

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Health Care to which was referred House Bill No. 353  
3 entitled “An act relating to pharmacy benefit management” respectfully reports  
4 that it has considered the same and recommends that the bill be amended by  
5 striking out all after the enacting clause and inserting in lieu thereof the  
6 following:

7 Sec. 1. INTENT

8 It is the intent of the General Assembly to increase access to needed  
9 medications by making prescription drugs more affordable and accessible to  
10 Vermonters by increasing State regulation of pharmacy benefit managers and  
11 pharmacy benefit management. It is also the intent of the General Assembly to  
12 stabilize and safeguard against the loss of more independent and community  
13 pharmacies, where pharmacists provide personalized care to Vermonters and  
14 help them with their health care needs, including medication management,  
15 medication adherence, and health screenings.

16 Sec. 2. 18 V.S.A. chapter 221, subchapter 9 is amended to read:

17 Subchapter 9. Pharmacy Benefit Managers

18 § 9471. DEFINITIONS

19 As used in this subchapter:

20 \* \* \*



1 interests, and to perform its duties with care, skill, prudence, and diligence. In  
2 the case of a health benefit plan offered by a health insurer as defined by  
3 subdivision 9471(2)(A) of this title, the health insurer shall remain responsible  
4 for administering the health benefit plan in accordance with the health  
5 insurance policy or subscriber contract or plan and in compliance with all  
6 applicable provisions of Title 8 and this title.

7 (b) A pharmacy benefit manager shall provide notice to the health insurer  
8 that the terms contained in subsection (c) of this section may be included in the  
9 contract between the pharmacy benefit manager and the health insurer.

10 (c) A pharmacy benefit manager that provides pharmacy benefit  
11 management for a health plan shall do all of the following:

12 (1) Provide all financial and utilization information requested by a  
13 health insurer relating to the provision of benefits to beneficiaries through that  
14 health insurer's health plan and all financial and utilization information  
15 relating to services to that health insurer. A pharmacy benefit manager  
16 providing information under this subsection may designate that material as  
17 confidential. Information designated as confidential by a pharmacy benefit  
18 manager and provided to a health insurer under this subsection ~~may~~ shall not  
19 be disclosed by the health insurer to any person without the consent of the  
20 pharmacy benefit manager, except that disclosure may be made by the health  
21 insurer:

1           (A) in a court filing under the consumer protection provisions of 9  
2 V.S.A. chapter 63, provided that the information shall be filed under seal and  
3 that prior to the information being unsealed, the court shall give notice and an  
4 opportunity to be heard to the pharmacy benefit manager on why the  
5 information should remain confidential;

6           (B) to State and federal government officials;

7           (C) when authorized by 9 V.S.A. chapter 63;

8           ~~(C)~~(D) when ordered by a court for good cause shown; or

9           ~~(D)~~(E) when ordered by the Commissioner as to a health insurer as  
10 defined in subdivision 9471(2)(A) of this title pursuant to the provisions of  
11 Title 8 and this title.

12           (2) Notify a health insurer in writing of any proposed or ongoing  
13 activity, policy, or practice of the pharmacy benefit manager that presents,  
14 directly or indirectly, any conflict of interest with the requirements of this  
15 section.

16           (3) With regard to the dispensation of a substitute prescription drug for a  
17 prescribed drug to a beneficiary in which the substitute drug costs more than  
18 the prescribed drug and the pharmacy benefit manager receives a benefit or  
19 payment directly or indirectly, disclose to the health insurer the cost of both  
20 drugs and the benefit or payment directly or indirectly accruing to the  
21 pharmacy benefit manager as a result of the substitution.

1           (4) ~~Unless the contract provides otherwise, if~~ If the pharmacy benefit  
2 manager derives any payment or benefit for the dispensation of prescription  
3 drugs within the State based on volume of sales for certain prescription drugs  
4 or classes or brands of drugs within the State, pass that payment or benefit on  
5 in full to the health insurer.

6           (5) Disclose to the health insurer all financial terms and arrangements  
7 for remuneration of any kind that apply between the pharmacy benefit manager  
8 and any prescription drug manufacturer that relate to benefits provided to  
9 beneficiaries under or services to the health insurer’s health plan, including  
10 formulary management and drug-switch programs, educational support, claims  
11 processing, and pharmacy network fees charged from retail pharmacies and  
12 data sales fees. A pharmacy benefit manager providing information under this  
13 subsection may designate that material as confidential. Information designated  
14 as confidential by a pharmacy benefit manager and provided to a health insurer  
15 under this subsection ~~may~~ shall not be disclosed by the health insurer to any  
16 person without the consent of the pharmacy benefit manager, except that  
17 disclosure may be made by the health insurer:

18           (A) in a court filing under the consumer protection provisions of 9  
19 V.S.A. chapter 63, provided that the information shall be filed under seal and  
20 that prior to the information being unsealed, the court shall give notice and an

1 opportunity to be heard to the pharmacy benefit manager on why the  
2 information should remain confidential;

3 (B) when authorized by 9 V.S.A. chapter 63;

4 (C) when ordered by a court for good cause shown; or

5 (D) when ordered by the Commissioner as to a health insurer as  
6 defined in subdivision 9471(2)(A) of this title pursuant to the provisions of  
7 Title 8 and this title.

8 (d) At least annually, a pharmacy benefit manager that provides pharmacy  
9 benefit management for a health plan shall disclose to the health insurer, the  
10 Department of Financial Regulation, and the Green Mountain Care Board the  
11 aggregate amount the pharmacy benefit manager retained on all claims charged  
12 to the health insurer for prescriptions filled during the preceding calendar year  
13 in excess of the amount the pharmacy benefit manager reimbursed pharmacies.

14 (e) A pharmacy benefit manager contract with a health insurer shall not  
15 contain any provision purporting to reserve discretion to the pharmacy benefit  
16 manager to move a drug to a higher tier or remove a drug from its drug  
17 formulary any more frequently than two times per year.

18 (f)(1) A pharmacy benefit manager shall not require a covered person  
19 purchasing a covered prescription drug to pay an amount greater than the lesser  
20 of:

1           (A) the cost-sharing amount under the terms of the health benefit  
2 plan;  
3           (B) the maximum allowable cost for the drug; or  
4           (C) the amount the covered person would pay for the drug, after  
5 application of any known discounts, if the covered person were paying the cash  
6 price.

7           (2) Any amount paid by a covered person under subdivision (1) of this  
8 subsection shall be attributed toward any deductible and, to the extent  
9 consistent with Sec. 2707 of the Public Health Service Act (42 U.S.C.  
10 § 300gg-6), the annual out-of-pocket maximums under the covered person’s  
11 health benefit plan.

12           (g) Compliance with the requirements of this section is required for  
13 pharmacy benefit managers entering into contracts with a health insurer in this  
14 State for pharmacy benefit management in this State.

15           § 9473. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES

16                           WITH RESPECT TO PHARMACIES

17           (a) Within 14 calendar days following receipt of a pharmacy claim, a  
18 pharmacy benefit manager or other entity paying pharmacy claims shall do one  
19 of the following:

20                   (1) Pay or reimburse the claim.

1           (2) Notify the pharmacy in writing that the claim is contested or denied.  
2           The notice shall include specific reasons supporting the contest or denial and a  
3           description of any additional information required for the pharmacy benefit  
4           manager or other payer to determine liability for the claim.

5           (b) A participation contract between a pharmacy benefit manager and a  
6           pharmacist shall not prohibit, restrict, or penalize a pharmacy or pharmacist in  
7           any way from disclosing to any covered person any health care information  
8           that the pharmacy or pharmacist deems appropriate, including:

9                   (1) the nature of treatment, risks, or alternatives to treatment;

10                   (2) the availability of alternate therapies, consultations, or tests;

11                   (3) the decision of utilization reviewers or similar persons to authorize  
12           or deny services;

13                   (4) the process that is used to authorize or deny health care services; or

14                   (5) information on finance incentives and structures used by the health  
15           insurer.

16           ~~(b)~~(c) A pharmacy benefit manager or other entity paying pharmacy claims  
17           shall not:

18                   (1) ~~impose a higher co-payment for a prescription drug than the co-~~  
19           ~~payment applicable to the type of drug purchased under the insured's health~~  
20           ~~plan;~~

1           ~~(2) impose a higher co-payment for a prescription drug than the~~  
2           ~~maximum allowable cost for the drug;~~

3           ~~(3) require a pharmacy to pass through any portion of the insured’s co-~~  
4           ~~payment, or patient responsibility, to the pharmacy benefit manager or other~~  
5           ~~payer;~~

6           (2) prohibit a pharmacy or pharmacist from discussing information  
7           regarding the total cost for pharmacist services for a prescription drug;

8           ~~(4)~~(3) prohibit or penalize a pharmacy or pharmacist for providing  
9           information to an insured regarding the insured’s cost-sharing amount for a  
10          prescription drug; or

11          ~~(5)~~(4) prohibit or penalize a pharmacy or pharmacist for the pharmacist  
12          or other pharmacy employee disclosing to an insured the cash price for a  
13          prescription drug or selling a lower cost drug to the insured if one is available.

14          (d) A pharmacy benefit manager contract with a participating pharmacist or  
15          pharmacy shall not prohibit, restrict, or limit disclosure of information to the  
16          Commissioner, law enforcement, or State and federal government officials,  
17          provided that:

18                 (1) the recipient of the information represents that the recipient has the  
19                 authority, to the extent provided by State or federal law, to maintain  
20                 proprietary information as confidential; and

1           (2) prior to disclosure of information designated as confidential, the  
2 pharmacist or pharmacy:

3           (A) marks as confidential any document in which the information  
4 appears; and

5           (B) requests confidential treatment for any oral communication of the  
6 information.

7           (e) A pharmacy benefit manager shall not terminate a contract with or  
8 penalize a pharmacist or pharmacy due to the pharmacist or pharmacy:

9           (1) disclosing information about pharmacy benefit manager practices,  
10 except for information determined to be a trade secret under State law or by the  
11 Commissioner, when disclosed in a manner other than in accordance with  
12 subsection (d) of this section; or

13           (2) sharing any portion of the pharmacy benefit manager contract with  
14 the Commissioner pursuant to a complaint or query regarding the contract's  
15 compliance with the provisions of this chapter.

16           ~~(e)~~(f) For each drug for which a pharmacy benefit manager establishes a  
17 maximum allowable cost in order to determine the reimbursement rate, the  
18 pharmacy benefit manager shall do all of the following:

19           (1) Make available, in a format that is readily accessible and  
20 understandable by a pharmacist, the actual maximum allowable cost for each  
21 drug and the source used to determine the maximum allowable cost, which

1 shall not be dependent upon individual beneficiary identification or benefit  
2 stage.

3 (2) Update the maximum allowable cost at least once every seven  
4 calendar days. In order to be subject to maximum allowable cost, a drug must  
5 be widely available for purchase by all pharmacies in the State, without  
6 limitations, from national or regional wholesalers and must not be obsolete or  
7 temporarily unavailable.

8 (3) Establish or maintain a reasonable administrative appeals process to  
9 allow a dispensing pharmacy provider to contest a listed maximum allowable  
10 cost.

11 (4)(A) Respond in writing to any appealing pharmacy provider within  
12 10 calendar days after receipt of an appeal, provided that, except as provided in  
13 subdivision (B) of this subdivision (4), a dispensing pharmacy provider shall  
14 file any appeal within 10 calendar days from the date its claim for  
15 reimbursement is adjudicated.

16 (B) A pharmacy benefit manager shall allow a dispensing pharmacy  
17 provider to appeal after the 10-calendar-day appeal period set forth in  
18 subdivision (A) of this subdivision (4) if the prescription claim is subject to an  
19 audit initiated by the pharmacy benefit manager or its auditing agent.

20 (5) For a denied appeal, provide the reason for the denial and identify  
21 the national drug code and a Vermont-licensed wholesaler of an equivalent

1 drug product that may be purchased by contracted pharmacies at or below the  
2 maximum allowable cost.

3 (6) For an appeal in which the appealing pharmacy is successful:

4 (A) make the change in the maximum allowable cost within 30  
5 business days after the redetermination; and

6 (B) allow the appealing pharmacy or pharmacist to reverse and rebill  
7 the claim in question.

8 ~~(d)~~(g) A pharmacy benefit manager shall not:

9 (1) require a claim for a drug to include a modifier or supplemental  
10 transmission, or both, to indicate that the drug is a 340B drug unless the claim  
11 is for payment, directly or indirectly, by Medicaid; or

12 (2) restrict access to a pharmacy network or adjust reimbursement rates  
13 based on a pharmacy's participation in a 340B contract pharmacy arrangement.

14 (h)(1) A pharmacy benefit manager or other third party that reimburses a  
15 340B covered entity for drugs that are subject to an agreement under 42 U.S.C.  
16 § 256b through the 340B drug pricing program shall not reimburse the 340B  
17 covered entity for pharmacy-dispensed drugs at a rate lower than that paid for  
18 the same drug to pharmacies that are not 340B covered entities, and the  
19 pharmacy benefit manager shall not assess any fee, charge-back, or other  
20 adjustment on the 340B covered entity on the basis that the covered entity  
21 participates in the 340B program as set forth in 42 U.S.C. § 256b.

1           (2) With respect to a patient who is eligible to receive drugs that are  
2           subject to an agreement under 42 U.S.C. § 256b through the 340B drug pricing  
3           program, a pharmacy benefit manager or other third party that makes payment  
4           for the drugs shall not discriminate against a 340B covered entity in a manner  
5           that prevents or interferes with the patient’s choice to receive the drugs from  
6           the 340B covered entity.

7           (i) A pharmacy benefit manager shall not reimburse a pharmacy or  
8           pharmacist in this State an amount less than the amount the pharmacy benefit  
9           manager reimburses a pharmacy benefit manager affiliate for providing the  
10           same pharmacist services.

11           (j) A pharmacy benefit manager shall not restrict, limit, or impose  
12           requirements on a licensed pharmacy in excess of those set forth by the  
13           Vermont Board of Pharmacy or by other State or federal law, nor shall it  
14           withhold reimbursement for services on the basis of noncompliance with  
15           participation requirements.

16           (k) A pharmacy benefit manager shall provide notice to all participating  
17           pharmacies prior to changing its drug formulary.

18           Sec. 3. 18 V.S.A. § 3802 is amended to read:

19           § 3802. PHARMACY RIGHTS DURING AN AUDIT

20           Notwithstanding any provision of law to the contrary, whenever a health  
21           insurer, a third-party payer, or an entity representing a responsible party

1 conducts an audit of the records of a pharmacy, the pharmacy shall have a right  
2 to all of the following:

3 \* \* \*

4 (2) If an audit is to be conducted on-site at a pharmacy, the entity  
5 conducting the audit:

6 (A) shall give the pharmacy at least 14 days' advance written notice  
7 of the audit and the specific prescriptions to be included in the audit; ~~and~~

8 (B) ~~may~~ shall not audit a pharmacy on Mondays or on weeks  
9 containing a federal holiday, unless the pharmacy agrees to alternative timing  
10 for the audit; and

11 ~~(3) Not to have an entity~~

12 (C) shall not audit claims that:

13 ~~(A)(i)~~ were submitted to the pharmacy benefit manager more than  
14 18 months prior to the date of the audit, unless:

15 ~~(i)(I)~~ required by federal law; or

16 ~~(ii)(II)~~ the originating prescription was dated within the 24-  
17 month period preceding the date of the audit; or

18 ~~(B)(ii)~~ exceed 200 selected prescription claims.

19 (3) If any audit is to be conducted remotely, the entity conducting the  
20 audit:





1           (3) A health insurer or pharmacy benefit manager shall adhere to the  
2           definitions of prescription drugs and the requirements and guidance regarding  
3           the pharmacy profession established by State and federal law and the Vermont  
4           Board of Pharmacy and shall not establish classifications of or distinctions  
5           between prescription drugs, impose penalties on prescription drug claims,  
6           attempt to dictate the behavior of pharmacies or pharmacists, or place  
7           restrictions on pharmacies or pharmacists that are more restrictive than or  
8           inconsistent with State or federal law or with rules adopted or guidance  
9           provided by the Board of Pharmacy.

10           (4) The provisions of this subsection shall not apply to Medicaid.

11           Sec. 5. DEPARTMENT OF FINANCIAL REGULATION; PHARMACY  
12                           BENEFIT MANAGEMENT; REPORT

13           (a) The Department of Financial Regulation, in consultation with interested  
14           stakeholders, shall consider:

15                   (1) whether pharmacy benefit managers should be required to be  
16           licensed to operate in this State;

17                   (2) whether pharmacy benefit managers should be prohibited from  
18           conducting or participating in spread pricing;

19                   (3) in collaboration with the Board of Pharmacy, whether any  
20           amendments to the Board's rules are needed to reflect necessary distinctions or  
21           appropriate limitations on pharmacist scope of practice;

1           (4) whether there should be a minimum dispensing fee that pharmacy  
2           benefit managers and health insurers must pay to pharmacies and pharmacists  
3           for dispensing prescription drugs;

4           (5) how a pharmacy should be reimbursed for a claim if a pharmacy  
5           benefit manager denies a pharmacy’s appeal in whole or in part, including  
6           whether the pharmacy should be allowed to submit a claim to the health insurer  
7           for the balance between the pharmacy benefit manager’s reimbursement and  
8           the pharmacy’s reasonable acquisition cost plus a dispensing fee;

9           (6) whether there is a problem in Vermont of pharmacies soliciting  
10           health insurance plan beneficiaries directly to market the pharmacy’s services  
11           and, if so, how best to address the problem; and

12           (7) other issues relating to pharmacy benefit management and its effects  
13           on Vermonters, on pharmacies and pharmacists, and on health insurance in this  
14           State.

15           (b) On or before January 15, 2023, the Department of Financial Regulation  
16           shall provide its findings and recommendations regarding the issues described  
17           in subsection (a) of this section to the House Committee on Health Care and  
18           the Senate Committees on Health and Welfare and on Finance.

19           Sec. 6. APPLICABILITY

20           (a) The provisions of Sec. 1 of this act (18 V.S.A. chapter 221, subchapter  
21           9, pharmacy benefit managers) shall apply to a contract or health plan issued,

1 offered, renewed, recredentialed, amended, or extended on or after the  
2 effective date of this act, including any health insurer that performs claims  
3 processing or other prescription drug or device services through a third party.

4 (b) A person doing business in this State as a pharmacy benefit manager on  
5 or before the effective date of this act shall have six months following the  
6 effective date of this act to come into compliance with the provisions of Sec. 1  
7 of this act (18 V.S.A. chapter 221, subchapter 9, pharmacy benefit managers).

8 Sec. 7. 2021 Acts and Resolves No. 74, Sec. E.227.2 is amended to read:

9 Sec. E.227.2 REPEAL

10 18 V.S.A. § 9473~~(d)~~(g) (pharmacy benefit managers; 340B entities) is  
11 repealed on ~~January 1, 2023~~ April 1, 2024.

12 Sec. 8. EFFECTIVE DATE

13 This act shall take effect on July 1, 2022.

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15  
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17

18 (Committee vote: \_\_\_\_\_)

19 \_\_\_\_\_

20 Representative \_\_\_\_\_

21 FOR THE COMMITTEE