



REPORT TO THE VERMONT LEGISLATURE

Department of Financial Regulation

Recommendations with Respect to Private Right of Action to Enforce Newly Enacted Market Conduct Standards Against Entities Performing PBM Services

In Accordance with Act 127 of 2024, Sec. 6a

**Submitted to: House Committee on Health Care
Senate Committee on Health and Welfare**

**Submitted by: Sandy Bigglestone
Acting Commissioner, Department of Financial Regulation**

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Deputy Commissioner of Insurance, Department of
Financial Regulation**

Report Date: January 10, 2025



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VIA ELECTRONIC MAIL

January 10, 2025

Rep. Alyssa Black, Chair
House Committee on Health Care

Sen. Virginia Lyons, Chair
Senate Committee on Health and Welfare

Dear Rep. Black and Senator Lyons,

In accordance with Act 127 of 2024, Sec. 6a, the Department of Financial Regulation (Department), submits the following recommendations with respect to a private right of action to enforce newly enacted market conduct standards against entities performing pharmacy benefit management services, “enabling pharmacies, pharmacists, and other persons injured by a pharmacy benefit manager’s violation of 18 V.S.A. chapter 77 to bring an action against the pharmacy benefit manager in Superior Court.”

By way of reminder, Act 127 establishes standards and criteria for licensure and regulation of pharmacy benefit managers (PBMs) in Vermont. Among other things, Act 127:

- Prohibits PBMs from entering into “spread pricing” arrangements.
- Requires all amounts paid by or on behalf of a patient for a prescription drug to be applied towards the patient’s deductible.
- Prohibits health insurers and PBMs from attempting to regulate prescription drugs 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 health insurers and PBMs from changing a patient’s prescription drug order or choice of pharmacy without the patient’s consent.

Act 127 also consolidates and incorporates Vermont’s existing PBM laws, including Act 131 of 2022.

The Department opposed the creation of a private right of action to enforce the substantive provisions of Act 127 in its testimony on the legislation during the 2024 legislative session. The



Department testified that enforcement of the substantive provisions of Title 8, V.S.A., as to regulated entities is subject to the Commissioner's discretion under 8 V.S.A. §§ 11, 12, and 15. A private right of action would necessarily undermine the Commissioner's enforcement discretion, allowing private attorneys to set healthcare policy and vastly increasing litigation risk for State-licensed entities regulated by the Department. The Department testified that the cost of increased litigation risk would be passed along to consumers who can ill afford it. The Department finally noted that pharmacies, who would benefit the most from a private right of action, already have ample tort and contract law remedies to address PBM conduct that is inconsistent with Vermont law and have previously filed lawsuits against PBMs.

Although a small minority of states, including New York and Arkansas,¹ allow a private right of action to enforce their PBM laws, the Department has seen no compelling evidence that the benefits in those states outweigh the costs and justify a departure from how other entities licensed and regulated by the Commissioner are treated. Therefore, for the same reasons expressed during testimony, the Department recommends against the creation of a private right of action to enforce Act 127.

Please let me know if you have any additional questions.

Thank you,

DocuSigned by:
Emily Brown
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Emily Brown (she/her)
Deputy Commissioner of Insurance

cc:

Jennifer Carbee, Legislative Counsel
Michael Fisher, Office of the Health Care Advocate

¹ See Ark. Code Ann. §§ 23-99-201-209, N.Y. Pub. Health Law § 280-a.

