

# Committee Report

**CONSENT CALENDAR**

**March 6, 2018**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Commerce and Consumer Affairs to  
which was referred HB 1741,**

**AN ACT relative to payments for covered prescription  
medications under the managed care law. Having  
considered the same, report the same with the following  
amendment, and the recommendation that the bill  
OUGHT TO PASS WITH AMENDMENT.**

**Rep. Edward Butler**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	Commerce and Consumer Affairs
Bill Number:	HB 1741
Title:	relative to payments for covered prescription medications under the managed care law.
Date:	March 6, 2018
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2018-0719h

### STATEMENT OF INTENT

This bill and its amendment simply put in statute an administrative rule adopted by the Insurance Department to allow and empower pharmacists to charge the least amount for pharmaceuticals.

Vote 17-0.

Rep. Edward Butler  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

Commerce and Consumer Affairs

**HB 1741**, relative to payments for covered prescription medications under the managed care law.  
**OUGHT TO PASS WITH AMENDMENT.**

Rep. Edward Butler for Commerce and Consumer Affairs. This bill and its amendment simply put in statute an administrative rule adopted by the Insurance Department to allow and empower pharmacists to charge the least amount for pharmaceuticals. **Vote 17-0.**

Original: House Clerk  
Cc: Committee Bill File

## Stapler, Carol

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**From:** John B Hunt <jbhunt@prodigy.net>  
**Sent:** Thursday, February 22, 2018 8:07 PM  
**To:** Smarling, Pam; Stapler, Carol  
**Subject:** Fwd: 1741 blurb  
**Attachments:** HB1741 - blurb.docx; ATT00001.htm

ok,  
Jbh

Begin forwarded message:

**From:** "Ed Butler" <edofthenotch@gmail.com>  
**Subject:** 1741 blurb  
**Date:** February 22, 2018 at 3:37:15 PM EST  
**To:** "John B Hunt" <jbhunt@prodigy.net>, "Stapler, Carol" <Carol.Stapler@leg.state.nh.us>

**HB1741:** OPA; This bill and its amendment simply puts in statute an INS rule to allow and empower pharmacists to charge the least amount for pharmaceuticals.









STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK

1/5/2018 10:27:29 AM  
Roll Call Committee Registers  
Report

2018 SESSION

COMMERCE

Bill #: HB 1741 Title: Re: to payments for covered prescription medications under the enhanced care law  
PH Date: 1, 17, 18 Exec Session Date: 2, 21, 18  
Motion: OTP-A Amendment #: \_\_\_\_\_

<u>MEMBER</u>	<u>YEAS</u>	<u>NAYS</u>
Hunt, John B. Chariman	✓	
Biggie, Barbara Vice Chairman	✓	
Fraser, Valerie Clerk	✓	
Fromuth, Bart		
Sanborn, Laurie J.	✓	
Ferreira, Elizabeth	✓	
Osborne, Jason M.		
Costable, Michael	✓	
Plumer, John R.	✓	
Schwaegler, Vicki	✓	
Panasiti, Reed A.	✓	
Butler, Edward A.	✓	
Gidge, Kenneth N.		
Williams, Kermit R.	✓	
Abel, Richard M.		
Luneau, David	✓	
McBeath, Rebecca		
Bartlett, Christy D.	✓	
Fontneau, Timothy	✓	
Van Houten, Connie	✓	
TOTAL VOTE:		

Rep. J. Mullin ✓  
Rep. P. Klee ✓  
17-0



2018 SESSION

COMMERCE

Bill #: 1741 Title: Payments for covered prescription medications under  
PH Date: 1/17/18 the managed care Exec Session Date: 2/21/18  
Motion: OTP Amendment #: 0719

MEMBER	YEAS	NAYS
Hunt, John B. Chariman	✓	
Biggie, Barbara Vice Chairman	✓	
Fraser, Valerie Clerk	✓	
Fromuth, Bart		
Sanborn, Laurie J.	✓	
Ferreira, Elizabeth	✓	
Osborne, Jason M.		
Costable, Michael	✓	
Plumer, John R.	✓	
Schwaegler, Vicki	✓	
Panasiti, Reed A.	✓	
Butler, Edward A.	✓	
Gidge, Kenneth N.		
Williams, Kermit R.	✓	
Abel, Richard M.		
Luneau, David	✓	
McBeath, Rebecca		
Bartlett, Christy D.	✓	
Fontneau, Timothy	✓	
Van Houten, Connie	✓	
TOTAL VOTE:		

Rep. J. Mollin ✓  
Rep. P. Klee ✓  
17-0

Rep. Butler, Carr. 7  
February 20, 2018  
2018-0719h  
01/10

Amendment to HB 1741

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to a definition of "contracted copayment" for purposes of the managed care  
4 law.

5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 Managed Care Law; Definitions. Amend RSA 420-J:3, X-a to read as follows:

9 X-a. *"Contracted copayment" means a fixed amount an individual is responsible to*  
10 *pay for covered prescriptions as set forth in the health benefit plan, or the price for filling*  
11 *the prescription as contracted between the health carrier or its pharmacy benefits*  
12 *manager and the pharmacy, whichever is less.*

13 X-b. "Contracted pharmacy" or "pharmacy" means a pharmacy participating in the network  
14 of a pharmacy benefit manager through a direct contract or through a contract with a pharmacy  
15 services administration organization or group purchasing organization.

16 2 Effective Date. This act shall take effect 60 days after its passage.

Amendment to HB 1741  
- Page 2 -

2018-0719h

AMENDED ANALYSIS

This bill establishes a definition of "contracted copayment" for the purposes of the managed care law.

# Sub-Committee Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

**SUBCOMMITTEE WORK SESSION** on HB 1741

**BILL TITLE:** (New Title) relative to a definition of "contracted copayment" for purposes of the managed care law.

**DATE:** February 20, 2018

**Subcommittee Members:** Reps. Hunt, Biggie, Fraser, Fromuth, Sanborn, Ferreira, Osborne, Costable, Plumer, Schwaegler, Panasiti, Butler, Gidge, Williams, Abel, Luneau, McBeath, Bartlett, Fontneau and Van Houten

**Comments and Recommendations:** Wednesday new amendment will be ready.

Respectfully submitted,

Rep. John Hunt  
Subcommittee Chairman

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION on HB 1741

BILL TITLE: relative to payments for covered prescription medications under the managed care law.

DATE: 2-20-18

Subcommittee Members: Reps. Hunt, Biggie, Fromuth, Sanborn, Ferreira, Osborne, Costable, Plumer, Schwaegler, Butler, Gidge, Williams, Abel, Luneau, McBeath, Bartlett, Fontneau, Van Houten and Fraser

Comments and Recommendations:

wed. new amendment

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

Respectfully submitted,

[Handwritten Signature]

Rep. \_\_\_\_\_ Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

**SUBCOMMITTEE WORK SESSION** on HB 1741

**BILL TITLE:** (New Title) relative to a definition of "contracted copayment" for purposes of the managed care law.

**DATE:** January 30, 2018

**Subcommittee Members:** Reps. Biggie, Schwaegler, Butler, Abel and Fraser

**Comments and Recommendations:** Awaiting more information for subcommittee to consider two different languages; waiting for amendment.

Respectfully submitted,

Rep. Barbara Biggie  
Subcommittee Clerk



HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION on HB 1741

BILL TITLE: relative to payments for covered prescription medications under the managed care law.

DATE: 1-30-18

Subcommittee Members: Reps. Hunt, Biggie, Fromuth, Sanborn, Ferreira, Osborne, Costable, Plumer, Schwaegler, Butler, Gidge, Williams, Abel, Luneau, McBeath, Bartlett, Fontneau, Van Houten and Fraser

Comments and Recommendations:

Awaiting more information for subcommittee to consider two different language. Waiting for an amendment.

MOTIONS: Withdrawn by Rep Butler. OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. Butler Seconded by Rep. Luneau AM Vote: \_\_\_\_\_

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

Amendment Adopted Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

Amendment Adopted Amendment Failed

Respectfully submitted,

Rep. Benjamin Biggie Subcommittee Chairman/Clerk



HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION on HB 1741

BILL TITLE: relative to payments for covered prescription medications under the managed care law.

DATE: 2-21-18

Subcommittee Members: Reps. Hunt, Biggie, Fraser, Fromuth, Sanborn, Ferreira, Osborne, Costable, Plumer, Schwaegler, Panasiti, Butler, Gidge, Williams, Abel, Luneau, McBeath, Bartlett, Fontneau and Van Houten

Comments and Recommendations:

Three horizontal lines for handwritten comments and recommendations.

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. Butler Seconded by Rep. Biggie AM Vote: 7-0

Adoption of Amendment # 719H

Moved by Rep. Butler Seconded by Rep. Biggie Vote: 7-0

Amendment Adopted Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. Seconded by Rep. AM Vote:

Adoption of Amendment #

Moved by Rep. Seconded by Rep. Vote:

Amendment Adopted Amendment Failed

Respectfully submitted,

Rep. [Signature] Subcommittee Chairman/Clerk

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Amendment to HB 1741  
- Page 2 -

2018-0719h

AMENDED ANALYSIS

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# Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 1741

BILL TITLE: relative to payments for covered prescription medications under the managed care law.

DATE: January 17, 2018

LOB ROOM: 302 Time Public Hearing Called to Order: 10:00 am

Time Adjourned: 10:14 am

Committee Members: Reps. Hunt, Biggie, Fromuth, Sanborn, Ferreira, Osborne, Costable, Plumer, Schwaegler, Panasiti, Butler, Gidge, Williams, Abel, Luneau, McBeath, Bartlett, Fontneau, Van Houter and Fraser

Bill Sponsors:

Rep. Butler

Rep. Rosenwald

Rep. Williams

Rep. Fothergill

Rep. Knirk

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

Rep Ed Butler, prime sponsor – Requests Interim Study on this bill. It is possible that insured can be charged more than that they need to be for drugs. There is a rule that the NH Department of Insurance has that can be used to ensure that consumers get the lowest price for prescription drug dispensed to them. Seems more prudent to study the issues and review the rule – prior to enacting a statute – to see if a statute is needed. So I am recommending Interim Study.

Tyler Brannan, NH Dept. of Insurance - Issue of how claims are being processed by carriers. For instance, if an insured has a \$25 copay - and the cost of the drug is only \$20- what does the patient pay? NH Statute says the insured pays "usually and customary" so some pharmacies charge the \$20 which is the usual price for this drug, but other pharmacy's say \$25 copay is what the insured contracted to pay for drug so that's the "usually and customary" cost. So to the extent that we have a rule in place we expect that the carriers will follow giving the lowest charge to consumers – There is some ambiguity here, but for the most part DOI believes that the insured are paying the lowest price for their prescriptions.

Q: Rep. Richard Abel – Would you believe, my wife and I take the same medication, and we have different policies, we use the same pharmacy, and pay different prices for same drug.

A: Yes. I believe it.

Q: Chairman John Hunt - How do you track it when it goes wrong?

A: Track it when consumer complains, and when the DOI does its compliance audits.

Chairman Hunt – I do it through even #'s. If I get charged \$.00, it's suspicious, if its \$.89 then I know its OK.

**Q: Rep. David Luneau** - If you are a member of the NH State health care plan

**A:** In most cases no. But even when it does not apply to self-insured population – it may because the size of the self-insured varies.

**Q: Chairman Hunt-** Some ERISA plans. State plan is free to use anything they want, correct?

**A: Mr. Brannon** – Yes, but we are using Anthem and Express Scripts. State opts in – but not for hearing aids and other ???

Blue Sheet: 2 Pro, ) Con

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Rebecca McBeath". The signature is fluid and cursive, with the first name being the most prominent.

Rebecca McBeath, Acting Clerk



HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 1741

**BILL TITLE:** relative to payments for covered prescription medications under the managed care law.

**DATE:** January 17, 2018

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**Time Adjourned:** 10:41 am 10:14 AM

Committee Members: Reps. Hunt, Biggie, Fromuth, Sanborn, Ferreira, Osborne, Costable, Plumer, Schwaegler, Panasiti, Butler, Gidge, Williams, Abel, Luneau, McBeath, Bartlett, Fontneau, Van Houten and Fraser

Bill Sponsors:

Rep. Butler

Rep. Rosenwald

Rep. Williams

Rep. Fothergill

Rep. Knirk

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\* Use asterisk if written testimony and/or amendments are submitted.

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**Q: Chairman Hunt**- Some ERISA plans. State plan is free to use anything they want, correct?

**A: Mr. Brannon** – Yes, but we are using Anthem and Express Scripts. State opts in – but not for hearing aids and other ???

Blue Sheet: 2 Pro, ) Con

Respectfully Submitted:

Rebecca McBeath, Acting Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB ~~1791-FN~~ 1741

BILL TITLE: allowing pharmacists to disclose information relative to lower cost drugs under the managed care law.

DATE: 1-17-18

ROOM: 302

Time Public Hearing Called to Order: 10:00 AM

Time Adjourned: 10:14 AM

*not present*

(please circle if present)

Committee Members: Reps. Hunt, Biggie, Fromuth, Sanborn, Ferreira, Osborne, Costable, Plumer, Schwaegler, Butler, Gidge, Williams, Abel, Luneau, McBeath, Bartlett, Fontneau, Van Houten and Fraser *Panasiti*

Bill Sponsors:

Rep. Butler  
Rep. Fothergill

Rep. Rosenwald  
Rep. Knirk

Rep. Williams

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

Rep. Ed Butler, Prime Sponsor

Tyler Brennan, NH Dept. of Insurance

Multiple horizontal lines for additional testimony.

*Handwritten signature*



# Testimony

Global Healthy Living Foundation  
515 North Midland Avenue  
Upper Nyack, New York 10960 USA  
+1 845 348 0400  
+1 845 340 0210 fax  
www.ghlf.org

TESTIMONY – STATE PBM CLAWBACK LEGISLATION

New Hampshire General Court

Public Hearing for House Bills 1741 & 1791

Speaker:

Stephen Marmaras

Director, State and National Advocacy

Global Healthy Living Foundation

December 12, 2017

*Disclosure: I have no disclosures to make regarding my travel here today. The Global Healthy Living Foundation accepts grants and charitable contributions from pharmaceutical companies, the government, private foundations and individuals. We have received scientific briefings from pharmaceutical companies, as well as from our independent medical advisory board.*

Good Morning Mr. Chairman and committee members.

My name is Stephen Marmaras. I am the Director of State and National Advocacy for the Global Healthy Living Foundation and I am speaking on behalf of the more than 100,000 chronically ill patients, including your fellow New Hampshire residents, whom we represent. I want to thank you for allowing me to speak today in support of the passage of House Bills 1741 & 1791, regulating PBM “clawbacks”. These bills significantly reduce health care spending and put the patient first by ending a little known but deceptive practice often used by pharmacy benefit managers to profit from over-charging enrollees for their prescription medicines.

One of the key factors in our increasingly complex health care system is the rise of Pharmacy Benefit Managers, or PBMs. PBMs are middlemen, paid by insurance companies to develop their formularies. However, pharmaceutical companies will often give PBMs rebates in exchange for inclusion on a formulary meaning that PBMs are paid twice. In order to cover these costs, pharmaceutical companies and insurance companies both raise their prices, placing the burden on the patient.

Current legislation allows for “clawbacks” which drastically increase healthcare spending. Under these schemes a patient goes to a pharmacy to fill a prescription and is charged a copayment that may be more than if the patient were to pay without using their insurance. The pharmacist is reimbursed at the normal rate, but is contractually obligated to send the over-charged “clawback” to the PBM. Current legislation also allows for a gag order preventing pharmacists from disclosing the price discrepancy, greatly restricting the patient’s autonomy. While the PBMs profit, pharmacists are bound to aid without realizing any of their own benefits, and patients suffer significant financial burdens.

Passage of HB 1741 or HB 1791 would put an end to this and ensure that patients receive their treatment at the lowest cost possible. If a PBM or insurance plan has a higher cost-sharing requirement than the customary price for cash costumers, the pharmacist shall inform the customer of the difference between available payment options. This ends the deceptive practice of PBM “clawbacks” once and for all, saving patients, insurers and the health care system money, while preventing PBMs from interfering with pharmacists’ ability to provide high quality, efficient care for the patients they serve.

HB 1741 and HB 1791 keep patients at the center of health care decisions, allow pharmacists to practice to the full extent of their licensure, and significantly reduce healthcare spending. We hope that you will offer your support for these pro-patient common sense bills. Thank you for your time and consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Stephen Marmaras". The signature is fluid and cursive, with the first name "Stephen" written in a larger, more prominent script than the last name "Marmaras".

Stephen Marmaras  
Director, State and National Policy  
Global Healthy Living Foundation



Bill as  
Introduced



HB 1741 - AS INTRODUCED

2018 SESSION

18-2684  
01/10

HOUSE BILL        **1741**

AN ACT            relative to payments for covered prescription medications under the managed care law.

SPONSORS:        Rep. Butler, Carr. 7; Rep. Rosenwald, Hills. 30; Rep. Williams, Hills. 4; Rep. Fothergill, Coos 1; Rep. Knirk, Carr. 3

COMMITTEE:       Commerce and Consumer Affairs

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ANALYSIS

This bill allows an insured to pay the least amount for covered prescription medication under the managed care law.

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Explanation:     Matter added to current law appears in *bold italics*.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eighteen*

AN ACT relative to payments for covered prescription medications under the managed care law.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

- 1       1 New Paragraph; Managed Care Law; Payments for Covered Prescription Medication. Amend  
2 RSA 420-J:8 by inserting after paragraph XV the following new paragraph:  
3       XVI.(a) After January 1, 2019, no health carrier or pharmacy benefits manager shall  
4 require an individual to make a payment at the point of sale for a covered prescription medication  
5 in an amount greater than the lesser of:  
6               (1) The applicable copayment for such prescription medication;  
7               (2) The allowable claim amount for the prescription medication; or  
8               (3) The amount an individual would pay for the prescription medication if the  
9 individual purchased the prescription medication without using a health benefit plan, or any other  
10 source of prescription medication benefits or discounts.  
11       (b) For the purposes of this paragraph, "allowable claim amount" means the amount the  
12 health carrier or pharmacy benefits manager has agreed to pay the pharmacy for the prescription  
13 medication.  
14       2 Effective Date. This act shall take effect 60 days after its passage.