

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 257
PROPOSED COMMITTEE SUBSTITUTE S257-PCS15298-BCf-36

Short Title: Medication Cost Transparency Act.

(Public)

Sponsors:

Referred to:

March 15, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE PRICING TRANSPARENCY FOR PATIENTS AND TO
3 ESTABLISH STANDARDS AND CRITERIA FOR THE REGULATION AND
4 LICENSURE OF PHARMACY BENEFITS MANAGERS PROVIDING SERVICES FOR
5 HEALTH BENEFIT PLANS IN NORTH CAROLINA.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.(a)** G.S. 58-56A-10 is recodified as G.S. 58-56A-30.

8 **SECTION 1.(b)** Article 56A of Chapter 58 of the General Statutes, as amended by
9 Section 1(a) of this act, reads as rewritten:

10 "Article 56A.

11 "Pharmacy Benefits Management.

12 **"§ 58-56A-1. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) 340B contract pharmacy. – Any pharmacy under contract with a 340B covered
15 entity to dispense drugs on behalf of the 340B covered entity.
- 16 (2) 340B covered entity. – Any entity defined in 42 U.S.C. § 256b(a)(4)(A), 42
17 U.S.C. § 256b(a)(4)(D), 42 U.S.C. § 256b(a)(4)(E), 42 U.S.C. §
18 256b(a)(4)(N), or 42 U.S.C. § 256b(a)(4)(O).
- 19 (3) Claim. – A request from a pharmacy or pharmacist to be reimbursed for the
20 cost of filling or refilling a prescription for a drug or for providing a medical
21 supply or device.
- 22 (4) Claims processing service. – The administrative services performed in
23 connection with the processing and adjudicating of claims relating to
24 pharmacist services that include either or both of the following activities:
25 a. Receiving payments for pharmacist services.
26 b. Making payments to pharmacists or pharmacies for pharmacist
27 services.
- 28 ~~(1)(5)~~ Health benefit plan. – As defined in G.S. 58-50-110(11). This definition
29 specifically excludes the State Health Plan for Teachers and State
30 Employees. G.S. 58-3-167.
- 31 ~~(1a)(6)~~ Insured. – An individual covered by a health benefit plan.
- 32 ~~(2)(7)~~ Insurer. – Any entity that provides or offers a health benefit plan. As defined
33 in G.S. 58-3-167.
- 34 (8) Maximum allowable cost list. – A listing of generic or multiple source drugs
35 used by a pharmacy benefits manager to set the maximum allowable cost on
36 which reimbursement of a pharmacy is made.



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- 1 ~~(3)~~(9) Maximum allowable cost price. – The maximum per unit reimbursement for
2 amount that a pharmacy benefits manager will reimburse a pharmacy for the
3 cost of generic or multiple source prescription drugs, medical products, or
4 devices.
- 5 (10) Out-of-pocket costs. – With respect to the acquisition of a drug, the amount to
6 be paid by the insured under the plan or coverage, including any cost-sharing,
7 copayment, coinsurance, or deductible.
- 8 (11) Pharmacy services administration organization (PSAO). – An entity operating
9 within the State that contracts with independent pharmacies to conduct
10 business on their behalf with third-party payers. PSAOs provide
11 administrative services to pharmacies and negotiate and enter into contracts
12 with third-party payers or pharmacy benefits managers on behalf of
13 pharmacies. A person or entity is a PSAO under this Article if it performs one
14 or more of the following administrative services to pharmacies:
- 15 a. Assistance with claims.
16 b. Assistance with audits.
17 c. Centralized payment.
18 d. Certification in specialized care programs.
19 e. Compliance support.
20 f. Setting flat fees for generic drugs.
21 g. Assistance with store layout.
22 h. Inventory management.
23 i. Marketing support.
24 j. Management and analysis of payment and drug dispensing data.
25 k. Provision of services for retail cash cards.
- 26 ~~(3a)~~(12) Pharmacist. – A person licensed to practice pharmacy under Article 4A of
27 Chapter 90 of the General Statutes.
- 28 (13) Pharmacist services. – Products, goods, or services provided as a part of the
29 practice of pharmacy.
- 30 ~~(4)~~(14) Pharmacy. – A pharmacy registered with the North Carolina Board of
31 Pharmacy. As defined in G.S. 90-85.3(q).
- 32 ~~(5)~~(15) Pharmacy benefits manager. – An entity who contracts with a pharmacy on
33 behalf of an insurer or third-party administrator to administer or manage
34 prescription drug benefits; benefits to perform any of the following functions:
35 a. Negotiating rebates with manufacturers for drugs paid for or procured
36 as described in this Article.
37 b. Processing claims for prescription drugs or medical supplies or
38 providing retail network management for pharmacies or pharmacists.
39 c. Paying pharmacies or pharmacists for prescription drugs or medical
40 supplies.
- 41 (16) Pharmacy benefits manager affiliate. – A pharmacy or pharmacist that directly
42 or indirectly, through one or more intermediaries, owns or controls or is
43 owned or controlled by a pharmacy benefits manager.
- 44 ~~(6)~~(17) Third-party administrator. – As defined in G.S. 58-56-2.
- 45 **§ 58-56A-2. Licensure.**
- 46 (a) A person or organization may not establish or operate as a pharmacy benefits manager
47 for health benefit plans in this State without obtaining a license from the Commissioner of the
48 Department of Insurance.
- 49 (b) The Commissioner shall develop an application for licensure to operate in this State
50 as a pharmacy benefits manager and may charge an initial application fee of two thousand dollars

1 (\$2,000) and an annual renewal fee of one thousand five hundred dollars (\$1,500). The pharmacy
2 benefits manager application form must collect only the following information:

- 3 (1) The name, address, and telephone contact number of the pharmacy benefits
4 manager.
- 5 (2) The name and address of the pharmacy benefits manager's agent for service
6 of process in this State.
- 7 (3) The name and address of each person with management or control over the
8 pharmacy benefits manager.
- 9 (4) The name and address of each person with a beneficial ownership interest in
10 the pharmacy benefits manager.
- 11 (5) Either (i) a signed statement that, to the best of the applicant's knowledge, no
12 officer with management or control of the pharmacy benefits manager has
13 been convicted of a felony or has violated any requirement of State or federal
14 law applicable to pharmacy benefits management or (ii) a description of any
15 felony or any violation of any requirement of State or federal law applicable
16 to pharmacy benefits management committed by any officer with
17 management or control of the pharmacy benefits manager.

18 (c) Unless otherwise provided for in this Article, an applicant or a pharmacy benefits
19 manager that is licensed to conduct business in the State shall file a notice describing any material
20 modification of the information required under this section.

21 **"§ 58-56A-3. Consumer protections.**

22 (a) A pharmacy or pharmacist shall have the right to provide an insured information
23 regarding the amount of the insured's cost share for a prescription drug. Neither a pharmacy nor
24 a pharmacist shall be penalized by a pharmacy benefits manager for discussing any information
25 described in this section or for selling a lower-priced drug to the insured if one is available.

26 (b) A pharmacy benefits manager shall not, through contract, prohibit a pharmacy from
27 offering and providing direct and limited delivery services to an insured as an ancillary service
28 of the pharmacy, as delineated in the contract between the pharmacy benefits manager and the
29 pharmacy.

30 (b1) A pharmacy benefits manager shall not prohibit a pharmacist or pharmacy from
31 charging a minimal shipping and handling fee to the insured for a mailed or delivered prescription
32 if the pharmacist or pharmacy discloses all of the following to the insured before delivery:

- 33 (1) The fee will be charged.
- 34 (2) The fee may not be reimbursed by the health benefit plan, insurer, or pharmacy
35 benefits manager.
- 36 (3) The charge is specifically agreed to by the health benefit plan or pharmacy
37 benefits manager.

38 (c) A pharmacy benefits manager shall not charge, or attempt to collect from, an insured
39 a co-payment that exceeds the total submitted charges by the network pharmacy.

40 (d) Any contract for the provision of a network to deliver health care services between a
41 pharmacy benefits manager and insurer shall be made available for review by the Department.

42 ~~(e) The Department shall report to the Attorney General any violations of this section or~~
43 ~~G.S. 58-56A-4 in accordance with G.S. 58-2-40(5).~~

44 **"§ 58-56A-4. Pharmacy and pharmacist protections.**

45 (a) A pharmacy benefits manager may only charge ~~a fee~~ fees or otherwise hold a
46 pharmacy responsible for a fee relating to the adjudication of a claim if the fee is reported on the
47 remittance advice of the adjudicated claim or is set out in contract between the pharmacy benefits
48 manager and the pharmacy. No fee or adjustment for the receipt and processing of a claim, or
49 otherwise related to the adjudication of a claim, shall be charged without a justification on the
50 remittance advice or as set out in contract and agreed upon by the pharmacy or pharmacist for

1 each adjustment or fee. This section shall not apply with respect to claims under an employee
2 benefit plan under the Employee Retirement Income Security Act of 1974 or Medicare Part D.

3 (b) Nothing in this Article shall abridge the right of a pharmacist to refuse to fill or refill
4 a prescription if the pharmacist believes it would be harmful to the patient or is not in the patient's
5 best interest, or if there is a question to the validity of the prescription.

6 (c) A pharmacy or pharmacist shall not be prohibited by a pharmacy benefits manager
7 from dispensing any prescription drug, including specialty drugs dispensed by a credentialed and
8 accredited pharmacy, allowed to be dispensed under a license to practice pharmacy under Article
9 4A of Chapter 90 of the General Statutes.

10 (d) A pharmacy benefits manager shall not penalize or retaliate against a pharmacist or
11 pharmacy for exercising rights provided under this Article. This subsection does not apply to
12 breach of contract between a pharmacy and a pharmacy benefits manager.

13 (e) A claim for pharmacist services may not be retroactively denied or reduced after
14 adjudication of the claim unless any of the following apply:

15 (1) The original claim was submitted fraudulently.

16 (2) The original claim payment was incorrect because the pharmacy or pharmacist
17 had already been paid for the pharmacist services.

18 (3) The pharmacist services were not rendered by the pharmacy or pharmacist.

19 (4) The adjustments were agreed to by the pharmacy or pharmacist.

20 (5) The adjustments were part of an attempt to limit overpayment recovery efforts
21 by a pharmacy benefits manager.

22 (f) Nothing in this section shall be construed to limit overpayment recovery efforts by a
23 pharmacy benefits manager.

24 **"§ 58-56A-5. Maximum allowable cost price.**

25 (a) In order to place a prescription drug on the maximum allowable cost price list, the
26 drug must be available for purchase by pharmacies in North Carolina from national or regional
27 wholesalers, must not be obsolete, and must meet one of the following conditions:

28 (1) The drug is listed as "A" or "B" rated in the most recent version of the United
29 States Food and Drug Administration's Approved Drug Products with
30 Therapeutic Equivalence Evaluations, also known as the Orange Book.

31 (2) The drug has a "NR" or "NA" rating, or a similar rating, by a nationally
32 recognized reference.

33 (b) A pharmacy benefits manager shall adjust or remove the maximum allowable cost
34 price for a prescription drug to remain consistent with changes in the national marketplace for
35 prescription drugs. A review of the maximum allowable cost prices for removal or modification
36 shall be completed by the pharmacy benefits manager at least once every seven business days,
37 and any removal or modification shall occur within seven business days of the review. A
38 pharmacy benefits manager shall provide a means by which the contracted pharmacies may
39 promptly review current prices in an electronic, print, or telephonic format within one business
40 day of the removal or modification.

41 (c) A pharmacy benefits manager shall ensure that dispensing fees are not included in the
42 calculation of maximum allowable cost price.

43 (d) A pharmacy benefits manager shall establish an administrative appeals procedure by
44 which a contracted pharmacy or pharmacist, or a designee, may appeal the provider's
45 reimbursement for a prescription drug subject to maximum allowable cost pricing if the amount
46 of reimbursement for the drug is less than the net amount that the network provider paid to the
47 suppliers of the drug. The reasonable administrative appeal procedure must include all of the
48 following:

49 (1) A dedicated telephone number and email address or website for the purpose
50 of submitting administrative appeals.

- 1 (2) The ability to submit an administrative appeal regarding the pharmacy
2 benefits plan or program directly to the pharmacy benefits manager or through
3 a pharmacy service administrative organization if the pharmacy service
4 administrative organization has a contract with the pharmacy benefits
5 manager that allows for the submission of appeals.
- 6 (3) No less than 10 calendar days after the applicable prescription fill date to file
7 an administrative appeal.
- 8 (4) A period of no more than 10 calendar days after receipt of notice of the filing
9 of the administrative appeal by the pharmacy benefits manager for a decision
10 to be made on the appeal.
- 11 (5) A requirement that if an appeal is upheld, then, within 10 calendar days of the
12 decision, the pharmacy benefits manager shall take all of the following
13 actions:
- 14 a. Notify the appellant of the decision.
- 15 b. Apply the change in the maximum allowable cost effective as of the
16 date the appeal was resolved and make the change effective for all
17 similarly situated pharmacies or pharmacists, as defined by the payor
18 subject to the Maximum Allowable Cost list.
- 19 c. Permit the appellant to reverse and rebill the claim that was appealed.
- 20 (6) A requirement that if the appeal is denied, then, within 10 calendar days of the
21 decision, the pharmacy benefits manager shall notify the appellant of the
22 decision and provide all of the following information:
- 23 a. The reason for denial.
- 24 b. The National Drug Code number for the prescription drug that is the
25 subject of the appeal.
- 26 c. The names of the national or regional pharmaceutical wholesalers
27 operating in the State.

28 "**§ 58-56A-15. Pharmacy benefits manager networks.**

29 (a) A pharmacy benefits manager shall not deny the right to any properly licensed
30 pharmacist or pharmacy to participate in a retail pharmacy network on the same terms and
31 conditions of other similarly situated participants in the network.

32 (b) A pharmacist or pharmacy that is a member of a pharmacy service administration
33 organization that enters into a contract with a health benefit plan issuer or a pharmacy benefits
34 manager on the pharmacy's behalf is entitled to receive from the pharmacy service administration
35 organization a copy of the contract provisions applicable to the pharmacy, including each
36 provision relating to the pharmacy's rights and obligations under the contract.

37 (c) Termination of a pharmacy or pharmacist from a pharmacy benefits manager network
38 does not release the pharmacy benefits manager from the obligation to make any payment due to
39 the pharmacy or pharmacist for pharmacist services properly rendered according to the contract.
40 This subsection does not apply in cases of fraud, waste, and abuse.

41 "**§ 58-56A-20. Pharmacy benefits manager affiliate disclosure; sharing of data.**

42 A pharmacy benefits manager shall not, in any way that is prohibited by the Health Insurance
43 Portability and Accountability Act of 1996 (HIPAA), transfer or share records relative to
44 prescription information containing patient-identifiable and prescriber-identifiable data to a
45 pharmacy benefits manager affiliate.

46 "**§ 58-56A-25. Enforcement.**

47 (a) The Commissioner may make an examination of the affairs of any pharmacy benefits
48 manager pursuant to the services that it provides for an insurer or a health benefit plan that are
49 relevant to determining if the pharmacy benefits manager is in compliance with this Article.
50 When making an examination, the Commissioner may retain attorneys, independent actuaries,

1 independent certified public accountants, or other professionals and specialists as examiners. The
2 pharmacy benefits manager shall bear the cost of retaining those persons.

3 (b) Pending, during, and after the examination of any pharmacy benefits manager, the
4 Commissioner shall not make public the information or data acquired, and the information or
5 data acquired during an examination is considered proprietary and confidential and is not a public
6 record under Chapter 132 of the General Statutes.

7 (c) Violations of this Article are subject to the penalties under G.S. 58-56A-30. After
8 notice and hearing, a pharmacy benefits manager may also be subject to revocation of, or a refusal
9 to renew, a license to operate in this State as a result of violations of this Article.

10 **"§ 58-56A-30. Civil Penalties for violations; administrative procedure.**

11 (a) Whenever the Commissioner has reason to believe that a pharmacy benefits manager
12 has violated any of the provisions of this Article with such frequency as to indicate a general
13 business practice, the Commissioner may, after notice and opportunity for a hearing, proceed
14 under the appropriate subsections of this section.

15 (b) If, under subsection (a) of this section, the Commissioner finds a violation of this
16 Article, the Commissioner may order the payment of a monetary penalty ~~as provided in~~
17 ~~subsection (e) of this section~~ or petition the Superior Court of Wake County for an order directing
18 payment of restitution as provided in subsections (d) and (e) of this section, or both. Each day
19 during which a violation occurs constitutes a separate violation.

20 (c) If the Commissioner orders the payment of a monetary penalty pursuant to subsection
21 (b) of this section, the penalty shall not be less than one hundred dollars (\$100.00) nor more than
22 one thousand dollars (\$1,000) per day for each prescription drug resulting from the pharmacy
23 benefit manager's failure to comply with G.S. 58-56A-5. In determining the amount of the
24 penalty, the Commissioner shall consider the degree and extent of harm caused by the violation,
25 the amount of money that inured to the benefit of the violator as a result of the violation, whether
26 the violation was committed willfully, and the prior record of the violator in complying or failing
27 to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty
28 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
29 Payment of the civil penalty under this section shall be in addition to payment of any other
30 penalty for a violation of the criminal laws of this State.

31 (d) Upon petition of the Commissioner to the court pursuant to subsection (b) of this
32 section, the court may order the pharmacy benefits manager who committed a violation ~~specified~~
33 ~~in subsection (b) of this section~~ under this Article to make restitution in an amount that would
34 make whole any pharmacist harmed by the violation. The petition may be made at any time and
35 also in any appeal of the Commissioner's order.

36 (e) Upon petition of the Commissioner to the court pursuant to subsection (b) of this
37 section, the court may order the pharmacy benefits manager who committed a violation ~~specified~~
38 ~~in subsection (b) of this section~~ under this Article to make restitution to the Department for
39 expenses under subsection (f) of this section, incurred in the investigation, hearing, and any
40 appeals associated with the violation in such amount that would reimburse the agency for the
41 expenses. The petition may be made at any time and also in any appeal of the Commissioner's
42 order.

43 (f) The Commissioner may contract with consultants and other professionals with
44 relevant expertise as necessary and appropriate to conduct investigation, hearing, and appeals
45 activities as provided in this section. ~~Such~~ ~~These~~ contracts shall not be subject to G.S. 114-2.3,
46 G.S. 147-17, or Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with rules
47 and procedures adopted under those Articles concerning procurement, contracting, and contract
48 review.

49 (g) Nothing in this section prevents the Commissioner from negotiating a mutually
50 acceptable agreement with any pharmacy benefits manager as to any civil penalty or restitution.

1 (h) Unless otherwise specifically provided for, all administrative proceedings under this
2 Article are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's
3 orders under this section shall be governed by G.S. 58-2-75.

4 **"§ 58-56A-45. Rules.**

5 The Commissioner shall adopt rules to implement the provisions of this Article.

6 **"§ 58-56A-50. Contracts with 340B covered entities.**

7 (a) A contract entered into between a pharmacy benefits manager and a 340B covered
8 entity's pharmacy or between a pharmacy benefits manager and a 340B contract pharmacy shall
9 not do any of the following:

10 (1) Restrict access to a pharmacy network or adjust 340B drug reimbursement
11 rates based on whether a pharmacy dispenses drugs under the 340B drug
12 discount program.

13 (2) Assess any additional, or vary the amount of any, fees, chargebacks, or other
14 adjustments on the basis of a drug being dispensed under the 340B drug
15 discount program or a pharmacy's status as a 340B covered entity or a 340B
16 contract pharmacy. This section does not prevent adjustments to correct errors
17 or overpayments resulting from an adjudicated claim.

18 (b) No pharmacy benefits manager making payments pursuant to a health benefit plan
19 shall discriminate against a 340B covered entity or a 340B contract pharmacy in a manner that
20 prevents or interferes with an enrollee's choice to receive a prescription drug from an in-network
21 340B covered entity or an in-network 340B contract pharmacy.

22 (c) The provisions of G.S. 58-51-37 shall apply to pharmacy benefits managers with
23 respect to 340B covered entities and 340B contract pharmacies.

24 (d) Any provision of a contract entered into between a pharmacy benefits manager and a
25 340B covered entity or 340B contract pharmacy that is contrary to this section is unenforceable."

26 **SECTION 2.** G.S. 58-2-40(5) reads as rewritten:

27 "(5) Report in detail to the Attorney General any violations of the laws relative to
28 pharmacy benefits managers, insurance companies, associations, orders and
29 bureaus or the business of insurance; and the Commissioner may institute civil
30 actions or criminal prosecutions either by the Attorney General or another
31 attorney whom the Attorney General may select, for any violation of the
32 provisions of Articles 1 through 64 of this Chapter."

33 **SECTION 3.** G.S. 58-56-2 reads as rewritten:

34 **"§ 58-56-2. Definitions.**

35 The following definitions apply in this Article:

36 ...

37 (5) Third party administrator. A person who directly or indirectly solicits or
38 effects coverage of, underwrites, collects charges or premiums from, or
39 adjusts or settles claims on residents of this State, or residents of another state
40 from offices in this State, in connection with life or health insurance or
41 annuities, except any of the following:

42 ...

43 m. A pharmacy benefits manager licensed under Article 56A of this
44 Chapter.

45"

46 **SECTION 4.** G.S. 58-51-37 reads as rewritten:

47 **"§ 58-51-37. Pharmacy of choice.**

48 (a) This section shall apply to all health benefit plans providing pharmaceutical services
49 benefits, including prescription drugs, to any resident of North Carolina. This section shall also
50 apply to insurance companies and health maintenance organizations that provide or administer
51 coverages and benefits for prescription drugs. This section shall apply to pharmacy benefits

1 managers with respect to 340B covered entities and 340B contract pharmacies, as defined in
2 G.S. 58-56A-1. This section shall not apply to any entity that has its own facility, employs or
3 contracts with physicians, pharmacists, nurses, and other health care personnel, and that
4 dispenses prescription drugs from its own pharmacy to its employees and to enrollees of its health
5 benefit plan; provided, however, this section shall apply to an entity otherwise excluded that
6 contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and
7 services. This section shall not apply to any federal program, clinical trial program, hospital or
8 other health care facility licensed pursuant to Chapter 131E or Chapter 122C of the General
9 Statutes, when dispensing prescription drugs to its patients.

10"

11 **SECTION 5.** This act becomes effective October 1, 2021, and applies to any
12 contracts entered into, renewed, or amended on or after that date.