BILLS/H-0290/H-0290%20As%20Introduced.pdf>

Respectfully Submitted,

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On behalf of the Vermont Pharmacists Association and Rutland Pharmacy