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# Committee Report

REGULAR CALENDAR

June 5, 2019

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

The Majority of the Committee on Commerce and Consumer Affairs to which was referred SB 226-FN,

AN ACT relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

**Rep. Garrett Muscatel**

**FOR THE MAJORITY OF THE COMMITTEE**

**MAJORITY  
COMMITTEE REPORT**

Committee:	Commerce and Consumer Affairs
Bill Number:	SB 226-FN
Title:	relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.
Date:	June 5, 2019
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2019-2128h

**STATEMENT OF INTENT**

This bill, with the amendment, creates a registration requirement for Pharmacy Benefit Managers (PBMs) operating in the State of New Hampshire and reestablishes the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs from last year. The committee heard that there is a stunning lack of transparency in how insured individuals get their prescription drugs, and with prescription drug costs rising every day, removing the veil from this complicated system will allow us to understand it better and guide further regulation to help Granite Staters access the medication they need. Last year's commission recommended registration as a way to gather more data about prescription drug spending in New Hampshire as much of the information we currently collect from insurers is withheld by PBMs on account of "trade secrets" protection. Registration will allow us to get the data from PBMs directly, and with it, we will better understand where the money goes in this convoluted process. The commission reestablished in the bill will also continue to study this issue and make valuable further recommendations on how to proceed.

Vote 12-8.

Rep. Garrett Muscatel  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Commerce and Consumer Affairs

**SB 226-FN**, relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Garrett Muscatel for the **Majority** of Commerce and Consumer Affairs. This bill creates a registration requirement for Pharmacy Benefit Managers (PBMs) operating in the State of New Hampshire and reestablishes the prescription drug transparency commission from last year. The committee heard that there is a stunning lack of transparency in how insured individuals get their prescription drugs, and with prescription drug costs rising every day, removing the veil from this complicated system will allow us to understand it better and guide further regulation to help Granite Staters access the medication they need. Last year's commission recommended registration as a way to gather more data about prescription drug spending in New Hampshire as much of the information we currently collect from insurers is withheld by PBMs on account of "trade secrets" protection. Registration will allow us to get the data from PBMs directly, and with it, we will better understand where the money goes in this convoluted process. The commission reestablished in the bill will also continue to study this issue and make valuable further recommendations on how to proceed.

**Vote 12-8.**

Original: House Clerk  
Cc: Committee Bill File

## Carol Stapler

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**From:** Garrett Muscatel <repmuscatel@gmail.com>  
**Sent:** Saturday, May 25, 2019 2:13 PM  
**To:** Butler, Ed  
**Cc:** Carol Stapler  
**Subject:** SB 226 Committee Report

Hey Ed,

Sorry for being day late. Here's my committee report for 226.

This bill creates a registration requirement for Pharmacy Benefit Managers (PBMs) operating in the State of New Hampshire and reestablishes the prescription drug transparency commission from last year. The committee heard that there is a stunning lack of transparency in how insured individuals get their prescription drugs, and with prescription drug costs rising every day, removing the veil from this complicated system will allow us to understand it better and guide further regulation to help Granite Staters access the medication they need. Last year's commission recommended registration as a way to gather more data about prescription drug spending in New Hampshire as much of the information we currently collect from insurers is withheld by PBMs on account of "trade secrets" protection. Registration will allow us to get the data from PBMs directly, and with it, we will better understand where the money goes in this convoluted process. The commission reestablished in the bill will also continue to study this issue and make valuable further recommendations on how to proceed.

Best,

Garrett

Amendment to SB 226-FN

1 Amend the bill by replacing all after section 1 with the following:

2

3 2 New Chapter; Pharmacy Benefits Managers. Amend RSA by inserting after chapter 402-M  
4 the following new chapter:

5

CHAPTER 402-N

6

PHARMACY BENEFITS MANAGERS

7

402-N:1 Definitions. In this chapter:

8

I. "Claims processing services" means the administrative services performed in connection  
9 with the processing and adjudicating of claims relating to pharmacist  
10 services that include:

11

(a) Receiving payments for pharmacist services.

12

(b) Making payments to pharmacists or pharmacies for pharmacist services.

13

II. "Commissioner" means the commissioner of the insurance department.

14

III. "Health carrier" means "health carrier" as defined in RSA 420-J:3, XXIII.

15

IV. "Health benefit plan" means "health benefit plan" as defined in RSA 420-J:3, XIX.

16

V. "Pharmacist" means an individual licensed as a pharmacist by the pharmacy board.

17

VI. "Pharmacist services" means products, goods, and services, or any combination of  
18 products, goods, and services, provided as a part of the practice of pharmacy.

19

VII. "Pharmacy" means the place licensed by the pharmacy board in which drugs,  
20 chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.

21

VIII.(a) "Pharmacy benefits manager" means a person, business, or other entity, including a  
22 wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that, pursuant  
23 to a contract with a health carrier, manages the prescription drug coverage provided by the health  
24 carrier, including, but not limited to, providing claims processing services for prescription drugs,  
25 performing drug utilization review, processing drug prior authorization requests, adjudication of  
26 grievances or appeals related to prescription drug coverage, contracting with network pharmacies,  
27 and controlling the cost of covered prescription drugs.

28

(b) "Pharmacy benefits manager" shall not include any:

29

(1) Health care facility licensed in this state;

30

(2) Health care professional licensed in this state;

31

(3) Consultant who only provides advice as to the selection or performance of a

32

pharmacy benefits manager;

1 (4) Service provided to the Centers for Medicare and Medicaid Services; or

2 (5) Health insurer licensed in this state if the health insurer or its subsidiary is  
3 providing pharmacy benefits management services exclusively to its own insureds.

4 IX. "Rebate" means a discount or price concession attributable to the utilization of a  
5 prescription drug that is paid by the pharmaceutical manufacturer of the drug directly to a  
6 pharmacy benefits manager or health carrier after the pharmacy benefits manager or health carrier  
7 processes a claim from a pharmacy for a prescription drug manufactured by such pharmaceutical  
8 manufacturer. "Rebate" shall not include bona fide service fees, administrative fees, or any other  
9 amount which does not qualify as a rebate under this paragraph.

10 402-N:2 Registration to do Business; Rulemaking; Penalties.

11 I. A person or organization shall not establish or operate as a pharmacy benefits manager  
12 in this state for health benefit plans without registering with the insurance commissioner under  
13 this chapter.

14 II. The commissioner shall adopt rules pursuant to RSA 541-A relative to:

15 (a) Prescribing the application format for registration as a pharmacy benefits manager,  
16 including a requirement to submit the registrant's corporate charter, articles of incorporation, or  
17 other formation documents.

18 (b) Establishing application fees and renewal fees, not to exceed \$500 per year.

19 (c) Delineating procedures for handling consumer complaints and coordinating with the  
20 department's consumer services unit, including supplying designated contact information to enable  
21 the department to reach the pharmacy benefits manager regarding consumer complaints.

22 III. If the commissioner finds after notice and hearing that any person has violated any  
23 provision of this chapter, or rules adopted pursuant to this chapter, the commissioner may order:

24 (a) For each separate violation, a penalty in the amount of \$2,500.

25 (b) Revocation or suspension of the pharmacy benefits manager registration.

26 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

27 I. All contracts between a carrier or pharmacy benefit manager and a contracted pharmacy  
28 shall include:

29 (a) The sources used by the pharmacy benefit manager to calculate the drug product  
30 reimbursement paid for covered drugs available under the pharmacy health benefit plan  
31 administered by the carrier or pharmacy benefit manager.

32 (b) A process to appeal, investigate, and resolve disputes regarding the maximum  
33 allowable cost pricing. The process shall include the following provisions:

34 (1) A provision granting the contracted pharmacy or pharmacist at least 30 business  
35 days following the initial claim to file an appeal;

36 (2) A provision requiring the carrier or pharmacy benefit manager to investigate  
37 and resolve the appeal within 30 business days;

1           (3) A provision requiring that, if the appeal is denied, the carrier or pharmacy  
2 benefit manager shall:

3                   (A) Provide the reason for the denial; and

4                   (B) Identify the national drug code of a drug product that may be purchased by  
5 contracted pharmacies at a price at or below the maximum allowable cost; and

6           (4) A provision requiring that, if an appeal is granted, the carrier or pharmacy  
7 benefits manager shall within 30 business days after granting the appeal:

8                   (A) Make the change in the maximum allowable cost; and

9                   (B) Permit the challenging pharmacy or pharmacist to reverse and rebill the  
10 claim in question.

11           II. For every drug for which the pharmacy benefit manager establishes a maximum  
12 allowable cost to determine the drug product reimbursement, the pharmacy benefit manager shall:

13                   (a) Include in the contract with the pharmacy information identifying the national drug  
14 pricing compendia or sources used to obtain the drug price data.

15                   (b) Make available to a contracted pharmacy the actual maximum allowable cost for  
16 each drug.

17                   (c) Review and make necessary adjustments to the maximum allowable cost for every  
18 drug for which the price has changed at least every 14 days.

19           III. A pharmacy benefit manager shall not require accreditation of providers other than  
20 requirements set forth by the New Hampshire pharmacy board or other state or federal entity.

21           402-N:4 Prescription Drugs.

22           I. A pharmacy benefits manager or insurer shall require a contracted pharmacy to charge  
23 an enrollee or insured person the pharmacy's usual and customary price of filling the prescription  
24 or the contracted copayment, whichever is less.

25           II. Once it has settled a claim for filling a prescription for an enrollee or insured person and  
26 notified the pharmacy of the amount the pharmacy benefits manager or insurer shall pay to the  
27 pharmacy for that prescription, the pharmacy benefits manager or insurer shall not lower the  
28 amount to be paid to the pharmacy by the pharmacy benefits manager or the insurer for such  
29 settled claim; provided, however, that this paragraph shall not apply if the claim was submitted  
30 fraudulently or with inaccurate or misrepresented information.

31           402-N:5 Complaints Relative to Pharmacy Benefit Managers.

32           I. Consumers may file a complaint related to a registered pharmacy benefit manager  
33 pursuant to RSA 400-A:15-e.

34           II. The commissioner shall adopt rules, pursuant to RSA 541-A, to implement RSA 402-N:4.  
35 Such rules shall include procedures for addressing complaints, provisions for enforcement, the  
36 receipt of complaints referred to the insurance department under RSA 318:47-h, III(b), and for  
37 reporting to the board of pharmacy on the status of complaints referred.



1           402-N:6 Pharmacy Benefits Manager Reporting.

2           I. Each pharmacy benefits manager shall submit an annual report to the commissioner  
3 containing a list of health benefit plans it administered, and the aggregate amount of all rebates it  
4 collected from pharmaceutical manufacturers that were attributable to patient utilization in the  
5 state of New Hampshire during the prior calendar year.

6           II. Information reported to the commissioner pursuant to this paragraph shall be  
7 confidential and protected from disclosure under the commissioner's examination authority and  
8 shall not be considered a public record subject to disclosure under RSA 91-A. Based on this  
9 reporting, the commissioner shall make public aggregated data on the overall amount of rebates  
10 collected on behalf of covered persons in the state, but shall not release data that directly identifies  
11 a specific insurer or pharmacy benefit manager.

12           402-N:7 Authority to Examine and Directly Bill Pharmacy Benefits Managers for Certain  
13 Examinations. The commissioner may examine and directly bill a pharmacy benefits manager  
14 required to be registered under this chapter for the costs of any examination pursuant to RSA 400-  
15 A:37 as necessary to determine and enforce compliance with this chapter. In addition, if the  
16 commissioner finds through an investigation or examination that a carrier has not received  
17 information required under RSA 420-J:7-b, from a pharmacy benefit manager, the commissioner  
18 may require that the pharmacy benefit manager provide the required information, and the  
19 commissioner may investigate or examine and directly bill the pharmacy benefit manager for the  
20 cost of any portion of the examination or investigation pertaining to obtaining the required  
21 information.

22           402-N:8 Non-Exclusivity. Nothing in this chapter shall be interpreted to invalidate or render  
23 inapplicable any other provision of Title XXXVII that is otherwise applicable to an entity that  
24 qualifies as a pharmacy benefit manager under this chapter.

25           402-N:9 Severability. If any provision of this chapter or the application of this chapter to any  
26 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications  
27 of this chapter which can be given effect without the invalid provisions or application, and to this  
28 end, the provisions of this chapter are declared severable.

29           3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1,  
30 XI-a to read as follows:

31           XI-a. "Pharmacy benefits manager" means ~~[any person or entity as defined in RSA 420-J:3,~~  
32 ~~XXVIII-a]~~ *"pharmacy benefits manager" as defined in RSA 402-N:1, VIII.*

33           4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-  
34 a to read as follows:

35           XXVIII-a. "Pharmacy benefits manager" means ~~[a person who performs pharmacy benefits~~  
36 ~~management services, including a person acting on behalf of a pharmacy benefits manager in a~~  
37 ~~contractual or employment relationship in the performance of pharmacy benefits management~~

Amendment to SB 226

- Page 5 -

1 ~~services for a covered entity. "Pharmacy benefits manager" shall not include a health insurer~~  
2 ~~licensed in this state if the health insurer or its subsidiary is providing pharmacy benefits~~  
3 ~~management services exclusively to its own insureds, or a private single employer self-funded plan~~  
4 ~~that provides such benefits or services directly to its beneficiaries. "Pharmacy benefits~~  
5 ~~management" means the administration of prescription drug benefits provided by a covered entity~~  
6 ~~under the terms and conditions of the contract between the pharmacy benefits manager and the~~  
7 ~~covered entity and the provision of mail order pharmacy services] "pharmacy benefits manager"~~  
8 ~~as defined in RSA 402-N:1, VIII.~~

9 5 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug  
10 Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

11 126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug  
12 Rebate Programs.

13 I. There is established a commission to study greater transparency in pharmaceutical costs  
14 and drug rebate programs.

15 (a) The members of the commission shall be as follows:

16 (1) Three members of the house of representatives, appointed by the speaker of the  
17 house of representatives.

18 (2) One member of the senate, appointed by the president of the senate.

19 (3) The insurance commissioner, or designee.

20 (4) The commissioner of the department of health and human services, or designee.

21 (5) A representative of the New Hampshire Hospital Association, appointed by the  
22 association.

23 (6) A physician licensed under RSA 329, appointed by the New Hampshire Medical  
24 Society.

25 (7) The executive director of New Futures, or designee.

26 (8) A representative of the New Hampshire Pharmacists Association, appointed by  
27 the association.

28 (9) A representative of the Business and Industry Association of New Hampshire,  
29 appointed by the association.

30 (10) A member representing pharmacy benefit managers, appointed by the  
31 Pharmaceutical Care Management Association.

32 (11) A representative of America's Health Insurance Plans (AHIP), appointed by  
33 that organization.

34 (12) A representative of Pharmaceutical Research and Manufacturers of America,  
35 appointed by that organization.

36 (b) Legislative members of the commission shall receive mileage at the legislative rate  
37 when attending to the duties of the commission.

1           II.(a)(1) The commission shall study how to achieve greater transparency in pharmaceutical  
2 costs by identifying and analyzing certain critical prescription drugs and their role in overall health  
3 care spending in the New Hampshire and by analyzing the amounts rebated by drug manufacturers  
4 for certain high cost and high utilization prescription drugs. The commission's study shall include,  
5 but not be limited to:

6                   (A) Studying strategies available to achieve greater transparency in  
7 pharmaceutical costs by identifying and analyzing certain critical prescription drugs and their role  
8 in overall health care spending and the impact of price increases on patients and their families.

9                   (B) Reviewing legislative efforts in other states and taking advantage of any  
10 other analysis by outside organizations or foundations.

11                   (C) Analyzing the impact of drug prices on insurance premium costs, consumer  
12 out-of-pocket costs for prescription drugs, and state and county purchasing of prescription drugs.

13                   (D) Analyzing the potential impact of transparency in relation to the practices of  
14 pharmaceutical manufacturers and pharmacy benefits managers, including how research and  
15 development, marketing, and rebates affect drug prices.

16                   (E) Proposing changes to New Hampshire law, as needed, to reduce the rising  
17 cost of pharmaceuticals.

18           (2) The commission shall also study the role pharmacy benefit managers play in the  
19 cost, administration, and distribution of prescription drugs; if greater transparency in  
20 pharmaceutical costs to purchasers would lower costs in overall health care spending in New  
21 Hampshire; and analyzing the amounts rebated by drug manufacturers for prescription drugs  
22 passed to purchasers and patients. The goal shall be to determine if any changes to New  
23 Hampshire laws could reduce the rising cost of pharmaceuticals to purchasers or patients.

24           (b) The commission may solicit input from any person or entity the commission deems  
25 relevant to its study.

26           III. The members of the commission shall elect a chairperson from among the members.  
27 The first meeting of the commission shall be called by the first-named house member. The first  
28 meeting of the commission shall be held within 45 days of the effective date of this section. Eight  
29 members of the commission shall constitute a quorum.

30           IV. The commission shall make a report with its findings and any recommendations for  
31 proposed legislation on or before November 1, 2020 to the speaker of the house of representatives,  
32 the president of the senate, the house clerk, the senate clerk, the governor, and the state library.

33           6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in  
34 pharmaceutical costs and drug rebate programs, is repealed.

35           7 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

36           8 Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs and  
37 Drug Rebate Programs. To the extent possible, the membership of the commission to study greater

Amendment to SB 226

- Page 7 -

1 transparency in pharmaceutical costs and drug rebate programs established in section 6 of this act.  
2 shall remain the same as the commission established in former RSA 126-A:77.

3 9 Effective Date.

4 I. Sections 1-4 of this act shall take effect January 1, 2020.

5 II. Section 6 of this act shall take effect November 1, 2020.

6 III. Section 7 of this act shall take effect June 30, 2020.

7 IV. The remainder of this act shall take effect upon its passage.

REGULAR CALENDAR

June 5, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Commerce and Consumer Affairs to which was referred SB 226-FN,

AN ACT relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. John Hunt

FOR THE MINORITY OF THE COMMITTEE

**MINORITY  
COMMITTEE REPORT**

Committee:	Commerce and Consumer Affairs
Bill Number:	SB 226-FN
Title:	relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.
Date:	June 5, 2019
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

**STATEMENT OF INTENT**

Pharmacy Benefit Managers (PBMs) are subcontractors of health insurance companies. They are intended to help an insurance company control costs and ultimately hold down health insurance premiums. Currently the NH Insurance Department licenses and regulates insurance companies and must have access to information about all paid health benefits so that it can ensure that the insurance companies' premiums are correct based on all their actual claims paid, including any rebates or "kickbacks". Unfortunately the department is not confident that it is getting all of this information, and instead of holding the health insurance companies accountable, the department wants to register, not even license, these PBMs, in hopes that the department can fill the holes in to fully calculate the insurance companies' paid benefits. Clearly this problem can be best solved by requiring the insurance companies to rewrite their contracts with the PBMs. The adoption of this bill will just continue the finger pointing that will not resolve anything and will leave everyone wanting for real accountability.

Rep. John Hunt  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Commerce and Consumer Affairs

**SB 226-FN**, relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs. **INEXPEDIENT TO LEGISLATE.**

Rep. John Hunt for the **Minority** of Commerce and Consumer Affairs. Pharmacy Benefit Managers (PBMs) are subcontractors of health insurance companies. They are intended to help an insurance company control costs and ultimately hold down health insurance premiums. Currently the NII Insurance Department licenses and regulates insurance companies and must have access to information about all paid health benefits so that it can ensure that the insurance companies' premiums are correct based on all their actual claims paid, including any rebates or "kickbacks". Unfortunately the department is not confident that it is getting all of this information, and instead of holding the health insurance companies accountable, the department wants to register, not even license, these PBMs, in hopes that the department can fill the holes in to fully calculate the insurance companies' paid benefits. Clearly this problem can be best solved by requiring the insurance companies to rewrite their contracts with the PBMs. The adoption of this bill will just continue the finger pointing that will not resolve anything and will leave everyone wanting for real accountability.

Original: House Clerk  
Cc: Committee Bill File

## Carol Stapler

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**From:** Ed Butler <edofthenotch@gmail.com>  
**Sent:** Wednesday, May 29, 2019 9:42 AM  
**To:** Carol Stapler  
**Subject:** FW: SB226 Minority

Carol,

This is OK to go.

Ed

SB226 Minority ITL

Pharmacy Benefit Managers, PBMs, are subcontractors of health insurance companies. They are intended to help an insurance company to control costs and ultimately hold down health insurance premiums. Currently the NH department license and regulates insurance companies and must have be able to access all paid health benefits so that it may insure that the insurance companies premiums are correct based on all their actual claims paid including any rebates or "kickbacks". Unfortunately the department is not confident that it is getting all the information, and instead of holding the Health insurance companies accountable, the department wants to "Register", not even license these PBMs, in hopes that the department can fill the holes in to fully calculate the insurance companies paid benefits. Clearly this problem can be best solved by requiring the insurance companies to rewrite their contracts with the PBMs, but instead this bill will just continue the finger pointing that will not resolve anything and will leave everyone wanting for real accountability.



# Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on SB 226-FN

**BILL TITLE:** relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

**DATE:** May 21, 2019

**LOB ROOM:** 302

**MOTIONS:** OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Muscatel                      Seconded by Rep. Fargo                      AM Vote: 12-8

Amendment # 2019-2128h

Moved by Rep. Muscatel                      Seconded by Rep. Fargo                      Vote: 12-8

**CONSENT CALENDAR: NO**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Rebecca McBeath, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on SB 226-FN

BILL TITLE: relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

DATE: 5-21-19

LOB ROOM: 302

MOTION: (Please check one box)

Options: OTP, ITL, Retain (1st year), Interim Study (2nd year), Adoption of Amendment # (if offered). Moved by Rep. Muscatel, Seconded by Rep. Fargo, Vote: 12-8.

MOTION: (Please check one box)

Options: OTP, OTP/A, ITL, Retain (1st year), Interim Study (2nd year), Adoption of Amendment # (if offered). Moved by Rep. [blank], Seconded by Rep. [blank], Vote: 12-8.

MOTION: (Please check one box)

Options: OTP, OTP/A, ITL, Retain (1st year), Interim Study (2nd year), Adoption of Amendment # (if offered). Moved by Rep. [blank], Seconded by Rep. [blank], Vote: [blank].

MOTION: (Please check one box)

Options: OTP, OTP/A, ITL, Retain (1st year), Interim Study (2nd year), Adoption of Amendment # (if offered). Moved by Rep. [blank], Seconded by Rep. [blank], Vote: [blank].

CONSENT CALENDAR: YES NO

Minority Report? Yes No If yes, author, Rep: Hunt Motion ITL

Respectfully submitted: Rep Rebecca McBeath, Clerk



2019 SESSION

Commerce and Consumer Affairs

Bill #: SB226 Motion: Adopt Amended AM #: 21281 Exec Session Date: 5-21-2019

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Butler, Edward A. Chairman	✓		
Williams, Kermit R. Vice Chairman	✓		
<del>Giddens, Kenneth</del> <b>McConnell</b>	✓		
Abel, Richard M.	✓		
McBeath, Rebecca Susan Clerk	✓		
Bartlett, Christy D.	✓		
Herbert, Christopher J.	✓		
Van Houten, Constance	✓		
Fargo, Kristina M.	✓		
Indruk, Greg L.	✓		
Muscatel, Garrett D.	✓		
Weston, Joyce	✓		
Hunt, John B.		✓	
<del>Sanford, James</del> <b>RENZULLO</b>		✓	
Osborne, Jason M.		✓	
Costable, Michael		✓	
<del>Blumenfeld, John R.</del> <b>BALDASARO</b>		✓	
Barnes, Arthur E.		✓	
Potucek, John M.		✓	
Warden, Mark ↑		✓	
<b>TOTAL VOTE:</b>	<b>12</b>	<b>8</b>	





2019 SESSION

Commerce and Consumer Affairs

Bill #: 2026 Motion: OTPA AM #: 2128 Exec Session Date: 5-21-2019

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Butler, Edward A. Chairman	✓		
Williams, Kermit R. Vice Chairman	✓		
<del>Giddens, Kenneth</del> <b>McConnell</b>	✓		
Abel, Richard M.	✓		
McBeath, Rebecca Susan Clerk	✓		
Bartlett, Christy D.	✓		
Herbert, Christopher J.	✓		
Van Houten, Constance	✓		
Fargo, Kristina M.	✓		
Indruk, Greg L.	✓		
Muscatel, Garrett D.	✓		
Weston, Joyce	✓		
Hunt, John B.		✓	
<del>Sanborn, Robert</del> <b>RENZULLO</b>		✓	
Osborne, Jason M.		✓	
Costable, Michael		✓	
<del>Plummer, John R.</del> <b>BALDASARO</b>		✓	
Barnes, Arthur E.		✓	
Potucek, John M.		✓	
Warden, Mark ↑		✓	
<b>TOTAL VOTE:</b>	<b>12</b>	<b>8</b>	

Amendment to SB 226-FN

1 Amend the bill by replacing all after section 1 with the following:

2

3 2 New Chapter; Pharmacy Benefits Managers. Amend RSA by inserting after chapter 402-M  
4 the following new chapter:

5

CHAPTER 402-N

6

PHARMACY BENEFITS MANAGERS

7

402-N:1 Definitions. In this chapter:

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(a) Receiving payments for pharmacist services.

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(b) Making payments to pharmacists or pharmacies for pharmacist services.

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II. "Commissioner" means the commissioner of the insurance department.

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IV. "Health benefit plan" means "health benefit plan" as defined in RSA 420-J:3, XIX.

16

V. "Pharmacist" means an individual licensed as a pharmacist by the pharmacy board.

17

VI. "Pharmacist services" means products, goods, and services, or any combination of  
18 products, goods, and services, provided as a part of the practice of pharmacy.

19

VII. "Pharmacy" means the place licensed by the pharmacy board in which drugs,  
20 chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.

21

VIII.(a) "Pharmacy benefits manager" means a person, business, or other entity, including a  
22 wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that, pursuant  
23 to a contract with a health carrier, manages the prescription drug coverage provided by the health  
24 carrier, including, but not limited to, providing claims processing services for prescription drugs,  
25 performing drug utilization review, processing drug prior authorization requests, adjudication of  
26 grievances or appeals related to prescription drug coverage, contracting with network pharmacies,  
27 and controlling the cost of covered prescription drugs.

28

(b) "Pharmacy benefits manager" shall not include any:

29

(1) Health care facility licensed in this state;

30

(2) Health care professional licensed in this state;

31

(3) Consultant who only provides advice as to the selection or performance of a

32

pharmacy benefits manager;

Amendment to SB 226

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1 (4) Service provided to the Centers for Medicare and Medicaid Services; or

2 (5) Health insurer licensed in this state if the health insurer or its subsidiary is  
3 providing pharmacy benefits management services exclusively to its own insureds.

4 IX. "Rebate" means a discount or price concession attributable to the utilization of a  
5 prescription drug that is paid by the pharmaceutical manufacturer of the drug directly to a  
6 pharmacy benefits manager or health carrier after the pharmacy benefits manager or health carrier  
7 processes a claim from a pharmacy for a prescription drug manufactured by such pharmaceutical  
8 manufacturer. "Rebate" shall not include bona fide service fees, administrative fees, or any other  
9 amount which does not qualify as a rebate under this paragraph.

10 402-N:2 Registration to do Business; Rulemaking; Penalties.

11 I. A person or organization shall not establish or operate as a pharmacy benefits manager  
12 in this state for health benefit plans without registering with the insurance commissioner under  
13 this chapter.

14 II. The commissioner shall adopt rules pursuant to RSA 541-A relative to:

15 (a) Prescribing the application format for registration as a pharmacy benefits manager,  
16 including a requirement to submit the registrant's corporate charter, articles of incorporation, or  
17 other formation documents.

18 (b) Establishing application fees and renewal fees, not to exceed \$500 per year.

19 (c) Delineating procedures for handling consumer complaints and coordinating with the  
20 department's consumer services unit, including supplying designated contact information to enable  
21 the department to reach the pharmacy benefits manager regarding consumer complaints.

22 III. If the commissioner finds after notice and hearing that any person has violated any  
23 provision of this chapter, or rules adopted pursuant to this chapter, the commissioner may order:

24 (a) For each separate violation, a penalty in the amount of \$2,500.

25 (b) Revocation or suspension of the pharmacy benefits manager registration.

26 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

27 I. All contracts between a carrier or pharmacy benefit manager and a contracted pharmacy  
28 shall include:

29 (a) The sources used by the pharmacy benefit manager to calculate the drug product  
30 reimbursement paid for covered drugs available under the pharmacy health benefit plan  
31 administered by the carrier or pharmacy benefit manager.

32 (b) A process to appeal, investigate, and resolve disputes regarding the maximum  
33 allowable cost pricing. The process shall include the following provisions:

34 (1) A provision granting the contracted pharmacy or pharmacist at least 30 business  
35 days following the initial claim to file an appeal;

36 (2) A provision requiring the carrier or pharmacy benefit manager to investigate  
37 and resolve the appeal within 30 business days;

1 (3) A provision requiring that, if the appeal is denied, the carrier or pharmacy  
2 benefit manager shall:

3 (A) Provide the reason for the denial; and

4 (B) Identify the national drug code of a drug product that may be purchased by  
5 contracted pharmacies at a price at or below the maximum allowable cost; and

6 (4) A provision requiring that, if an appeal is granted, the carrier or pharmacy  
7 benefits manager shall within 30 business days after granting the appeal:

8 (A) Make the change in the maximum allowable cost; and

9 (B) Permit the challenging pharmacy or pharmacist to reverse and rebill the  
10 claim in question.

11 II. For every drug for which the pharmacy benefit manager establishes a maximum  
12 allowable cost to determine the drug product reimbursement, the pharmacy benefit manager shall:

13 (a) Include in the contract with the pharmacy information identifying the national drug  
14 pricing compendia or sources used to obtain the drug price data.

15 (b) Make available to a contracted pharmacy the actual maximum allowable cost for  
16 each drug.

17 (c) Review and make necessary adjustments to the maximum allowable cost for every  
18 drug for which the price has changed at least every 14 days.

19 III. A pharmacy benefit manager shall not require accreditation of providers other than  
20 requirements set forth by the New Hampshire pharmacy board or other state or federal entity.

21 402-N:4 Prescription Drugs.

22 I. A pharmacy benefits manager or insurer shall require a contracted pharmacy to charge  
23 an enrollee or insured person the pharmacy's usual and customary price of filling the prescription  
24 or the contracted copayment, whichever is less.

25 II. Once it has settled a claim for filling a prescription for an enrollee or insured person and  
26 notified the pharmacy of the amount the pharmacy benefits manager or insurer shall pay to the  
27 pharmacy for that prescription, the pharmacy benefits manager or insurer shall not lower the  
28 amount to be paid to the pharmacy by the pharmacy benefits manager or the insurer for such  
29 settled claim; provided, however, that this paragraph shall not apply if the claim was submitted  
30 fraudulently or with inaccurate or misrepresented information.

31 402-N:5 Complaints Relative to Pharmacy Benefit Managers.

32 I. Consumers may file a complaint related to a registered pharmacy benefit manager  
33 pursuant to RSA 400-A:15-e.

34 II. The commissioner shall adopt rules, pursuant to RSA 541-A, to implement RSA 402-N:4.  
35 Such rules shall include procedures for addressing complaints, provisions for enforcement, the  
36 receipt of complaints referred to the insurance department under RSA 318:47-h, III(b), and for  
37 reporting to the board of pharmacy on the status of complaints referred.



1 402-N:6 Pharmacy Benefits Manager Reporting.

2 I. Each pharmacy benefits manager shall submit an annual report to the commissioner  
3 containing a list of health benefit plans it administered, and the aggregate amount of all rebates it  
4 collected from pharmaceutical manufacturers that were attributable to patient utilization in the  
5 state of New Hampshire during the prior calendar year.

6 II. Information reported to the commissioner pursuant to this paragraph shall be  
7 confidential and protected from disclosure under the commissioner's examination authority and  
8 shall not be considered a public record subject to disclosure under RSA 91-A. Based on this  
9 reporting, the commissioner shall make public aggregated data on the overall amount of rebates  
10 collected on behalf of covered persons in the state, but shall not release data that directly identifies  
11 a specific insurer or pharmacy benefit manager.

12 402-N:7 Authority to Examine and Directly Bill Pharmacy Benefits Managers for Certain  
13 Examinations. The commissioner may examine and directly bill a pharmacy benefits manager  
14 required to be registered under this chapter for the costs of any examination pursuant to RSA 400-  
15 A:37 as necessary to determine and enforce compliance with this chapter. In addition, if the  
16 commissioner finds through an investigation or examination that a carrier has not received  
17 information required under RSA 420-J:7-b, from a pharmacy benefit manager, the commissioner  
18 may require that the pharmacy benefit manager provide the required information, and the  
19 commissioner may investigate or examine and directly bill the pharmacy benefit manager for the  
20 cost of any portion of the examination or investigation pertaining to obtaining the required  
21 information.

22 402-N:8 Non-Exclusivity. Nothing in this chapter shall be interpreted to invalidate or render  
23 inapplicable any other provision of Title XXXVII that is otherwise applicable to an entity that  
24 qualifies as a pharmacy benefit manager under this chapter.

25 402-N:9 Severability. If any provision of this chapter or the application of this chapter to any  
26 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications  
27 of this chapter which can be given effect without the invalid provisions or application, and to this  
28 end, the provisions of this chapter are declared severable.

29 3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1,  
30 XI-a to read as follows:

31 XI-a. "Pharmacy benefits manager" means ~~[any person or entity as defined in RSA 420-J:3,~~  
32 ~~XXVIII-a]~~ *"pharmacy benefits manager" as defined in RSA 402-N:1, VIII.*

33 4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-  
34 a to read as follows:

35 XXVIII-a. "Pharmacy benefits manager" means ~~[a person who performs pharmacy benefits~~  
36 ~~management services, including a person acting on behalf of a pharmacy benefits manager in a~~  
37 ~~contractual or employment relationship in the performance of pharmacy benefits management~~

1 ~~services for a covered entity. "Pharmacy benefits manager" shall not include a health insurer~~  
2 ~~licensed in this state if the health insurer or its subsidiary is providing pharmacy benefits~~  
3 ~~management services exclusively to its own insureds, or a private single employer self funded plan~~  
4 ~~that provides such benefits or services directly to its beneficiaries. "Pharmacy benefits~~  
5 ~~management" means the administration of prescription drug benefits provided by a covered entity~~  
6 ~~under the terms and conditions of the contract between the pharmacy benefits manager and the~~  
7 ~~covered entity and the provision of mail order pharmacy services] "pharmacy benefits manager"~~  
8 ~~as defined in RSA 402-N:1, VIII.~~

9 5 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug  
10 Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

11 126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug  
12 Rebate Programs.

13 I. There is established a commission to study greater transparency in pharmaceutical costs  
14 and drug rebate programs.

15 (a) The members of the commission shall be as follows:

16 (1) Three members of the house of representatives, appointed by the speaker of the  
17 house of representatives.

18 (2) One member of the senate, appointed by the president of the senate.

19 (3) The insurance commissioner, or designee.

20 (4) The commissioner of the department of health and human services, or designee.

21 (5) A representative of the New Hampshire Hospital Association, appointed by the  
22 association.

23 (6) A physician licensed under RSA 329, appointed by the New Hampshire Medical  
24 Society.

25 (7) The executive director of New Futures, or designee.

26 (8) A representative of the New Hampshire Pharmacists Association, appointed by  
27 the association.

28 (9) A representative of the Business and Industry Association of New Hampshire,  
29 appointed by the association.

30 (10) A member representing pharmacy benefit managers, appointed by the  
31 Pharmaceutical Care Management Association.

32 (11) A representative of America's Health Insurance Plans (AHIP), appointed by  
33 that organization.

34 (12) A representative of Pharmaceutical Research and Manufacturers of America,  
35 appointed by that organization.

36 (b) Legislative members of the commission shall receive mileage at the legislative rate  
37 when attending to the duties of the commission.

1 II.(a)(1) The commission shall study how to achieve greater transparency in pharmaceutical  
2 costs by identifying and analyzing certain critical prescription drugs and their role in overall health  
3 care spending in the New Hampshire and by analyzing the amounts rebated by drug manufacturers  
4 for certain high cost and high utilization prescription drugs. The commission's study shall include,  
5 but not be limited to:

6 (A) Studying strategies available to achieve greater transparency in  
7 pharmaceutical costs by identifying and analyzing certain critical prescription drugs and their role  
8 in overall health care spending and the impact of price increases on patients and their families.

9 (B) Reviewing legislative efforts in other states and taking advantage of any  
10 other analysis by outside organizations or foundations.

11 (C) Analyzing the impact of drug prices on insurance premium costs, consumer  
12 out-of-pocket costs for prescription drugs, and state and county purchasing of prescription drugs.

13 (D) Analyzing the potential impact of transparency in relation to the practices of  
14 pharmaceutical manufacturers and pharmacy benefits managers, including how research and  
15 development, marketing, and rebates affect drug prices.

16 (E) Proposing changes to New Hampshire law, as needed, to reduce the rising  
17 cost of pharmaceuticals.

18 (2) The commission shall also study the role pharmacy benefit managers play in the  
19 cost, administration, and distribution of prescription drugs; if greater transparency in  
20 pharmaceutical costs to purchasers would lower costs in overall health care spending in New  
21 Hampshire; and analyzing the amounts rebated by drug manufacturers for prescription drugs  
22 passed to purchasers and patients. The goal shall be to determine if any changes to New  
23 Hampshire laws could reduce the rising cost of pharmaceuticals to purchasers or patients.

24 (b) The commission may solicit input from any person or entity the commission deems  
25 relevant to its study.

26 III. The members of the commission shall elect a chairperson from among the members.  
27 The first meeting of the commission shall be called by the first-named house member. The first  
28 meeting of the commission shall be held within 45 days of the effective date of this section. Eight  
29 members of the commission shall constitute a quorum.

30 IV. The commission shall make a report with its findings and any recommendations for  
31 proposed legislation on or before November 1, 2020 to the speaker of the house of representatives,  
32 the president of the senate, the house clerk, the senate clerk, the governor, and the state library.

33 6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in  
34 pharmaceutical costs and drug rebate programs, is repealed.

35 7 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

36 8 Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs and  
37 Drug Rebate Programs. To the extent possible, the membership of the commission to study greater

Amendment to SB 226

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1 transparency in pharmaceutical costs and drug rebate programs established in section 6 of this act  
2 shall remain the same as the commission established in former RSA 126-A:77.

3 9 Effective Date.

4 I. Sections 1-4 of this act shall take effect January 1, 2020.

5 II. Section 6 of this act shall take effect November 1, 2020.

6 III. Section 7 of this act shall take effect June 30, 2020.

7 IV. The remainder of this act shall take effect upon its passage.

# Sub-Committee Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

**SUBCOMMITTEE WORK SESSION** on SB 226-FN

**BILL TITLE:** relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

**DATE:** May 16, 2019

**Subcommittee Members:** Reps. Butler, Williams, McBeath, Gidge, Abel, Bartlett, Herbert, Van Houten, Fargo, Indruk, Muscatel, Weston, Hunt, Sanborn, J. Osborne, Costable, Plumer, Barnes, Potucek and Warden

**Comments and Recommendations:** Pharmacy Benefit Managers. #1 Jen Patterson, NHID, provides amendment #2019-2010h. #2 Paula Rogers, Anthem #3 Lindsey Nadeau, Express Scripts.

Respectfully submitted,

Rep. Rebecca McBeath  
Subcommittee Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

Full Committee Work Session

Amendment May Be Made  
B4 Exec

~~EXECUTIVE SESSION on SB 251~~

SB 226-FN

BILL TITLE: (New Title) relative to the life and health insurance guaranty association and relative to an unfair insurance practice regarding certain prescriptions.

DATE: 5-16-19 Pharmacy Benefit Managers

LOB ROOM: 302  
\*1. Sen Patterson, NHIP, provides Amendment 19-2010n  
2. Paula Rogers, Anthem  
3. Lindsay Nadeau, Express Scripts

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # (if offered)
- Interim Study (2nd year)

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

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # (if offered)
- Interim Study (2nd year)

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

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # (if offered)
- Interim Study (2nd year)

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

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # (if offered)
- Interim Study (2nd year)

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

CONSENT CALENDAR: YES NO

Minority Report? Yes No If yes, author, Rep: \_\_\_\_\_ Motion

Respectfully submitted:   
Rep Rebecca McBeath, Clerk

✶ I. Jennifer Patterson  
5-16-19  
Work Session

Amendment to SB 226-FN

1 Amend the bill by replacing all after section 1 with the following:

2  
3 2 New Chapter; Pharmacy Benefits Managers. Amend RSA by inserting after chapter 402-M  
4 the following new chapter:

5 CHAPTER 402-N

6 PHARMACY BENEFITS MANAGERS

7 402-N:1 Definitions. In this chapter:

8 I. "Claims processing services" means the administrative services performed in connection  
9 with the processing and adjudicating of claims relating to pharmacist  
10 services that include:

11 (a) Receiving payments for pharmacist services.

12 (b) Making payments to pharmacists or pharmacies for pharmacist services.

13 II. "Commissioner" means the commissioner of the insurance department.

14 III. "Health carrier" means "health carrier" as defined in RSA 420-J:3, XXIII.

15 IV. "Health benefit plan" means "health benefit plan" as defined in RSA 420-J:3, XIX.

16 V. "Pharmacist" means an individual licensed as a pharmacist by the pharmacy board.

17 VI. "Pharmacist services" means products, goods, and services, or any combination of  
18 products, goods, and services, provided as a part of the practice of pharmacy.

19 VII. "Pharmacy" means the place licensed by the pharmacy board in which drugs,  
20 chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.

21 VIII.(a) "Pharmacy benefits manager" means a person, business, or other entity, including a  
22 wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that, pursuant  
23 to a contract with a health carrier, manages the prescription drug coverage provided by the health  
24 carrier, including, but not limited to, providing claims processing services for prescription drugs,  
25 performing drug utilization review, processing drug prior authorization requests, adjudication of  
26 grievances or appeals related to prescription drug coverage, contracting with network pharmacies,  
27 and controlling the cost of covered prescription drugs.

28 (b) "Pharmacy benefits manager" shall not include any:

29 (1) Health care facility licensed in this state;

30 (2) Health care professional licensed in this state;

31 (3) Consultant who only provides advice as to the selection or performance of a  
32 pharmacy benefits manager;



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1 (4) Service provided to the Centers for Medicare and Medicaid Services; or

2 (5) Health insurer licensed in this state if the health insurer or its subsidiary is  
3 providing pharmacy benefits management services exclusively to its own insureds.

4 IX. "Rebate" means a discount or price concession attributable to the utilization of a  
5 prescription drug that is paid by the pharmaceutical manufacturer of the drug directly to a  
6 pharmacy benefits manager or health carrier after the pharmacy benefits manager or health carrier  
7 processes a claim from a pharmacy for a prescription drug manufactured by such pharmaceutical  
8 manufacturer. "Rebate" shall not include bona fide service fees, administrative fees, or any other  
9 amount which does not qualify as a rebate under this paragraph.

10 402-N:2 Registration to do Business; Rulemaking; Penalties.

11 I. A person or organization shall not establish or operate as a pharmacy benefits manager  
12 in this state for health benefit plans without registering with the insurance commissioner under  
13 this chapter.

14 II. The commissioner shall adopt rules pursuant to RSA 541-A relative to:

15 (a) Prescribing the application format for registration as a pharmacy benefits manager,  
16 including a requirement to submit the registrant's corporate charter, articles of incorporation, or  
17 other formation documents.

18 (b) Establishing application fees and renewal fees, not to exceed \$500 per year.

19 (c) Delineating procedures for handling consumer complaints and coordinating with the  
20 department's consumer services unit, including supplying designated contact information to enable  
21 the department to reach the pharmacy benefits manager regarding consumer complaints.

22 III. If the commissioner finds after notice and hearing that any person has violated any  
23 provision of this chapter, or rules adopted pursuant to this chapter, the commissioner may order:

24 (a) For each separate violation, a penalty in the amount of \$2,500.

25 (b) Revocation or suspension of the pharmacy benefits manager registration.

26 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

27 I. All contracts between a carrier or pharmacy benefit manager and a contracted pharmacy  
28 shall include:

29 (a) The sources used by the pharmacy benefit manager to calculate the drug product  
30 reimbursement paid for covered drugs available under the pharmacy health benefit plan  
31 administered by the carrier or pharmacy benefit manager.

32 (b) A process to appeal, investigate, and resolve disputes regarding the maximum  
33 allowable cost pricing. The process shall include the following provisions:

34 (1) A provision granting the contracted pharmacy or pharmacist at least 30 business  
35 days following the initial claim to file an appeal;

36 (2) A provision requiring the carrier or pharmacy benefit manager to investigate  
37 and resolve the appeal within 30 business days;

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1 (3) A provision requiring that, if the appeal is denied, the carrier or pharmacy  
2 benefit manager shall:

3 (A) Provide the reason for the denial; and

4 (B) Identify the national drug code of a drug product that may be purchased by  
5 contracted pharmacies at a price at or below the maximum allowable cost; and

6 (4) A provision requiring that, if an appeal is granted, the carrier or pharmacy  
7 benefits manager shall within 30 business days after granting the appeal:

8 (A) Make the change in the maximum allowable cost; and

9 (B) Permit the challenging pharmacy or pharmacist to reverse and rebill the  
10 claim in question.

11 II. For every drug for which the pharmacy benefit manager establishes a maximum  
12 allowable cost to determine the drug product reimbursement, the pharmacy benefit manager shall:

13 (a) Include in the contract with the pharmacy information identifying the national drug  
14 pricing compendia or sources used to obtain the drug price data.

15 (b) Make available to a contracted pharmacy the actual maximum allowable cost for  
16 each drug.

17 (c) Review and make necessary adjustments to the maximum allowable cost for every  
18 drug for which the price has changed at least every 14 days.

19 III. A pharmacy benefit manager shall not require accreditation of providers other than  
20 requirements set forth by the New Hampshire pharmacy board or other state or federal entity.

21 402-N:4 Prescription Drugs.

22 I. A pharmacy benefits manager or insurer shall require a contracted pharmacy to charge  
23 an enrollee or insured person the pharmacy's usual and customary price of filling the prescription  
24 or the contracted copayment, whichever is less.

25 II. Once it has settled a claim for filling a prescription for an enrollee or insured person and  
26 notified the pharmacy of the amount the pharmacy benefits manager or insurer shall pay to the  
27 pharmacy for that prescription, the pharmacy benefits manager or insurer shall not lower the  
28 amount to be paid to the pharmacy by the pharmacy benefits manager or the insurer for such  
29 settled claim; provided, however, that this paragraph shall not apply if the claim was submitted  
30 fraudulently or with inaccurate or misrepresented information.

31 402-N:5 Complaints Relative to Pharmacy Benefit Managers.

32 I. Consumers may file a complaint related to a registered pharmacy benefit manager  
33 pursuant to RSA 400-A:15-e.

34 II. The commissioner shall adopt rules, pursuant to RSA 541-A, to implement RSA 402-N:4.  
35 Such rules shall include procedures for addressing complaints, provisions for enforcement, the  
36 receipt of complaints referred to the insurance department under RSA 318:47-h, III(b), and for  
37 reporting to the board of pharmacy on the status of complaints referred.

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1 402-N:6 Pharmacy Benefits Manager Reporting.

2 I. Each pharmacy benefits manager shall submit an annual report to the commissioner  
3 containing a list of health benefit plans it administered, and the aggregate amount of all rebates it  
4 collected from pharmaceutical manufacturers that were attributable to patient utilization in the  
5 state of New Hampshire during the prior calendar year.

6 II. Information reported to the commissioner pursuant to this paragraph shall be  
7 confidential and protected from disclosure under the commissioner's examination authority and  
8 shall not be considered a public record subject to disclosure under RSA 91-A. Based on this  
9 reporting, the commissioner shall make public aggregated data on the overall amount of rebates  
10 collected on behalf of covered persons in the state, but shall not release data that directly identifies  
11 a specific insurer or pharmacy benefit manager.

12 402-N:7 Authority to Examine and Directly Bill Pharmacy Benefits Managers for Certain  
13 Examinations. The commissioner may examine and directly bill a pharmacy benefits manager  
14 required to be registered under this chapter for the costs of any examination, pursuant to RSA 400-  
15 A:37, as necessary to determine and enforce compliance with the provisions of this chapter and with  
16 the disclosure requirements of RSA 420-G:11. Nothing in this section shall be interpreted to limit  
17 the commissioner's examination or investigation authority under RSA 400-A:37 or RSA 400-A:16  
18 with respect to an entity that qualifies as a pharmacy benefits manager under this chapter.

19 402-N:8 Non-Exclusivity. Nothing in this chapter shall be interpreted to invalidate or render  
20 inapplicable any other provision of Title XXXVII that is otherwise applicable to an entity that  
21 qualifies as a pharmacy benefit manager under this chapter.

22 402-N:9 Severability. If any provision of this chapter or the application of this chapter to any  
23 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications  
24 of this chapter which can be given effect without the invalid provisions or application, and to this  
25 end, the provisions of this chapter are declared severable.

26 3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1,  
27 XI-a to read as follows:

28 XI-a. "Pharmacy benefits manager" means ~~[any person or entity as defined in RSA 420-J:3,~~  
29 ~~XXVIII-a]~~ ***"pharmacy benefits manager" as defined in RSA 402-N:1, VIII.***

30 4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-  
31 a to read as follows:

32 XXVIII-a. "Pharmacy benefits manager" means ~~[a person who performs pharmacy benefits~~  
33 ~~management services, including a person acting on behalf of a pharmacy benefits manager in a~~  
34 ~~contractual or employment relationship in the performance of pharmacy benefits management~~  
35 ~~services for a covered entity. "Pharmacy benefits manager" shall not include a health insurer~~  
36 ~~licensed in this state if the health insurer or its subsidiary is providing pharmacy benefits~~  
37 ~~management services exclusively to its own insureds, or a private single employer self funded plan~~

1 ~~that provides such benefits or services directly to its beneficiaries. "Pharmacy benefits~~  
2 ~~management" means the administration of prescription drug benefits provided by a covered entity~~  
3 ~~under the terms and conditions of the contract between the pharmacy benefits manager and the~~  
4 ~~covered entity and the provision of mail order pharmacy services] "pharmacy benefits manager"~~  
5 ~~as defined in RSA 402-N:1, VIII.~~

6 5 Portability, Availability, and Renewability of Health Coverage; Disclosure. Amend the  
7 introductory paragraph of RSA 420-G:11, II(a) to read as follows:

8 II.(a) All health carriers, licensed third party administrators, "**pharmacy benefits**  
9 **managers" as defined in RSA 402-N:1, VIII**, and any entity required to be registered with the  
10 commissioner pursuant to RSA 402-H, shall electronically provide:

11 6 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug  
12 Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

13 126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug  
14 Rebate Programs.

15 I. There is established a commission to study greater transparency in pharmaceutical costs  
16 and drug rebate programs.

17 (a) The members of the commission shall be as follows:

18 (1) Three members of the house of representatives, appointed by the speaker of the  
19 house of representatives.

20 (2) One member of the senate, appointed by the president of the senate.

21 (3) The insurance commissioner, or designee.

22 (4) The commissioner of the department of health and human services, or designee.

23 (5) A representative of the New Hampshire Hospital Association, appointed by the  
24 association.

25 (6) A physician licensed under RSA 329, appointed by the New Hampshire Medical  
26 Society.

27 (7) The executive director of New Futures, or designee.

28 (8) A representative of the New Hampshire Pharmacists Association, appointed by  
29 the association.

30 (9) A representative of the Business and Industry Association of New Hampshire,  
31 appointed by the association.

32 (10) A member representing pharmacy benefit managers, appointed by the  
33 Pharmaceutical Care Management Association.

34 (11) A representative of America's Health Insurance Plans (AHIP), appointed by  
35 that organization.

36 (12) A representative of Pharmaceutical Research and Manufacturers of America,  
37 appointed by that organization.

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1 (b) Legislative members of the commission shall receive mileage at the legislative rate  
2 when attending to the duties of the commission.

3 II.(a)(1) The commission shall study how to achieve greater transparency in pharmaceutical  
4 costs by identifying and analyzing certain critical prescription drugs and their role in overall health  
5 care spending in the New Hampshire and by analyzing the amounts rebated by drug manufacturers  
6 for certain high cost and high utilization prescription drugs. The commission's study shall include,  
7 but not be limited to:

8 (A) Studying strategies available to achieve greater transparency in  
9 pharmaceutical costs by identifying and analyzing certain critical prescription drugs and their role  
10 in overall health care spending and the impact of price increases on patients and their families.

11 (B) Reviewing legislative efforts in other states and taking advantage of any  
12 other analysis by outside organizations or foundations.

13 (C) Analyzing the impact of drug prices on insurance premium costs, consumer  
14 out-of-pocket costs for prescription drugs, and state and county purchasing of prescription drugs.

15 (D) Analyzing the potential impact of transparency in relation to the practices of  
16 pharmaceutical manufacturers and pharmacy benefits managers, including how research and  
17 development, marketing, and rebates affect drug prices.

18 (E) Proposing changes to New Hampshire law, as needed, to reduce the rising  
19 cost of pharmaceuticals.

20 (2) The commission shall also study the role pharmacy benefit managers play in the  
21 cost, administration, and distribution of prescription drugs; if greater transparency in  
22 pharmaceutical costs to purchasers would lower costs in overall health care spending in New  
23 Hampshire; and analyzing the amounts rebated by drug manufacturers for prescription drugs  
24 passed to purchasers and patients. The goal shall be to determine if any changes to New  
25 Hampshire laws could reduce the rising cost of pharmaceuticals to purchasers or patients.

26 (b) The commission may solicit input from any person or entity the commission deems  
27 relevant to its study.

28 III. The members of the commission shall elect a chairperson from among the members.  
29 The first meeting of the commission shall be called by the first-named house member. The first  
30 meeting of the commission shall be held within 45 days of the effective date of this section. Eight  
31 members of the commission shall constitute a quorum.

32 IV. The commission shall make a report with its findings and any recommendations for  
33 proposed legislation on or before November 1, 2020 to the speaker of the house of representatives,  
34 the president of the senate, the house clerk, the senate clerk, the governor, and the state library.

35 7 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in  
36 pharmaceutical costs and drug rebate programs, is repealed.

37 8 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

Amendment to SB 226-FN

- Page 7 -

1       9 Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs and  
2 Drug Rebate Programs. To the extent possible, the membership of the commission to study greater  
3 transparency in pharmaceutical costs and drug rebate programs established in section 6 of this act  
4 shall remain the same as the commission established in former RSA 126-A:77.

5       10 Effective Date.

6           I. Sections 1-4 of this act shall take effect January 1, 2020.

7           II. Section 7 of this act shall take effect November 1, 2020.

8           III. Section 8 of this act shall take effect June 30, 2020.

9           IV. The remainder of this act shall take effect upon its passage.

UNAPPROVED

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

**SUBCOMMITTEE WORK SESSION** on SB 226-FN

**BILL TITLE:** relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

**DATE:** May 2, 2019

**Subcommittee Members:** Reps. Butler, Williams, Abel, Bartlett, Herbert, Van Houten, Fargo, Muscatel, Weston, Hunt, Costable, Barnes and Potucek

**Comments and Recommendations:** Discussion of possible changes for possible amendment.

Respectfully submitted,

Rep. Constance Van Houten  
Subcommittee Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

~~SUB~~ <sup>FULL</sup> COMMITTEE WORK SESSION on SB 226-FN

**BILL TITLE:** relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

**DATE:** 5-2-19

**Subcommittee Members:** Reps. Butler, Williams, McBeath, Gidge, Abel, Bartlett, Clerbert, Van Houten, Fargo, Indruk, Muscater, Weston, Hunt, Sanborn, J. Osborne, Costable, Plumer, Barnes, Potucek and Warden

**Comments and Recommendations:**

discussion of possible changes for possible 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,

Rep. Constance Van Houten  
Subcommittee Chairman/Clerk



# Hearing Minutes



**A:** Annual report, new claims data but can be confusing. This chapter allows us to regulate and protect consumers.

**Q: Rep. Richard Abel** - Can you explain why PBMs would challenge NH Insurance Department?

**A:** Do not want to impact benefits to avoid preemption from federal law.

**Q: Rep. Christy Bartlett** - Does anything in the bill keep us from having both?

**A:** No.

**Q: Rep. Christopher Herbert** - So either amendment 1628 or 1600 resolve this concern on definition of PBMs?

**A:** 1600 preferred amendment.

**\*Holly Stevens, New Futures** - Supports. Would enable us to know more about whether PBMs need to be more regulated.

**Jodi Grimbilecs, CVS Health** - Supports the bill but there are unknowns. Will work with the committee. There is minimal regulatory oversight of PBMs.

**Lindsay Nadeau, Cigna** - Will work with us on the bill. Wants to meld with other bills.

**Peter Bragdon, Harvard Pilgrim Health Care** - Supports Brennen's definition in amendment #1600. Do not have their own PBM's.

Blue Sheet: Pro, 7; Con, 0

Respectfully submitted,



Kristina Fargo, Acting Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON SB 226-FN

**BILL TITLE:** relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

**DATE:** 4-24-19

**ROOM:** 302

**Time Public Hearing Called to Order:** 11:50

**Time Adjourned:** 12:30

(please circle if present)

**Committee Members:** Reps. Butler, Williams, McBeath, Gidge, Abel, Bartlett, Herbert, Van Houten, Fargo, Indruk, Muscatel, Weston, Hunt, Sanborn, J. Osborne, Costable, Plumer, Barnes, Potucek and Warden

**Bill Sponsors:**

Sen. Soucy

Sen. Hennessey

Sen. Levesque

Sen. Rosenwald

TESTIMONY

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

- #1 Donna Soucy - ~~Sen~~ Senator Introduction
- #2 Tyler Brannen - NH Ins Dept
- \* #3 Nolly Stevens - New Futures \*
- #4 Jodi Grimkiles - CVS Health
- #5 Lindsay-Nadeau - Cigna
- #6 Peter Bragdon - Harvard Pilgrim

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SB 226 - 4-24-19

Donna Soucy - JD 18

#1

- establishes registration for PBMs
- extends commission to study transparency in pharmaceutical costs and drug rebate programs
- Amendment 16285 provided
- NCOIL Model - Registration not licensing, to insure a place for complaints to be heard as well
- includes practice legislation for consistency
- results from study Sen Soucy was part of and she will work with our committee

Q Warden - Problem?

A - lack of understanding of PBM's since they are "hidden" layer of process that needs transparency

Q Williams - Will registration just provide transparency or does it provide regulation?

A Not much regulation and no way to address issues or resolve complaints at PBM level today



#2 Tyler Brannen - NH Ins Dept

- no position

- regulate PBM thru insurers

- amendment is good because it gives us one definition of PBM's

- replicates insurance statutes for PBM's

- reporting } clarifying

- market conduct }

-

Q Butler - If challenges would need resources in DOJ for addressing?

A Yes -

Q Williams - Would NH State Insurance website provide PBM info for consumers

A - Annual Report, raw claims data but can be confusing. This chapter allows us to regulate & protect consumers

Q Abel - Explain why PBMs would challenge NH Insur Dept

A - Do not want to impact benefits to avoid pre-emption from Federal law

SB 226 - Page 2 con't 4-24-19

Q Bartlett - Is anything in the bill  
keep us from having both?

A - No

Q Herbert - Is either amendment  
1628 or 1600 resolve his concern  
on definition of PBM's?

A - 1600 (Butler) preferred amendment

#3 Holly Stevens - New Futures  
Written Testimony

- Supports SB 226
- Would enable us to know more about  
whether PBM's need to be more  
regulated

#4 Jodi Gimbilecs - CMS Health

- Supports the bill - unknown
- will work with the committee
- there are regulatory oversight  
of PMS's

#5 Lindsay Nadeau - Cigna (Express Scripts) <sup>(PBM)</sup>

- will work with us  
on the bill
- want to meld with other  
bills

Q - ~~Cigna~~ Herbert - Cigna & CVS

A - None



#6 Peter Bragdon - Harvard Pilgrim  
- supports Brannens definition  
in amendment 1100  
- do not own PBM

Blue Sheet - Hebert





# Testimony

Amendment to SB 226-FN

- Page 2 -

1 contracted pharmacies at a price at or below the maximum allowable cost; and

2 (4) A provision requiring that, if an appeal is granted, the carrier or pharmacy  
3 benefits manager shall within 30 business days after granting the appeal:

4 (A) Make the change in the maximum allowable cost; and

5 (B) Permit the challenging pharmacy or pharmacist to reverse and rebill the  
6 claim in question.

7 II. For every drug for which the pharmacy benefits manager establishes a maximum  
8 allowable cost to determine the drug product reimbursement, the pharmacy benefits manager shall:

9 (a) Include in the contract with the pharmacy information identifying the national drug  
10 pricing compendia or sources used to obtain the drug price data.

11 (b) Make available to a contracted pharmacy the actual maximum allowable cost for  
12 each drug.

13 (c) Review and make necessary adjustments to the maximum allowable cost for every  
14 drug for which the price has changed at least every 14 days.

15 III. A pharmacy benefits manager shall not require accreditation of providers other than  
16 requirements set forth by the New Hampshire pharmacy board or other state or federal entity.

17  
18 Amend RSA 402-N:6 as inserted by section 2 of the bill by replacing it with the following:

19  
20 402-N:6 Pharmacy Benefits Manager Reporting.

21 I. Pharmacy benefits managers shall submit an annual report, commencing on November 1,  
22 2021, to the commissioner containing the aggregate amount of all rebates they collected from  
23 pharmaceutical manufacturers that are attributable to patient utilization covered by insurers  
24 domiciled in the state of New Hampshire.

25 II. Information reported to the commissioner pursuant to this paragraph is protected as a  
26 trade secret as defined in RSA 350-B:1, is not a public record subject to disclosure under RSA 91-A,  
27 and shall not be disclosed directly or indirectly in any manner.

28 402-N:7 Severability. If any provision of this chapter or the application of this chapter to any  
29 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications  
30 of this chapter which can be given effect without the invalid provisions or application, and to this  
31 end, the provisions of this chapter are declared severable.

32  
33 Amend RSA 126-A:77-a, I(a) as inserted by section 5 of the bill by replacing it with the following:

34  
35 (a) The members of the commission shall be as follows:

36 (1) Three members of the house of representatives, appointed by the speaker of the  
37 house of representatives.

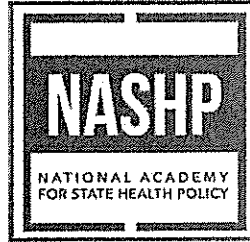
Amendment to SB 226-FN

- Page 3 -

- 1 (2) One member of the senate, appointed by the president of the senate.  
2 (3) The insurance commissioner, or designee.  
3 (4) The commissioner of the department of health and human services, or designee.  
4 (5) A representative of the New Hampshire Hospital Association, appointed by the  
5 association.  
6 (6) A physician licensed under RSA 329, appointed by the New Hampshire Medical  
7 Society.  
8 (7) The executive director of New Futures, or designee.  
9 (8) A representative of the New Hampshire Pharmacists Association, appointed by  
10 the association.  
11 (9) A representative of the Business and Industry Association of New Hampshire,  
12 appointed by the association.  
13 (10) A member representing pharmacy benefit managers, appointed by the  
14 Pharmaceutical Care Management Association.  
15 (11) A representative of America's Health Insurance Plans (AHIP), appointed by  
16 that organization.  
17 (12) A representative of Pharmaceutical Research and Manufacturers of America,  
18 appointed by that organization.

UNAPPROVED





## A MODEL ACT RELATING TO PHARMACY BENEFIT MANAGERS

1 *Whereas:* It is essential to understand the drivers and impacts of prescription drug costs, and  
 2 transparency is the first step toward that understanding and can lead to better cost containment and  
 3 greater consumer access to prescription drugs.

4 *Whereas:* Pharmacy benefit managers are companies that contract with health plans to administer the  
 5 health plan prescription drug benefit.

6 *Whereas:* Nearly all health plans require some level of cost sharing either via a fixed copayment or some  
 7 percentage of the cost of care. Pharmacy benefit managers may require patient drug cost sharing that  
 8 exceeds the pharmacy's actual cost of the medication.

9 *Whereas:* Pharmacy benefit manager business operations are not transparent.

10 *Whereas:* Some pharmacy benefit manager business practices appear to benefit the business at the cost  
 11 of the patient, the health plan, and the pharmacist.

12 *Therefore:* The legislature finds that there is a need to ensure the health and welfare of residents who  
 13 access prescription drugs managed by pharmacy benefit managers.

### 14 **General Description:**

15 The purpose of this act is to improve the business practice and transparency of pharmacy benefit  
 16 managers.

### 17 **Section 1. Definitions**

18 A. *Pharmacy Benefit Manager:* "Pharmacy Benefit Manager" means a person, business, or other  
 19 entity that, pursuant to a contract or under an employment relationship with a health carrier, a  
 20 self-insurance plan, or other third-party payer, either directly or through an intermediary,  
 21 manages the prescription drug coverage provided by the health carrier, self-insurance plan, or  
 22 other third-party payer including, but not limited to, the processing and payment of claims for

23 prescription drugs, the performance of drug utilization review, the processing of drug prior  
24 authorization requests, the adjudication of appeals or grievances related to prescription drug  
25 coverage, contracting with network pharmacies, and controlling the cost of covered prescription  
26 drugs.

27 B. *Health Carrier*: "Health Carrier" means an entity subject to the insurance laws and regulations of  
28 this State, or subject to the jurisdiction of the commissioner, that contracts or offers to contract,  
29 or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the  
30 cost of health care services, including a health insurance company, a health maintenance  
31 organization, a hospital and health services corporation, or any other entity providing a plan of  
32 health insurance, health benefits, or health care services.

33 C. *Health Benefit Plan*: "Health Benefit Plan" means a policy, contract, certificate or agreement  
34 offered or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of  
35 the costs of healthcare services.

36 D. *Covered Person*: "Covered Person" means a policyholder, subscriber, enrollee or other individual  
37 participating in a health benefit plan. A covered person includes the authorized representative  
38 of the covered person.

39 E. *Pharmacy*: "Pharmacy" means an established location, either physical or electronic that is  
40 licensed by the State and that has entered into a network contract with a pharmacy benefit  
41 manager and/or health carrier.

42 F. *Network Pharmacy*: "Network Pharmacy" means a retail or other licensed pharmacy provider  
43 that contracts with a pharmacy benefit manager.

44 G. *Retail Pharmacy*: "Retail Pharmacy" means a chain pharmacy, a supermarket pharmacy, a mass  
45 merchandiser pharmacy, an independent pharmacy, or a network of independent pharmacies  
46 that is licensed as a pharmacy by the State of \_\_\_\_\_ and that dispenses medications to the  
47 public.

48 H. *Mail Order Pharmacy*: "Mail Order Pharmacy" means a pharmacy whose primary business is to  
49 receive prescriptions by mail, telefax or through electronic submissions and to dispense  
50 medication to covered persons through the use of the United States mail or other common or  
51 contract carrier services and that provides any consultation with patients electronically rather  
52 than face to face.

53 I. *Aggregate Retained Rebate Percentage*: "Aggregate Retained Rebate Percentage" means the  
54 percentage of all rebates received from a manufacturer or other entity to a Pharmacy Benefit  
55 Manager for prescription drug utilization which is not passed on to Pharmacy Benefit Managers'  
56 health carrier clients. The percentage shall be calculated for each health carrier for rebates in

57 the prior calendar years as follows: a) the sum total dollar amount of rebates received from all  
58 pharmaceutical manufacturers for all utilization of covered persons of a health carrier that was  
59 not passed through to the health carrier; and b) divided by the sum total dollar amount of all  
60 rebates received from all pharmaceutical manufacturers for covered persons of a health carrier.

61 J. *Rebates*: "Rebates" means all price concessions paid by a manufacturer to a Pharmacy Benefit  
62 Manager or health carrier, including rebates, discounts, and other price concessions that are  
63 based on actual or estimated utilization of a prescription drug. Rebates also include price  
64 concessions based on the effectiveness a drug as in a value-based or performance-based  
65 contract.

66 K. *Trade Secrets*: "Trade Secrets" has the meaning found in [state law citation].

67 L. *Cost Share/Cost Sharing*: "Cost Share/Cost Sharing" means the amount paid by a covered person  
68 as required under the covered person's health benefit plan.

69 **Section 2. Required Pharmacy Benefit Manager Licensure**

70 A. A Pharmacy Benefit Manager shall be licensed by [State Agency] before conducting business in  
71 the State.

72 B. Licensure pursuant to this section is not transferable.

73 C. The license may be granted only when the [State Agency] is satisfied that the entity possesses  
74 the necessary organization, background expertise, and financial integrity to supply the services  
75 sought to be offered.

76 D. The [State Agency] may issue a license subject to restrictions or limitations upon the  
77 authorization, including the type of services that may be supplied or the activities in which the  
78 entity may be engaged.

79 E. All licenses are valid for a period of three years.

80 F. The [State Agency] shall develop an application for licensure that includes at least the following  
81 information:

82 a. The name of the Pharmacy Benefit Manager;

83 b. The address and contact telephone number for the Pharmacy Benefit Manager;

84 c. The name and address of the Pharmacy Benefit Manager agent for service of process in  
85 the State;

86 d. The name and address of each person beneficially interested in the Pharmacy Benefit  
87 Manager; and

88 e. The name and address of each person with management or control over the Pharmacy  
89 Benefit Manager.

90 G. The [State Agency] may suspend, revoke, or place on probation a Pharmacy Benefit Manager  
91 license under any of the following circumstances:

- 92 a. The Pharmacy Benefit Manager has engaged in fraudulent activity that constitutes a  
93 violation of state or federal law;  
94 b. The [State Agency] received consumer complaints that justify an action under this  
95 subdivision to protect the safety and interests of consumers;  
96 c. The Pharmacy Benefit Manager fails to pay an application fee for the license; or  
97 d. The Pharmacy Benefit Manager fails to comply with a requirement set forth in this  
98 section.

99 H. If a Pharmacy Benefit Manager acts without registering, it will be subject to a fine of \$5,000 per  
100 day for the period they are found to be in violation.

101 **Section 3. Pharmacy Benefit Manager Business Practices**

102 A. A Pharmacy Benefit Manager has a fiduciary duty to a health carrier client and shall discharge  
103 that duty in accordance with the provisions of state and federal law.

104 B. A Pharmacy Benefit Manager shall perform its duties with care, skill, prudence, diligence, and  
105 professionalism.

106 C. A Pharmacy Benefit Manager shall notify a health carrier client in writing of any activity, policy,  
107 or practice of the Pharmacy Benefit Manager that directly or indirectly presents any conflict of  
108 interest with the duties imposed in this section.

109 D. A Pharmacy Benefit Manager or health carrier shall not enter into a contract with a pharmacy or  
110 pharmacist that prohibits or penalizes a pharmacy or pharmacist for disclosure of information to  
111 a covered person regarding:

- 112 I. The cost of a prescription medication to the covered person; or  
113 II. The availability of any therapeutically-equivalent alternative medications or alternative  
114 methods of purchasing the prescription medication, including but not limited to, paying  
115 a cash price that is less expensive to the customer than the cost of the prescription  
116 under a covered person's health benefit plan.

117 E. A Pharmacy Benefit Manager shall not require pharmacy or other provider accreditation  
118 standards or certification requirements inconsistent with, more stringent than, or in addition to  
119 requirements of the [State] Pharmacy Board or other state or federal entity.



- 120 F. A health carrier or Pharmacy Benefit Manager may not require a covered person to make a  
121 payment at the point of sale for a covered prescription medication in an amount greater than  
122 the lesser of:
- 123 I. The applicable copayment for the prescription medication;
  - 124 II. The allowable claim amount for the prescription medication;
  - 125 III. The amount a covered person would pay for the prescription medication if the covered  
126 person purchased the prescription medication without using a health benefit plan or  
127 any other source of prescription medication benefits or discounts; or
  - 128 IV. The amount the pharmacy will be reimbursed for the drug from Pharmacy Benefit  
129 Manager or health carrier.
- 130 G. A health carrier or Pharmacy Benefit Manager is prohibited from penalizing, requiring, or  
131 providing financial incentives, including variations in premiums, deductibles, copayments, or  
132 coinsurance, to covered persons as incentives to use specific retail, mail order pharmacy, or  
133 other network pharmacy provider in which a Pharmacy Benefit Manager has an ownership  
134 interest or that has an ownership interest in a Pharmacy Benefit Manager.

135 **Section 4. Pharmacy Benefit Manager Transparency**

- 136 A. Beginning June 1, 2020, and annually thereafter, each licensed Pharmacy Benefit Manager shall  
137 submit a transparency report containing data from the prior calendar year to the [State Agency].  
138 The transparency report shall contain the following information:
- 139 I. The aggregate amount of all rebates that the Pharmacy Benefit Manager received from  
140 all pharmaceutical manufacturers for all health carrier clients and for each health carrier  
141 client;
  - 142 II. The aggregate administrative fees that the Pharmacy Benefit Manager received from all  
143 manufacturers for all health carrier clients and for each health carrier client;
  - 144 III. The aggregate retained rebates that the Pharmacy Benefit Manager received from all  
145 pharmaceutical manufacturers and did not pass through to health carriers;
  - 146 IV. The aggregate retained rebate percentage as defined in Sec.(2)(I); and
  - 147 V. The highest, lowest, and mean aggregate retained rebate percentage for all health  
148 carrier clients and for each health carrier client.
- 149 B. A Pharmacy Benefit Manager r providing information under this section may designate that  
150 material as a trade secret. Disclosure, however, may be ordered by a court of this State for good  
151 cause shown or made in a court filing.
- 152 C. Within sixty (60) days of receipt, the [State Agency] shall publish the transparency report of each  
153 Pharmacy Benefit Manager on the agency's website in a way that does not violate State trade  
154 secrets law.

155 D. The state Attorney General may impose civil fines and penalties of not more than \$1,000 per  
156 day per violation of this section.

157 **Section 5. Severability Clause**

158 If any provision of this act or the application of this act to any person or circumstance is held invalid, the  
159 invalidity shall not affect other provisions or applications of this act which can be given effect without  
160 the invalid provision or application, and to this end, the provisions of the act are declared severable.

161 **Except as otherwise provided, this Act is effective six months after enactment.**

amend from ins. dept

Amendment to SB 226

1 Short Title. Sections 2-4 of this act shall be known as and may be cited as the New Hampshire pharmacy benefits manager registration and regulation act.

2 New Chapter; Pharmacy Benefits Managers. Amend RSA by inserting after chapter 402-M the following new chapter:

CHAPTER 402-N  
PHARMACY BENEFITS MANAGERS

402-N:1 Definitions. In this chapter:

I. "Claims processing services" means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include:

- (a) Receiving payments for pharmacist services.
- (b) Making payments to pharmacists or pharmacies for pharmacist services.

II. "Commissioner" means the commissioner of the insurance department.

III. "Health carrier" means "health carrier" as defined in RSA 420-J: 3 XXIII.

IV. "Pharmacist" means an individual licensed as a pharmacist by the pharmacy board.

IV. "Pharmacist services" means products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy.

V. "Pharmacy" means the place licensed by the pharmacy board in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.

VI.(a) "Pharmacy benefits manager" means a person, business, or other entity, including a wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that, pursuant to a contract with a health carrier, manages the prescription drug coverage provided by the health carrier, including, but not limited to, the processing and payment of claims for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of grievances or appeals related to prescription drug coverage, contracting with network pharmacies, and controlling the cost of covered prescription drugs. provides claims processing services or other prescription drug or device services, or both, for health benefit plans.

(b) "Pharmacy benefits manager" shall not include any:

- (1) Health care facility licensed in this state;
- (2) Health care professional licensed in this state;
- (3) Consultant who only provides advice as to the selection or performance of a pharmacy benefits manager; or

- (4) Service provided to the Centers for Medicare and Medicaid Services; or
- (5) Health insurer licensed in this state if the health insurer or its subsidiary is providing pharmacy benefits management services exclusively to its own insureds.

402-N:2 Registration to do Business; Rulemaking; Penalties.

I. A person or organization shall not establish or operate as a pharmacy benefits manager in this state for health benefit plans without registering with the insurance commissioner under this chapter.

II.(a) The commissioner shall adopt rules pursuant to RSA 541-A to:

(1) Prescribe the application for registration as a pharmacy benefits manager and shall charge application fees and renewal fees not to exceed \$500 as established in rules.

(2) Establish registration fees, financial standards, and annual reporting requirements of pharmacy benefits managers.

(3) Add to the existing consumer complaint form and provide information in the department's consumer resource section.

(b) In establishing rules pursuant to subparagraph (a)(1) and (2), the commissioner may request:

(1) A copy of the registrant's corporate charter, articles of incorporation, or other formation documents.

(2) Name and address of the registrant and person designated to address consumer complaints.

(3) Rebates to the client.

(4) Discounts offered directly to the consumer.

(5) Lists of health benefit plans administered by a pharmacy benefits manager in this state.

III. If the commissioner finds after notice and hearing that any person has violated any provision of this chapter, or rules adopted pursuant to this chapter, the commissioner may order:

(a) For each separate violation, a penalty in an amount of \$2,500.

(b) Revocation or suspension of the pharmacy benefits manager registration.

402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

I. All contracts between a carrier or pharmacy benefit manager and a contracted pharmacy shall include:

(a) The sources used by the pharmacy benefit manager to calculate the drug product reimbursement paid for covered drugs available under the pharmacy health benefit plan administered by the carrier or pharmacy benefit manager.

(b) A process to appeal, investigate, and resolve disputes regarding the maximum allowable cost pricing. The process shall include the following provisions:

(1) A provision granting the contracted pharmacy or pharmacist at least 30 business days following the initial claim to file an appeal;

(2) A provision requiring the carrier or pharmacy benefit manager to investigate and resolve the appeal within 30 business days;

(3) A provision requiring that, if the appeal is denied, the carrier or pharmacy benefit manager shall:

(A) Provide the reason for the denial; and

(B) Identify the national drug code of a drug product that may be purchased by contracted pharmacies at a price at or below the maximum allowable cost; and

(4) A provision requiring that, if an appeal is granted, the carrier or pharmacy benefits manager shall within 30 business days after granting the appeal:

(A) Make the change in the maximum allowable cost; and

(B) Permit the challenging pharmacy or pharmacist to reverse and rebill the claim in question.

II. For every drug for which the pharmacy benefit manager establishes a maximum allowable cost to determine the drug product reimbursement, the pharmacy benefit manager shall:

(a) Include in the contract with the pharmacy information identifying the national drug pricing compendia or sources used to obtain the drug price data.

(b) Make available to a contracted pharmacy the actual maximum allowable cost for each drug.

(c) Review and make necessary adjustments to the maximum allowable cost for every drug for which the price has changed at least every 14 days.

III. A pharmacy benefit manager shall not require accreditation of providers other than requirements set forth by the New Hampshire pharmacy board or other state or federal entity.  
402-N:4 Prescription Drugs.

I. A pharmacy benefits manager or insurer shall require a contracted pharmacy to charge an enrollee or insured person the pharmacy's usual and customary price of filling the prescription or the contracted copayment, whichever is less.

II. Once it has settled a claim for filling a prescription for an enrollee or insured person and notified the pharmacy of the amount the pharmacy benefits manager or insurer shall pay to the pharmacy for that prescription, the pharmacy benefits manager or insurer shall not lower the amount to be paid to the pharmacy by the pharmacy benefits manager or the insurer for such settled claim; provided, however, that this paragraph shall not apply if the claim was submitted fraudulently or with inaccurate or misrepresented information.

402-N:5 Complaints Relative to Pharmacy Benefit Managers.

I. Consumers may file a complaint related to a registered pharmacy benefit manager pursuant to RSA 400-A:15-e.

II. The commissioner shall adopt rules, pursuant to RSA 541-A, to implement RSA 402-N:4,

II. Such rules shall include procedures for addressing complaints, provisions for enforcement,

the receipt of complaints referred to the insurance department under RSA 318:47-h, III(b), and for reporting to the board of pharmacy on the status of complaints referred.

402-N:6 Examination Authority. The commissioner shall have authority to examine, pursuant to RSA 400-A 37, or investigate, pursuant to RSA 400-A: 16, pharmacy benefit managers required to be registered under this chapter. The costs of such examination or investigation shall be borne by the pharmacy benefit manager.

402-N:7 Non-exclusivity. Nothing in this chapter shall be interpreted to invalidate or make inapplicable any other provision of Title XXXVII that is otherwise applicable to an entity that qualifies as a pharmacy benefit manager under this chapter.

402-N:6-8 Severability. If any provision of this chapter or the application of this chapter to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of this chapter are declared severable.

3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1, XI-a to read as follows:

XI-a. "Pharmacy benefits manager" means "pharmacy benefits manager" as defined in RSA 402-N ~~any person or entity registered under RSA 402-N and practicing~~ as defined in RSA 420-J:3, XXVIII-a.

4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-a to read as follows:

XXVIII-a. "Pharmacy benefits manager" means "pharmacy benefits manager" as defined in ~~a person registered under RSA 402-N~~

5 Portability, Availability, and Renewability of Health Coverage; Disclosure. Amend RSA 420-G:11 II (a) to read as follows:

II. (a) All health carriers, licensed third party administrators, *pharmacy benefit managers as defined in RSA 402-N* and any entity required to be registered with the commissioner pursuant to RSA 402-H, shall electronically provide:

(1) Their encrypted claims data to the department and to the department of health and human services in accordance with rules approved by the commissioner of health and humans services and adopted under RSA 420-G:14.

(2) To the department of health and human services, cross-matched claims data on requested policyholders, and subscriber information necessary for third party liability for benefits provided under RSA 167, filed in accordance with rules adopted under RSA 167:3-c.-

6 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs Reestablished.

I. There is established a commission to study greater transparency in pharmaceutical costs and drug rebate programs.

(a) The members of the commission shall be as follows:

- (1) Three members of the house of representatives, appointed by the speaker of the house of representatives.
- (2) One member of the senate, appointed by the president of the senate.
- (3) The insurance commissioner, or designee.
- (4) The commissioner of the department of health and human services, or designee.
- (5) One public member, appointed by the governor.
- (6) A representative of the New Hampshire Hospital Association, appointed by the association.
- (7) A physician licensed under RSA 329, appointed by the New Hampshire Medical Society.
- (8) The executive director of New Futures, or designee.
- (9) A representative of the New Hampshire Pharmacists Association, appointed by the association.
- (10) A representative of the Business and Industry Association of New Hampshire, appointed by the association.
- (11) A member representing pharmacy benefit managers, appointed by the Pharmaceutical Care Management Association.
- (12) A representative of America's Health Insurance Plans (AHIP), appointed by that organization.
- (13) A representative of Pharmaceutical Research and Manufacturers of America, appointed by that organization.

(b) Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

II.(a)(1) The commission shall study how to achieve greater transparency in pharmaceutical costs by identifying and analyzing certain critical prescription drugs and their role in overall health care spending in the New Hampshire and by analyzing the amounts rebated by drug manufacturers for certain high cost and high utilization prescription drugs. The commission's study shall include, but not be limited to:

- (A) Studying strategies available to achieve greater transparency in pharmaceutical costs by identifying and analyzing certain critical prescription drugs and their role in overall health care spending and the impact of price increases on patients and their families.
- (B) Reviewing legislative efforts in other states and taking advantage of any other analysis by outside organizations or foundations.
- (C) Analyzing the impact of drug prices on insurance premium costs, consumer out-of-pocket costs for prescription drugs, and state and county purchasing of prescription drugs.

(D) Analyzing the potential impact of transparency in relation to the practices of pharmaceutical manufacturers and pharmacy benefits managers, including how research and development, marketing, and rebates affect drug prices.

(E) Proposing changes to New Hampshire law, as needed, to reduce the rising cost of pharmaceuticals.

(2) The commission shall also study the role pharmacy benefit managers play in the cost, administration, and distribution of prescription drugs; if greater transparency in pharmaceutical costs to purchasers would lower costs in overall health care spending in New Hampshire; and analyzing the amounts rebated by drug manufacturers for prescription drugs passed to purchasers and patients. The goal shall be to determine if any changes to New Hampshire laws could reduce the rising cost of pharmaceuticals to purchasers or patients.

(b) The commission may solicit input from any person or entity the commission deems relevant to its study.

III. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Eight members of the commission shall constitute a quorum.

IV. The commission shall make a report with its findings and any recommendations for proposed legislation on or before November 1, 2020 to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library.

~~6-7~~ Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in pharmaceutical costs and drug rebate programs, is repealed.

~~7-8~~ Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

~~8-9~~ Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs. To the extent possible, the membership of the commission to study greater transparency in pharmaceutical costs and drug rebate programs reestablished in section 5 of this act shall remain the same as the commission established in former RSA 126-A:77.

~~9-10~~ Effective Date.

I. Sections 1-4 of this act shall take effect January 1, 2020.

II. Section ~~6-7~~ of this act shall take effect November 1, 2020.

III. Section ~~7-8~~ of this act shall take effect June 30, 2020.

IV. The remainder of this act shall take effect upon its passage.



[https://www.unionleader.com/opinion/columnists/nh-voices-brendan-williams---washington-should-reject/article\\_7f879294-f001-5090-a92a-7e149977cc80.html](https://www.unionleader.com/opinion/columnists/nh-voices-brendan-williams---washington-should-reject/article_7f879294-f001-5090-a92a-7e149977cc80.html)

## NH Voices: Brendan Williams -- Washington should reject drug 'Rebate Rule'

By BRENDAN WILLIAMS 8 hrs ago

NEW HAMPSHIRE has the nation's second-oldest population, and polling shows one in four Americans cannot afford the drugs they need to live healthy lives, or even to stay alive.

With the majority of New Hampshire's older adults relying on several different drugs per day while living on fixed incomes, the problem is especially critical. For example, Namzaric, which combines two drugs that may help treat dementia, costs around \$500 a month. These crushing costs are unbearable for many in a country where 40 percent of all citizens – according to the Federal Reserve – can't even afford an emergency expense of \$400.

The late Sen. John McCain was among those so frustrated with soaring drug prices that he urged the Trump Administration to allow reimporting the U.S. drugs we send to Canada, where they are sold far cheaper. Recent efforts in Washington, D.C. to bring down drug prices are a welcome sign for older adults and their health care providers in the Granite State. The administration has rhetorically pledged to take the fight to the pharmaceutical industry, while Congress has held numerous hearings, and considered proposals, on the issue. Perhaps we can hope Washington will finally hold Big Pharma accountable for price-gouging the American people.

However, many are also rightfully unnerved by the administration's latest "Rebate Rule" proposal, which would eliminate the ability of pharmacy benefit managers (PBMs) to negotiate rebates with drug makers on behalf of Medicare recipients.

PBMs represent the only check on pharmaceutical manufacturers' control over prices, and they play a crucial role in Medicare Part D drug pricing, which helps our nation's most vulnerable seniors and people with disabilities afford their life-saving medications.

Seniors benefit from the PBM-negotiated discounts on drugs with lower out-of-pocket costs and removing that benefit will leave them with unsustainable financial pressure. According to federal analysis, Medicare Part D premiums will increase by 25 percent as a result of this rule. Additionally,

the administration admits this would increase federal spending by \$196 billion from 2020–2029. It does not make sense to bill taxpayers \$200 billion to fund a rule that also raises Medicare premiums.

Another flaw in the Rebate Rule is that its only benefactor is the pharmaceutical industry. Big Pharma spends millions in Washington each year lobbying for its own special interests and this rule is certainly one of them. Drug companies have successfully pushed the blame for their high drug prices onto PBMs and derailed congressional progress on this important issue. The federal report itself estimates that the Rebate Rule will hand Big Pharma, one of the most profitable and powerful industries on earth, an over-\$100 billion bailout. No wonder Big Pharma, the same folks who gave us the opioid crisis, is cheerleading this latest “reform.”

Would you trust them to do right here?

The transparency of this giveaway, engineered by Health and Human Services Secretary Alex Azar – a former Eli Lilly executive known for doubling the price of insulin – is so great, and the pain to those on Medicare so evident, that some in the administration are pushing to delay it until after the 2020 election.

In an ideal world, we might not have PBMs, but we need entities with the scale to negotiate with massive drug manufacturers whose lobbying has ensured Medicare is prohibited from negotiating prices directly. Older Americans deserve better than unaffordable medications and cheap tricks; they deserve quality, life-saving drugs at affordable and fair prices.

The Rebate Rule raises premiums for Medicare recipients, increases federal spending, and lavishes gifts upon the same Big Pharma recently caught raising, by 97,000 percent, the price of a drug treating a rare infant seizure disorder. Washington would be wise to reject this rule and shift its focus back to market-based solutions that will increase price transparency and boost competition.

Brendan Williams is the president/CEO of the New Hampshire Health Care Association, which represents 78 long-term care facilities capable of serving more than 7,200 residents.

April 24, 2019

The Honorable Edward Butler, Chair  
House Commerce and Consumer Affairs Committee  
Legislative Office Building Room 302  
Concord, NH 03301

Re: New Futures' support of SB 226

Dear Chairman Butler and Members of the Committee:

New Futures appreciates the opportunity to testify in support of SB 226, which would require Pharmacy Benefit Managers (PBM) to be registered and regulated by the New Hampshire insurance commissioner and would reestablish the commission to study greater transparency in pharmaceutical costs and drug rebate programs (Commission). New Futures is a nonpartisan, nonprofit organization that advocates, educates and collaborates to improve the health and wellness of all New Hampshire residents. In this role, we work extensively with policy makers, health care providers and families to increase access to quality, affordable health care throughout the Granite State, which includes access to affordable pharmaceutical drugs.

Increases in pharmaceutical drug prices are one of the leading reasons for insurance premium increases. Per the New Hampshire Insurance Department, from 2014 to 2016, pharmacy has contributed thirty-seven percent to the overall trend increases.<sup>1</sup> Due to rising drug costs, people resort to rationing medication because they simply cannot afford to pay for the medications every month.<sup>2</sup> They must make hard choices about picking up their medications or paying their other bills.<sup>3</sup>

One factor leading to the increases in pharmaceutical drug prices is the rebates that drug manufactures provide to PBM. PBM are intermediaries between the health insurance companies and the pharmacies. They set the insurance companies' formularies, develop the plan's network of pharmacies, and negotiate price rebates and drug prices with the prescription drug manufactures. The rebates are often in exchange for a drug being added to the insurance company's drug formulary. Little is known about how much of the rebate is passed on to the health insurance companies and how much is kept by the PBM.

The rebates have increased, nearly doubling in the last few years, but the rebate amounts are not being passed along to the consumer nor are they passed along to the insurance company.<sup>4</sup> This

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<sup>1</sup> New Hampshire Insurance Department 2017 Annual Hearing Medical Cost Drivers Fact Sheet

<sup>2</sup> Consumer Reports, *Americans Say they are Suffering as Drug Costs Continue to Rise*, December 14, 2017.

<sup>3</sup> *Ibid.*

<sup>4</sup> CNBC, In the debate over rising drug prices, both drug makers and PBMs claim innocence, April 19, 2017.

<https://www.cnbc.com/2017/04/19/in-the-debate-over-rising-drug-prices-both-drugmakers-and-pbms-claim->



creates a conflict for the PBM, in that they have an incentive to include higher cost medications on the formulary to receive higher rebate amounts.<sup>5</sup>

Additionally, PBM engage in arrangements for compensation after the point of sale, which is called direct and indirect remuneration (DIR).<sup>6</sup> The Centers of Medicare and Medicaid Services (CMS) has noticed an increase in DIR payments in recent years.<sup>7</sup> These DIR payments have a direct impact on consumers who have cost sharing responsibilities under their insurance plans. They are paying a percentage of the drug cost, which is calculated on the gross price before the price adjustments made by the DIR payments. Therefore, this practice of the PBM increases the cost of these drugs to the consumers.<sup>8</sup>

Further, PBM participate in spread pricing. They may reimburse the pharmacy a lower amount than they are contracted to be reimbursed from the insurance company, which is called a spread. For instance, a PBM could reimburse the pharmacy \$5.00 for a drug, for which the insurance company will reimburse the PBM \$7.00. The PBM can pocket the extra \$2.00, which again is called a spread.

The shroud surrounding PBM is extremely opaque. New Hampshire having the ability to license or register PBM is the first step in shining a light onto the PBM industry to see how PBM may be impacting increasing pharmaceutical costs.

SB 226 would also reestablish the commission to look at, study, and analyze drug price transparency and the impact of drug prices on insurance premiums and out-of-pocket costs to consumers. It also charges the commission to propose changes to New Hampshire law consistent with its findings to reduce the rising costs of pharmaceuticals. The commission is charged with looking at the relationship between pharmaceutical manufactures and pharmacy benefit managers including how rebates affect pricing. The membership of the commission is comprehensive and includes stakeholders from many facets, including PhRMA, insurers, the business community, pharmacists, Pharmacy Benefit Managers, and a consumer. One suggestion that New Futures would make is that the consumer be one who has been affected by the high cost of pharmaceuticals, and that language specific to this is included in the bill.

This summer, it became evident that for this Commission to successfully tackle its charge of studying how to achieve transparency in pharmaceutical costs, more time would be necessary. Although the Commission held several meetings and took lots of testimony, there simply was not enough time to accomplish the goals. Extending the Commission to November 1, 2020 will allow the members time to study this issue in depth, so that it is able to make recommendations consistent with its charge. There are several bills which were introduced this session, and if passed, could provide data to assist the Commission in an ongoing meaningful study of drug price transparency.

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[innocence.html](#) and CMS Medicare Part-D Direct and Indirect Remuneration (DIR)

<https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-01-19-2.html>

<sup>5</sup> Pharmacy Times, *The Role of Pharmacy Benefit Managers in American Health Care: Pharmacy Concerns and Perspectives: Part 1*, November 14, 2017

<sup>6</sup> Centers for Medicare and Medicaid Services, Fact Sheet: Medicare Part D- Direct and Indirect Remuneration (DIR), January 19, 2017. <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-01-19-2.html>

<sup>7</sup> Ibid.

<sup>8</sup> Health Affairs, Prescription Drug Pricing, Health Policy Brief Series, September 2017.

[https://www.healthaffairs.org/doi/10.1377/hpb20171409.000178/full/healthpolicybrief\\_178.pdf](https://www.healthaffairs.org/doi/10.1377/hpb20171409.000178/full/healthpolicybrief_178.pdf)

For the reasons stated above, New Futures strongly supports SB 226.

Please do not hesitate to contact me if you have any questions. I can provide hard copies of the cited material upon request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Holly A. Stevens".

Holly A. Stevens, Esq.  
Health Policy Coordinator

# **Fiscal Note**

**SB 226-FN- FISCAL NOTE**  
 AS AMENDED BY THE SENATE (AMENDMENT #2019-0871s)

AN ACT relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

FISCAL IMPACT:     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General Insurance Administrative Fund	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable

**METHODOLOGY:**

This bill requires the Insurance Department to license and regulate pharmacy benefits managers and reestablishes a commission to study greater transparency in pharmaceutical costs and drug rebate programs. The Department reports being unable to ascertain how many pharmacy benefits managers would require licensure under this bill. Therefore, the Department is unable to determine if the requirements of this bill could be implemented using existing resources or result in an increase to state expenditures. Also, the Department reports this bill may impact insurance premiums, which would impact premium tax revenue and insurance premium expenditures for county and local government entities by an indeterminable amount. Further, licensing fees and fines established in this bill would increase general fund revenue by an indeterminable amount.

**AGENCIES CONTACTED:**

Insurance Department

# Bill as Introduced



SB 226-FN - AS AMENDED BY THE SENATE

03/14/2019 0871s

2019 SESSION

19-1095  
01/10

SENATE BILL **226-FN**

AN ACT relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

SPONSORS: Sen. Soucy, Dist 18; Sen. Hennessey, Dist 5; Sen. Levesque, Dist 12; Sen. Rosenwald, Dist 13

COMMITTEE: Executive Departments and Administration

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ANALYSIS

This bill establishes the registration and regulation of pharmacy benefits managers by the insurance commissioner. This bill also reestablishes the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

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Explanation: Matter added to current law appears in *bold italics*.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
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 Nineteen*

AN ACT relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

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

1       1 Short Title. Sections 2-4 of this act shall be known as and may be cited as the New  
2 Hampshire pharmacy benefits manager registration and regulation act.

3       2 New Chapter; Pharmacy Benefits Managers. Amend RSA by inserting after chapter 402-M  
4 the following new chapter:

## CHAPTER 402-N

## PHARMACY BENEFITS MANAGERS

7       402-N:1 Definitions. In this chapter:

8           I. "Claims processing services" means the administrative services performed in connection  
9 with the processing and adjudicating of claims relating to pharmacist  
10 services that include:

11               (a) Receiving payments for pharmacist services.

12               (b) Making payments to pharmacists or pharmacies for pharmacist services.

13           II. "Commissioner" means the commissioner of the insurance department.

14           III. "Pharmacist" means an individual licensed as a pharmacist by the pharmacy board.

15           IV. "Pharmacist services" means products, goods, and services, or any combination of  
16 products, goods, and services, provided as a part of the practice of pharmacy.

17           V. "Pharmacy" means the place licensed by the pharmacy board in which drugs, chemicals,  
18 medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.

19           VI.(a) "Pharmacy benefits manager" means a person, business, or entity, including a wholly  
20 or partially owned or controlled subsidiary of a pharmacy benefits manager, that provides claims  
21 processing services or other prescription drug or device services, or both, for health benefit plans.

22               (b) "Pharmacy benefits manager" shall not include any:

23                   (1) Health care facility licensed in this state;

24                   (2) Health care professional licensed in this state;

25                   (3) Consultant who only provides advice as to the selection or performance of a  
26 pharmacy benefits manager; or

27                   (4) Service provided to the Centers for Medicare and Medicaid Services.

28       402-N:2 Registration to do Business; Rulemaking; Penalties.

29           I. A person or organization shall not establish or operate as a pharmacy benefits manager  
30 in this state for health benefit plans without registering with the insurance commissioner under

1 this chapter.

2 II.(a) The commissioner shall adopt rules pursuant to RSA 541-A to:

3 (1) Prescribe the application for registration as a pharmacy benefits manager and  
4 shall charge application fees and renewal fees not to exceed \$500 as established in rules.

5 (2) Establish registration fees, financial standards, and annual reporting  
6 requirements of pharmacy benefits managers.

7 (3) Add to the existing consumer complaint form and provide information in the  
8 department's consumer resource section.

9 (b) In establishing rules pursuant to subparagraph (a)(1) and (2), the commissioner may  
10 request:

11 (1) A copy of the registrant's corporate charter, articles of incorporation, or other  
12 formation documents.

13 (2) Name and address of the registrant and person designated to address consumer  
14 complaints.

15 (3) Rebates to the client.

16 (4) Discounts offered directly to the consumer.

17 (5) Lists of health benefit plans administered by a pharmacy benefits manager in  
18 this state.

19 III. If the commissioner finds after notice and hearing that any person has violated any  
20 provision of this chapter, or rules adopted pursuant to this chapter, the commissioner may order:

21 (a) For each separate violation, a penalty in an amount of \$2,500.

22 (b) Revocation or suspension of the pharmacy benefits manager registration.

23 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

24 I. All contracts between a carrier or pharmacy benefit manager and a contracted pharmacy  
25 shall include:

26 (a) The sources used by the pharmacy benefit manager to calculate the drug product  
27 reimbursement paid for covered drugs available under the pharmacy health benefit plan  
28 administered by the carrier or pharmacy benefit manager.

29 (b) A process to appeal, investigate, and resolve disputes regarding the maximum  
30 allowable cost pricing. The process shall include the following provisions:

31 (1) A provision granting the contracted pharmacy or pharmacist at least 30 business  
32 days following the initial claim to file an appeal;

33 (2) A provision requiring the carrier or pharmacy benefit manager to investigate  
34 and resolve the appeal within 30 business days;

35 (3) A provision requiring that, if the appeal is denied, the carrier or pharmacy  
36 benefit manager shall:

37 (A) Provide the reason for the denial; and

38 (B) Identify the national drug code of a drug product that may be purchased by

1 contracted pharmacies at a price at or below the maximum allowable cost; and

2 (4) A provision requiring that, if an appeal is granted, the carrier or pharmacy  
3 benefits manager shall within 30 business days after granting the appeal:

4 (A) Make the change in the maximum allowable cost; and

5 (B) Permit the challenging pharmacy or pharmacist to reverse and rebill the  
6 claim in question.

7 II. For every drug for which the pharmacy benefit manager establishes a maximum  
8 allowable cost to determine the drug product reimbursement, the pharmacy benefit manager shall:

9 (a) Include in the contract with the pharmacy information identifying the national drug  
10 pricing compendia or sources used to obtain the drug price data.

11 (b) Make available to a contracted pharmacy the actual maximum allowable cost for  
12 each drug.

13 (c) Review and make necessary adjustments to the maximum allowable cost for every  
14 drug for which the price has changed at least every 14 days.

15 III. A pharmacy benefit manager shall not require accreditation of providers other than  
16 requirements set forth by the New Hampshire pharmacy board or other state or federal entity.

17 402-N:4 Prescription Drugs.

18 I. A pharmacy benefits manager or insurer shall require a contracted pharmacy to charge  
19 an enrollee or insured person the pharmacy's usual and customary price of filling the prescription  
20 or the contracted copayment, whichever is less.

21 II. Once it has settled a claim for filling a prescription for an enrollee or insured person  
22 and notified the pharmacy of the amount the pharmacy benefits manager or insurer shall pay to the  
23 pharmacy for that prescription, the pharmacy benefits manager or insurer shall not lower the  
24 amount to be paid to the pharmacy by the pharmacy benefits manager or the insurer for such  
25 settled claim; provided, however, that this paragraph shall not apply if the claim was submitted  
26 fraudulently or with inaccurate or misrepresented information.

27 402-N:5 Complaints Relative to Pharmacy Benefit Managers.

28 I. Consumers may file a complaint related to a registered pharmacy benefit manager  
29 pursuant to RSA 400-A:15-e.

30 II. The commissioner shall adopt rules, pursuant to RSA 541-A, to implement RSA 402-N:4,  
31 II. Such rules shall include procedures for addressing complaints, provisions for enforcement, the  
32 receipt of complaints referred to the insurance department under RSA 318:47-h, III(b), and for  
33 reporting to the board of pharmacy on the status of complaints referred.

34 402-N:6 Severability. If any provision of this chapter or the application of this chapter to any  
35 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications  
36 of this chapter which can be given effect without the invalid provisions or application, and to this  
37 end, the provisions of this chapter are declared severable.

38 3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1,

1 XI-a to read as follows:

2 XI-a. "Pharmacy benefits manager" means any person or entity *registered under RSA*  
3 *402-N and practicing* as defined in RSA 420-J:3, XXVIII-a.

4 4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-  
5 a to read as follows:

6 XXVIII-a. "Pharmacy benefits manager" means a person *registered under RSA 402-N*  
7 who performs pharmacy benefits management services, including a person acting on behalf of a  
8 pharmacy benefits manager in a contractual or employment relationship in the performance of  
9 pharmacy benefits management services for a covered entity. "Pharmacy benefits manager" shall  
10 not include a health insurer licensed in this state if the health insurer or its subsidiary is providing  
11 pharmacy benefits management services exclusively to its own insureds, or a private single  
12 employer self-funded plan that provides such benefits or services directly to its beneficiaries.  
13 "Pharmacy benefits management" means the administration of prescription drug benefits provided  
14 by a covered entity under the terms and conditions of the contract between the pharmacy benefits  
15 manager and the covered entity and the provision of mail order pharmacy services.

16 5 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug  
17 Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

18 126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug  
19 Rebate Programs Reestablished.

20 I. There is established a commission to study greater transparency in pharmaceutical costs  
21 and drug rebate programs.

22 (a) The members of the commission shall be as follows:

23 (1) Three members of the house of representatives, appointed by the speaker of the  
24 house of representatives.

25 (2) One member of the senate, appointed by the president of the senate.

26 (3) The insurance commissioner, or designee.

27 (4) The commissioner of the department of health and human services, or designee.

28 (5) One public member, appointed by the governor.

29 (6) A representative of the New Hampshire Hospital Association, appointed by the  
30 association.

31 (7) A physician licensed under RSA 329, appointed by the New Hampshire Medical  
32 Society.

33 (8) The executive director of New Futures, or designee.

34 (9) A representative of the New Hampshire Pharmacists Association, appointed by  
35 the association.

36 (10) A representative of the Business and Industry Association of New Hampshire,  
37 appointed by the association.

38 (11) A member representing pharmacy benefit managers, appointed by the

1 Pharmaceutical Care Management Association.

2 (12) A representative of America's Health Insurance Plans (AHIP), appointed by  
3 that organization.

4 (13) A representative of Pharmaceutical Research and Manufacturers of America,  
5 appointed by that organization.

6 (b) Legislative members of the commission shall receive mileage at the legislative rate  
7 when attending to the duties of the commission.

8 II.(a)(1) The commission shall study how to achieve greater transparency in pharmaceutical  
9 costs by identifying and analyzing certain critical prescription drugs and their role in overall health  
10 care spending in the New Hampshire and by analyzing the amounts rebated by drug manufacturers  
11 for certain high cost and high utilization prescription drugs. The commission's study shall include,  
12 but not be limited to:

13 (A) Studying strategies available to achieve greater transparency in  
14 pharmaceutical costs by identifying and analyzing certain critical prescription drugs and their role  
15 in overall health care spending and the impact of price increases on patients and their families.

16 (B) Reviewing legislative efforts in other states and taking advantage of any  
17 other analysis by outside organizations or foundations.

18 (C) Analyzing the impact of drug prices on insurance premium costs, consumer  
19 out-of-pocket costs for prescription drugs, and state and county purchasing of prescription drugs.

20 (D) Analyzing the potential impact of transparency in relation to the practices of  
21 pharmaceutical manufacturers and pharmacy benefits managers, including how research and  
22 development, marketing, and rebates affect drug prices.

23 (E) Proposing changes to New Hampshire law, as needed, to reduce the rising  
24 cost of pharmaceuticals.

25 (2) The commission shall also study the role pharmacy benefit managers play in the  
26 cost, administration, and distribution of prescription drugs; if greater transparency in  
27 pharmaceutical costs to purchasers would lower costs in overall health care spending in New  
28 Hampshire; and analyzing the amounts rebated by drug manufacturers for prescription drugs  
29 passed to purchasers and patients. The goal shall be to determine if any changes to New  
30 Hampshire laws could reduce the rising cost of pharmaceuticals to purchasers or patients.

31 (b) The commission may solicit input from any person or entity the commission deems  
32 relevant to its study.

33 III. The members of the commission shall elect a chairperson from among the members.  
34 The first meeting of the commission shall be called by the first-named house member. The first  
35 meeting of the commission shall be held within 45 days of the effective date of this section. Eight  
36 members of the commission shall constitute a quorum.

37 IV. The commission shall make a report with its findings and any recommendations for  
38 proposed legislation on or before November 1, 2020 to the speaker of the house of representatives,

1 the president of the senate, the house clerk, the senate clerk, the governor, and the state library.

2 6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in  
3 pharmaceutical costs and drug rebate programs, is repealed.

4 7 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

5 8 Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs and  
6 Drug Rebate Programs. To the extent possible, the membership of the commission to study greater  
7 transparency in pharmaceutical costs and drug rebate programs reestablished in section 5 of this  
8 act shall remain the same as the commission established in former RSA 126-A:77.

9 9 Effective Date.

10 I. Sections 1-4 of this act shall take effect January 1, 2020.

11 II. Section 6 of this act shall take effect November 1, 2020.

12 III. Section 7 of this act shall take effect June 30, 2020.

13 IV. The remainder of this act shall take effect upon its passage.

SB 226-FN- FISCAL NOTE  
AS INTRODUCED

AN ACT relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General Administrative Fund	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other - Insurance

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill requires the Insurance Department to license and regulate pharmacy benefits managers and reestablishes a commission to study greater transparency in pharmaceutical costs and drug rebate programs. The Department reports being unable to ascertain how many pharmacy benefits managers would require licensure under this bill. Therefore, the Department is unable to determine if the requirements of this bill could be implemented using existing resources or result in an increase to state expenditures. Also, the Department reports this bill may impact insurance premiums, which would impact premium tax revenue and insurance premium expenditures for county and local government entities by an indeterminable amount. Further, licensing fees and fines established in this bill would increase general fund revenue by an indeterminable amount.

AGENCIES CONTACTED:

Insurance Department