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February 27, 2025

Representative Alyssa Black, Chair
Vermont House Committee on Health Care
155 State Street
Montpelier, VT 05602

RE: Office of the Health Care Advocate Testimony in Support of H.202, Sections 3 and 4

Dear Chair Black and Members of the Committee:

Thank you for the opportunity to provide testimony regarding Sections 3 and 4 of House Bill 202 – An act relating to increasing the transparency of prescription drug costs and spending.

You have heard many descriptions of the 340B drug pricing program already. In its simplest form: covered entities buy drugs for a low price, then sell them for a high price. The result being a "margin" or what some might call it a "spread"—a little pot of money for each 340B transaction. Multiplied by however many thousands of drug transactions a covered entity may fill per year, and the little pot of money becomes a big pot of money, which, as you have heard, is intended to stretch scarce federal resources as far as possible, to reach as many patients and provide as many services as possible.

Stretching scarce resources to serve more patients is clearly a good thing. What happens when you have a big pot of money, though, is that lots of people take an interest in it. And that is what you heard about in testimony yesterday and today—many voices, all interested in 340B revenue.

None of which is to say that 340B is good or bad. I think you heard multiple witnesses say already, if they were designing an ideal system, 340B would not be a part of it. I will add my voice to that chorus. But 340B exists as part of the imperfect system we have today.

This Committee is simultaneously considering H.266 related to 340B contract pharmacies. You heard excellent testimony discussing multiple perspectives on the controversy surrounding contract pharmacies. And I will say the PhRMA point of view is not unreasonable. However, on balance, the financial condition of our Vermont providers is more important than any distortions in the market being created by contract pharmacies. Furthermore, until there is a federal fix to the program, the contract pharmacy protections in H.266 make sense to the HCA.

At the same time, recognizing just how "big" 340B has gotten is the number one reason why we need legislation like the 340B transparency language in Section 3 of H.202. When you have a large sum of money at stake—and in Vermont, there are tens of millions of dollars at stake—and multiple actors who are not providers of health care, like PBMs and third party administrators, and vertically integrated chain pharmacies, all seeking to get a bit of that money, you know it is probably a good idea to have as much transparency into the workings of that program as you can possibly get.

And right now, we do not have any meaningful transparency into 340B at all. Only two states have passed transparency language similar to H.202—Minnesota and Maine. The language in H.202 most closely follows the Minnesota model. And as you heard yesterday, Minnesota has issued their first report about 340B in their state from the data they obtained using very similar language. The report is highly informative, and you can find it online just by searching "Minnesota 340B transparency report." The report will show you the kind of information we could get about 340B in Vermont by enacting the transparency language in H.202.

What reporting would be most helpful? I am thankful to the GMCB for bringing their ideas to the table today, for how the language in H.202, Section 3 could be improved. I think those are great improvements. And I am sure this committee will find the right approach through further discussions. The language currently in the bill is a good place to start. And the HCA hopes there is some movement toward 340B transparency here in Vermont.

Regarding Section 4 of H.202, this section would require two types of disclosures to Vermont consumers.

I will start with the second of those disclosures which is in paragraph (b). This paragraph would require 340B covered entities to, once per year, notify patients

if drugs that were prescribed to the patient by the covered entity were purchased through the 340B program.

Why is this something a person would want? Again, this is about transparency. The bill summary to H.266 says the purpose of the bill is to protect 340B covered entities and 340B contract pharmacies and their patients. At least three times, the bill refers to protecting a "patient's choice to receive drugs from the 340B covered entity or 340B contract pharmacy." Which, it is odd to say you are protecting "patient choice" when the patient has no idea that their health care is even wrapped up in the 340B program. Section 4 would address that lack of transparency to the consumer. Would some consumers be confused? Maybe. Would some consumers be meaningfully informed or inspired to learn more? Hopefully so.

The other disclosure required in Section 4, paragraph (a) would require health plans to annually provide an accounting to individual beneficiaries of actual drug spending. As Representative Cordes testified when she introduced the bill last week, for medical claims you get an EOB that tells you accurately what the health care provider charged, what the discounts were, and what your health plan actually paid.

Not so with pharmaceutical claims. At best, the pharmacy claim in your member portal will show that there was some negotiated discount off the highly inflated list price. But we all know, with prescription drugs, especially brand names, those upfront discounts are only part of the story. There are rebates and other discounts that health plans receive after claim adjudication, that significantly reduce their overall drug spending. The savings from post claim adjudication rebates and discounts are so significant that health plans vigorously defend them.

Last year, this committee briefly entertained the idea of "point-of-sale rebate pass through" to consumers—which the health plans vehemently opposed, because any concession of rebates to consumers, would lead to increased premiums. The disclosure contemplated here is a counterproposal to rebate pass-through. If health plans cannot pass through a portion of rebates and discounts to the people whose health care generated them, then at least tell those patients how much was actually spent on their care. This language in Section 4 would accomplish that, with the aim of additional transparency to consumers.

Again, thank you for the opportunity to provide this testimony today. On behalf of the HCA, we hope you will consider advancing Sections 3 and 4 of H.202.

Recognizing the time pressures the committee is facing, and the urgency to act regarding 340B, we highly encourage moving forward with the 340B transparency language in Section 3 of H.202 now, by combining it with H.266. The disclosure language in Section 4, while important, could be addressed at another time.

Thank you for your consideration.

Sincerely,

/s/ Charles Becker
Staff Attorney
Office of the Health Care Advocate