

LEGISLATIVE COMMITTEE MINUTES

SB226

Bill as
Introduced

SB 226-FN - AS INTRODUCED

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

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.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

1 medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.

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

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

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

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

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

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

12 VII. "Pharmacy board" means the New Hampshire pharmacy board under RSA 318.

13 318-F:2 Registration to do Business; Rulemaking; Penalties.

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

17 II. The commissioner shall adopt rules under RSA 541-A to:

18 (a) Prescribe the application for registration as a pharmacy benefits manager and shall
19 charge application fees and renewal fees as established in rules.

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

22 (c) Establish the following:

23 (1) Pharmacy benefits manager network adequacy.

24 (2) Prohibited market conduct practices.

25 (3) Data reporting requirements under relevant state laws.

26 (4) Rebates.

27 (5) Procedures for pharmacy audits conducted by or on behalf of a
28 pharmacy benefits manager.

29 (6) Affiliate information sharing;

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

32 (d) Add to the existing consumer complaint form and provide information in consumer
33 resource section.

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

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

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

38 318-F:3 Enforcement; Audits.

1 I. In order to enforce the provisions of this chapter, the commissioner may examine or audit
2 the books and records of a pharmacy benefits manager providing claims processing services or other
3 prescription drug or device services for a health benefit plan to determine if the pharmacy benefits
4 manager is in compliance with this chapter.

5 II. The information or data acquired during an examination or audit under paragraph I is
6 considered proprietary and confidential and shall not be subject to disclosure under the right-to-
7 know law in RSA 91-A.

8 318-F:4 Severability. If any provision of this chapter or the application of this chapter to any
9 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications
10 of this chapter which can be given effect without the invalid provisions or application, and to this
11 end, the provisions of this chapter are declared severable.

12 3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1,
13 XI-a to read as follows:

14 XI-a. "Pharmacy benefits manager" means any person or entity *registered under RSA*
15 *318-F and practicing* as defined in RSA 420-J:3, XXVIII-a.

16 4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-
17 a to read as follows:

18 XXVIII-a. "Pharmacy benefits manager" means a person *registered under RSA 318-F*
19 who performs pharmacy benefits management services, including a person acting on behalf of a
20 pharmacy benefits manager in a contractual or employment relationship in the performance of
21 pharmacy benefits management services for a covered entity. "Pharmacy benefits manager" shall
22 not include a health insurer licensed in this state if the health insurer or its subsidiary is providing
23 pharmacy benefits management services exclusively to its own insureds, or a private single
24 employer self-funded plan that provides such benefits or services directly to its beneficiaries.
25 "Pharmacy benefits management" means the administration of prescription drug benefits provided
26 by a covered entity under the terms and conditions of the contract between the pharmacy benefits
27 manager and the covered entity and the provision of mail order pharmacy services.

28 5 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug
29 Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

30 126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug
31 Rebate Programs Reestablished.

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

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

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

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

38 (3) The insurance commissioner, or designee.

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

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

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

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

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

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

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

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

37 (2) The commission shall also study the role pharmacy benefit managers play in the
38 cost, administration, and distribution of prescription drugs; if greater transparency in

SB 226-FN - AS INTRODUCED

- Page 5 -

1 pharmaceutical costs to purchasers would lower costs in overall health care spending in New
2 Hampshire; and analyzing the amounts rebated by drug manufacturers for prescription drugs
3 passed to purchasers and patients. The goal shall be to determine if any changes to New
4 Hampshire laws could reduce the rising cost of pharmaceuticals to purchasers or patients.

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

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

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

14 6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in
15 pharmaceutical costs and drug rebate programs, is repealed.

16 7 Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs and
17 Drug Rebate Programs. To the extent possible, the membership of the commission to study greater
18 transparency in pharmaceutical costs and drug rebate programs reestablished in section 5 of this
19 act shall remain the same as the commission established in former RSA 126-A:77.

20 8 Effective Date.

21 I. Sections 1-4 of this act shall take effect July 1, 2019.

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

23 III. 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 <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Insurance Administrative Fund			

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

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

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.

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

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand 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.

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

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

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

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

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

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

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

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

17 (3) Rebates to the client.

18 (4) Discounts offered directly to the consumer.

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

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

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

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

25 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

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

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

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

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

35 (2) A provision requiring the carrier or pharmacy benefit manager to investigate and
36 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 an
23 enrollee or insured person the pharmacy's usual and customary price of filling the prescription or the
24 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 settled
29 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 II. 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 Severability. If any provision of this chapter or the application of this chapter to any
2 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications
3 of this chapter which can be given effect without the invalid provisions or application, and to this
4 end, the provisions of this chapter are declared severable.

5 3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1,
6 XI-a to read as follows:

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

9 4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-a
10 to read as follows:

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

21 5 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug
22 Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

23 126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug
24 Rebate Programs Reestablished.

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

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

28 (1) Three members of the house of representatives, appointed by the speaker of the
29 house of representatives.

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

31 (3) The insurance commissioner, or designee.

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

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

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

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

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

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

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

6 (11) A member representing pharmacy benefit managers, appointed by the
7 Pharmaceutical Care Management Association.

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

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

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

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

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

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

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

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

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

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

37 (b) The commission may solicit input from any person or entity the commission deems

1 relevant to its study.

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

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

9 6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in
10 pharmaceutical costs and drug rebate programs, is repealed.

11 7 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

12 8 Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs and
13 Drug Rebate Programs. To the extent possible, the membership of the commission to study greater
14 transparency in pharmaceutical costs and drug rebate programs reestablished in section 5 of this act
15 shall remain the same as the commission established in former RSA 126-A:77.

16 9 Effective Date.

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

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

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

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

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
Appropriation	\$0	\$0	\$0	\$0
Revenue	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other - Insurance Administrative Fund

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

SB 226-FN - AS AMENDED BY THE HOUSE

03/14/2019 0871s
5Jun2019... 2128h

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

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.

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:

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, chemicals,
20 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 to
23 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;

- 1 (2) Health care professional licensed in this state;
- 2 (3) Consultant who only provides advice as to the selection or performance of a
- 3 pharmacy benefits manager;
- 4 (4) Service provided to the Centers for Medicare and Medicaid Services; or
- 5 (5) Health insurer licensed in this state if the health insurer or its subsidiary is
- 6 providing pharmacy benefits management services exclusively to its own insureds.

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

13 402-N:2 Registration to do Business; Rulemaking; Penalties.

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

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

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

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

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

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

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

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

29 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

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

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

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

37 (1) A provision granting the contracted pharmacy or pharmacist at least 30 business

1 days following the initial claim to file an appeal;

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

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

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

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

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

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

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

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

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

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

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

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

24 402-N:4 Prescription Drugs.

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

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

34 402-N:5 Complaints Relative to Pharmacy Benefit Managers.

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

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

1 Such rules shall include procedures for addressing complaints, provisions for enforcement, the
2 receipt of complaints referred to the insurance department under RSA 318:47-h, III(b), and for
3 reporting to the board of pharmacy on the status of complaints referred.

4 402-N:6 Pharmacy Benefits Manager Reporting.

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

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

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

25 402-N:8 Non-Exclusivity. Nothing in this chapter shall be interpreted to invalidate or render
26 inapplicable any other provision of Title XXXVII that is otherwise applicable to an entity that
27 qualifies as a pharmacy benefit manager under this chapter.

28 402-N:9 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 3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1,
33 XI-a to read as follows:

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

36 4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-a
37 to read as follows:

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

12 5 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug
13 Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

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

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

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

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

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

22 (3) The insurance commissioner, or designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in

SB 226-FN - AS AMENDED BY THE HOUSE

- Page 7 -

1 pharmaceutical costs and drug rebate programs, is repealed.

2 7 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

3 8 Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs and
4 Drug Rebate Programs. To the extent possible, the membership of the commission to study greater
5 transparency in pharmaceutical costs and drug rebate programs established in section 6 of this act
6 shall remain the same as the commission established in former RSA 126-A:77.

7 9 Effective Date.

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

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

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

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

SB 226-FN- FISCAL NOTE
 AS AMENDED BY THE HOUSE (AMENDMENT #2019-2128h)

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
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other
	Insurance Administrative Fund			

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 is not able 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. Regarding the Commissioner or designee participation on the commission, the Department indicates there would be no additional resources needed.

AGENCIES CONTACTED:

Insurance Department

**SB 226-FN FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2019-2128h)**

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
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General Insurance Administrative Fund	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other -

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 is not able 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. Regarding the Commissioner or designee participation on the commission, the Department indicates there would be no additional resources needed.

AGENCIES CONTACTED:

Insurance Department

SB 226-FN - FINAL VERSION

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06/27/2019 2610CofC
06/27/2019 2669EBA

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

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.

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.

- 1 (1) Health care facility licensed in this state;
- 2 (2) Health care professional licensed in this state;
- 3 (3) Consultant who only provides advice as to the selection or performance of a
- 4 pharmacy benefits manager;
- 5 (4) Service provided to the Centers for Medicare and Medicaid Services; or
- 6 (5) Health insurer licensed in this state if the health insurer or its subsidiary is
- 7 providing pharmacy benefits management services exclusively to its own insureds.

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

14 402-N:2 Registration to do Business; Rulemaking; Penalties.

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

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

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

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

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

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

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

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

30 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 402-N:4 Prescription Drugs.

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

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

35 402-N:5 Complaints Relative to Pharmacy Benefit Managers.

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

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

5 402-N:6 Pharmacy Benefits Manager Reporting.

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

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

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

26 402-N:8 Non-Exclusivity. Nothing in this chapter shall be interpreted to invalidate or render
27 inapplicable any other provision of Title XXXVII that is otherwise applicable to an entity that
28 qualifies as a pharmacy benefit manager under this chapter.

29 402-N:9 Severability. If any provision of this chapter or the application of this chapter to any
30 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications
31 of this chapter which can be given effect without the invalid provisions or application, and to this
32 end, the provisions of this chapter are declared severable.

33 3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1,
34 XI-a to read as follows:

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

1 4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-a
2 to read as follows:

3 XXVIII-a. "Pharmacy benefits manager" means ~~[a person who performs pharmacy benefits~~
4 ~~management services, including a person acting on behalf of a pharmacy benefits manager in a~~
5 ~~contractual or employment relationship in the performance of pharmacy benefits management~~
6 ~~services for a covered entity. "Pharmacy benefits manager" shall not include a health insurer~~
7 ~~licensed in this state if the health insurer or its subsidiary is providing pharmacy benefits~~
8 ~~management services exclusively to its own insureds, or a private single employer self-funded plan~~
9 ~~that provides such benefits or services directly to its beneficiaries. "Pharmacy benefits~~
10 ~~management" means the administration of prescription drug benefits provided by a covered entity~~
11 ~~under the terms and conditions of the contract between the pharmacy benefits manager and the~~
12 ~~covered entity and the provision of mail order pharmacy services]~~ **"pharmacy benefits manager"**
13 **as defined in RSA 402-N:1, VIII.**

14 5 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug
15 Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

16 126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug
17 Rebate Programs.

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

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

21 (1) Three members of the house of representatives, appointed by the speaker of the
22 house of representatives.

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

24 (3) The insurance commissioner, or designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in
5 pharmaceutical costs and drug rebate programs, is repealed.

6 7 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

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

11 9 Pharmacy Benefits Managers; Reference. Amend RSA 402-N:7 as inserted by section 2 of the
12 bill by replacing it with the following:

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

23 10 Contingency. If HB 670-FN of the 2019 regular legislative session becomes law, RSA 402-N:7
24 as inserted by section 2 of this act shall take effect January 1, 2020 and section 9 shall not take
25 effect. If HB 670-FN of the regular 2019 legislative session does not become law, RSA 402-N:7 as
26 inserted by section 9 of this act shall take effect at 12:01 am on January 1, 2020.

27 11 Effective Date.

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

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

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

31 IV. Section 9 of this act shall take effect as provided in section 10 of this act.

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

SB 226-FN- FISCAL NOTE
 AS AMENDED BY THE HOUSE (AMENDMENT #2019-2128h)

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 Insurance Administrative Fund	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

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 is not able 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. Regarding the Commissioner or designee participation on the commission, the Department indicates there would be no additional resources needed.

AGENCIES CONTACTED:

Insurance Department

CHAPTER 320
SB 226-FN - FINAL VERSION

03/14/2019 0871s
5Jun2019... 2128h
06/27/2019 2610CofC
06/27/2019 2669EBA

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

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.

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

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06/27/2019 2669EBA

19-1095
01/10

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:

1 320:1 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.

3 320:2 New Chapter; Pharmacy Benefits Managers. Amend RSA by inserting after chapter 402-
4 M 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 services that include:

10 (a) Receiving payments for pharmacist services.

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

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

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

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

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

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

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

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

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

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- 1 (1) Health care facility licensed in this state;
- 2 (2) Health care professional licensed in this state;
- 3 (3) Consultant who only provides advice as to the selection or performance of a
- 4 pharmacy benefits manager;
- 5 (4) Service provided to the Centers for Medicare and Medicaid Services; or
- 6 (5) Health insurer licensed in this state if the health insurer or its subsidiary is
- 7 providing pharmacy benefits management services exclusively to its own insureds.

8 IX. "Rebate" means a discount or price concession attributable to the utilization of a

9 prescription drug that is paid by the pharmaceutical manufacturer of the drug directly to a

10 pharmacy benefits manager or health carrier after the pharmacy benefits manager or health carrier

11 processes a claim from a pharmacy for a prescription drug manufactured by such pharmaceutical

12 manufacturer. "Rebate" shall not include bona fide service fees, administrative fees, or any other

13 amount which does not qualify as a rebate under this paragraph.

14 402-N:2 Registration to do Business; Rulemaking; Penalties.

15 I. A person or organization shall not establish or operate as a pharmacy benefits manager in

16 this state for health benefit plans without registering with the insurance commissioner under this

17 chapter.

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

19 (a) Prescribing the application format for registration as a pharmacy benefits manager,

20 including a requirement to submit the registrant's corporate charter, articles of incorporation, or

21 other formation documents.

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

23 (c) Delineating procedures for handling consumer complaints and coordinating with the

24 department's consumer services unit, including supplying designated contact information to enable

25 the department to reach the pharmacy benefits manager regarding consumer complaints.

26 III. If the commissioner finds after notice and hearing that any person has violated any

27 provision of this chapter, or rules adopted pursuant to this chapter, the commissioner may order:

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

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

30 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

31 I. All contracts between a carrier or pharmacy benefit manager and a contracted pharmacy

32 shall include:

33 (a) The sources used by the pharmacy benefit manager to calculate the drug product

34 reimbursement paid for covered drugs available under the pharmacy health benefit plan

35 administered by the carrier or pharmacy benefit manager.

36 (b) A process to appeal, investigate, and resolve disputes regarding the maximum

37 allowable cost pricing. The process shall include the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

25 402-N:4 Prescription Drugs.

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

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

35 402-N:5 Complaints Relative to Pharmacy Benefit Managers.

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

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

5 402-N:6 Pharmacy Benefits Manager Reporting.

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

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

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

26 402-N:8 Non-Exclusivity. Nothing in this chapter shall be interpreted to invalidate or render
27 inapplicable any other provision of Title XXXVII that is otherwise applicable to an entity that
28 qualifies as a pharmacy benefit manager under this chapter.

29 402-N:9 Severability. If any provision of this chapter or the application of this chapter to any
30 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications
31 of this chapter which can be given effect without the invalid provisions or application, and to this
32 end, the provisions of this chapter are declared severable.

33 320:3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA
34 318:1, XI-a to read as follows:

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

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1 320:4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3,
2 XXVIII-a to read as follows:

3 XXVIII-a. ~~"Pharmacy benefits manager" means [a person who performs pharmacy benefits~~
4 ~~management services, including a person acting on behalf of a pharmacy benefits manager in a~~
5 ~~contractual or employment relationship in the performance of pharmacy benefits management~~
6 ~~services for a covered entity. "Pharmacy benefits manager" shall not include a health insurer~~
7 ~~licensed in this state if the health insurer or its subsidiary is providing pharmacy benefits~~
8 ~~management services exclusively to its own insureds, or a private single employer self funded plan~~
9 ~~that provides such benefits or services directly to its beneficiaries. "Pharmacy benefits~~
10 ~~management" means the administration of prescription drug benefits provided by a covered entity~~
11 ~~under the terms and conditions of the contract between the pharmacy benefits manager and the~~
12 ~~covered entity and the provision of mail order pharmacy services] *"pharmacy benefits manager"*~~
13 ~~*as defined in RSA 402-N:1, VIII.*~~

14 320:5 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and
15 Drug Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

16 126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug
17 Rebate Programs.

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

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

21 (1) Three members of the house of representatives, appointed by the speaker of the
22 house of representatives.

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

24 (3) The insurance commissioner, or designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 320:6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in
5 pharmaceutical costs and drug rebate programs, is repealed.

6 320:7 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

7 320:8 Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs
8 and Drug Rebate Programs. To the extent possible, the membership of the commission to study
9 greater transparency in pharmaceutical costs and drug rebate programs established in section 5 of
10 this act shall remain the same as the commission established in former RSA 126-A:77.

11 320:9 Pharmacy Benefits Managers; Reference. Amend RSA 402-N:7 as inserted by section 2 of
12 the bill by replacing it with the following:

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

23 320:10 Contingency. If HB 670-FN of the 2019 regular legislative session becomes law, RSA
24 402-N:7 as inserted by section 2 of this act shall take effect January 1, 2020 and section 9 shall not
25 take effect. If HB 670-FN of the regular 2019 legislative session does not become law, RSA 402-N:7
26 as inserted by section 9 of this act shall take effect at 12:01 am on January 1, 2020.

27 320:11 Effective Date.

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

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

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

31 IV. Section 9 of this act shall take effect as provided in section 10 of this act.

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

Approved: August 12, 2019

Effective Date:

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

II. Section 6 shall take effect November 1, 2020.

III. Section 7 shall take effect June 30, 2020.

IV. Section 9 shall take effect as provided in section 10.

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V. Remainder shall take effect August 12, 2019.

Amendments

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

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

12

(a) Receiving payments for pharmacist services.

13

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

14

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

15

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

16

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

18

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

20

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

23

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

24

(1) Health care facility licensed in this state;

25

(2) Health care professional licensed in this state;

26

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

28

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

29

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

30

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

32

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

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

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

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

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

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

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

13 (3) Rebates to the client.

14 (4) Discounts offered directly to the consumer.

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

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

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

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

21 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 402-N:4 Prescription Drugs.

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

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

26 402-N:5 Complaints Relative to Pharmacy Benefit Managers.

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

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

33 402-N:6 Severability. If any provision of this chapter or the application of this chapter to any
34 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications
35 of this chapter which can be given effect without the invalid provisions or application, and to this
36 end, the provisions of this chapter are declared severable.

37 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.

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1 (11) A member representing pharmacy benefit managers, appointed by the
2 Pharmaceutical Care Management Association.

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

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

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

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

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

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

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

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

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

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

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

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

Amendment to SB 226-FN

- Page 6 -

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

4 6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in
5 pharmaceutical costs and drug rebate programs, is repealed.

6 7 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

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

11 9 Effective Date.

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

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

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

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

UNAPPROVED

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. "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 in
30 this state for health benefit plans without registering with the insurance commissioner under this
31 chapter.

32

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

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

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

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

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

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

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

13 (3) Rebates to the client.

14 (4) Discounts offered directly to the consumer.

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

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

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

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

21 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 402-N:4 Prescription Drugs.

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

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

26 402-N:5 Complaints Relative to Pharmacy Benefit Managers.

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

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

33 402-N:6 Severability. If any provision of this chapter or the application of this chapter to any
34 person or circumstance is held invalid, the invalidity shall not affect other provisions or applications
35 of this chapter which can be given effect without the invalid provisions or application, and to this
36 end, the provisions of this chapter are declared severable.

Amendment to SB 226-FN
- Page 4 -

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

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

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

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

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

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

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

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

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

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

27 (3) The insurance commissioner, or designee.

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

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

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

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

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

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

37 (10) A representative of the Business and Industry Association of New Hampshire,

1 appointed by the association.

2 (11) A member representing pharmacy benefit managers, appointed by the
3 Pharmaceutical Care Management Association.

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

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

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

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

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

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

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

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

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

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

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

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

1 members of the commission shall constitute a quorum.

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

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

12 9 Effective Date.

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

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

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

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

Committee Minutes

SENATE CALENDAR NOTICE

Executive Departments and Administration

Sen Sharon Carson, Chair
 Sen Kevin Cavanaugh, Vice Chair
 Sen Cindy Rosenwald, Member
 Sen Shannon Chandley, Member
 Sen John Reagan, Member

Date: January 23, 2019

HEARINGS

Wednesday

01/30/2019

(Day)

(Date)

Executive Departments and Administration

LOB 101

9:00 a.m.

(Name of Committee)

(Place)

(Time)

9:00 a.m.	SB 173-FN	relative to criminal history background checks by employers and public agencies.
9:15 a.m.	SB 208	renaming the adjutant general's department to the department of military affairs and veterans services.
9:30 a.m.	SB 109-FN	relative to paid details by personnel of the division of fire safety.
9:45 a.m.	SB 115	establishing a commission to study the business environment for mental health providers in New Hampshire.
10:00 a.m.	SB 114	establishing a committee to study state oversight and regulation of life coaches.
10:15 a.m.	SB 222-FN	relative to licensure of pharmacy benefits managers.
10:30 a.m.	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.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 173-FN

Sen. Giuda

Sen. Fuller Clark

Rep. Hennessey

SB 208

Sen. Giuda

Sen. D'Allesandro

Sen. Feltes

Rep. Graham

SB 109-FN

Sen. Carson

Sen. Cavanaugh

Rep. Baldasaro

Rep. Doucette

Rep. Goley

Rep. S. Beaudoin

SB 115

Sen. Feltes

Sen. Hennessey

SB 114

Sen. Fuller Clark

Rep. Grote

Rep. J. Schmidt

SB 222-FN

Sen. Rosenwald
Sen. Feltes
Sen. Levesque
Rep. Luneau

SB 226-FN

Sen. Soucy

Sen. Soucy
Sen. Fuller Clark
Sen. Watters
Rep. Butler

Sen. Hennessey

Sen. Sherman
Sen. Hennessey
Rep. Hennessey
Rep. McBeath

Sen. Levesque

Sen. Cavanaugh
Sen. Kahn
Rep. Muscatel

Sen. Rosenwald

Jennifer Horgan 271-2609

Sharon M Carson
Chairman

**Senate Executive Departments and Administration
Committee**

Jennifer Horgan 271-2609

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.

Hearing Date: January 30, 2019

Time Opened: 10:50 a.m.

Time Closed: 11:16 a.m.

Members of the Committee Present: Senators Carson, Cavanaugh, Rosenwald, Chandley and Reagan

Members of the Committee Absent : None

Bill 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.

Sponsors:

Sen. Soucy

Sen. Hennessey

Sen. Levesque

Sen. Rosenwald

Who supports the bill: Senator Soucy; Senator Rosenwald; Senator Levesque; Representative Hennessey; Representative Merchant; Michael Bullic, Board of Pharmacy; Holly Stevens, New Futures; Rick Newman, NH Independent Pharmacy Association; Richard Cohen, NH Pharmacy Association; Jay Ward, SEA; Fran Wendelboe, NH Independent Pharmacy Association

Who opposes the bill: Jodi Grimbilas, CVS Health; Lauren Rawley, PCMA; Lindsey Nadeau, CIGNA; Heidi Kroll, AHIP

Who is neutral on the bill: Jennifer Patterson, Insurance Department

Summary of testimony presented in support:

Senator Soucy (provided written testimony)

- Provided a copy of the report from 2018's SB481 study commission.
- This bill will develop a process to ensure NH knows who is acting as a Pharmacy Benefit Manager (PBM) in the State by establishing a registration process.

- A portion of language was omitted from the bill, as there should have been a section that addresses consumer complaints. Page 2, line 32 alludes to complaints, but it would be better to have that more explicitly outlined in the statute.
- The Insurance Department has said that they have not received many complaints, but there is not a distinct process that is easily accessible on their website for complaints.
- The bill will also re-establish the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs, which has been doing good work on this matter.
- Believes the bill is misplaced in the RSAs if the Insurance Department is going to oversee this it should be in Chapter 421.
- Trusts the Committee to make sure the goals of SB222 and SB226 work well together.
- Senator Carson pointed out that SB222 speaks to licensure and SB226 speaks to regulation. Asked if licensure is better than registration or registration better than licensure.
 - Her role here is to maintain the fidelity of the work from the study commission and their recommendation was registration. Recognizes there are some differences and would leave it to the Committee to determine what is the most appropriate.

Holly Stevens (New Futures) (provided written testimony)

- Participated in the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs.
- Thinks there are seven total drug transparency bills currently in the House, some of which will collect additional data that would be extremely important to that Commission's work.
- In support of registration or licensure of PBMs given the opaque nature of them.
- In favor of looking at the entire system and not just PBMs.
- There is a bill in the House that would subject PBMs to several insurance laws that were specifically identified by the Insurance Department and would encourage the Committee to look at those.
- In regards to the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs, would request that language be added to have the public member be someone who has been impacted by high drug prices or has used rebate programs, and would also request that individual be appointed by Senator Soucy due to her work on this matter.

Rick Newman (NH Independent Pharmacy Association)

- Agrees this language should be the insurance statute and not the pharmacy statute.
- The re-establishment of Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs is a good idea and would ask that a member of the NH Independent Pharmacy Association be added.
- In general, there needs to be something in place that has oversight over PBMs.

Richard Cohen (NH Pharmacists Association)

- Agrees with the comments of Mr. Newman.

- This bill is to protect the consumer.
- Not sure what the difference would be between licensure and registration but would suggest whichever one is the stronger one.

Fran Wendelboe (NH Independent Pharmacy Association)

- SB222 deals with the licensure of the practice of pharmacy and SB226 looks at the regulation of the brick and mortar companies.
- There are several states looking at registration or licensure laws and most of them are putting the language in their insurance statutes.
- The Board of Pharmacy is not asking to regulate third party administrator's role over PBMs or to have any oversight on the licensure of insurance agents.
- There are ERISA plans and non-ERISA plans.
- The House Bill mentioned lists various statutes and it says that the Insurance Commissioner 'may' decide to regulate various sections, which is slightly loose.
- Supports licensure or registration.

Summary of testimony presented in opposition:

Jodi Grimbilas (CVS Health) and **Lauren Rawley** (Pharmaceutical Care Management Association) (provided written testimony)

- PCMA represents PBMs across the country.
- PBMs are not insurers, as they are simply administrators of a benefit and consumers are not paying a premium to PBMs.
- PBMs are already regulated for network adequacy, prohibited practices, and data reporting through market conduct examinations by the Insurance Department.
- PBMs do not go to clients offering services, they respond to RFPs.
- A client will put out an RFP and PBMs will come and bid on that business.
- The client is the one saying what they want the benefit to look like and what they want to pay.
- PBMs are not solely determining what drugs will be covered, as there is a Pharmacy and Therapeutics Committee to create a national formulary.
- Certain brand drugs will be in a category and that is where the PBMs can drive cost savings.
- No one must hire a PBM, they do it because it lowers the costs of prescription drugs.
- PBMs get rebates from pharmaceutical manufacturers and if that company wants their equivalent drug to be preferred on the formulary the PBM will extract rebates.
- 95% + of those rebates are passed completely through to the client.
- Opposed to the bill as written but is certainly willing to work on the language.
- Agrees that statutorily this should be in Insurance section.
- Section 2 of the amendment to SB222 says the PBMs shall be regulated by the Board of Pharmacy.
- The bill creates a new definition for PBMs but, there is an existing definition in the Insurance statute and they would conflict.
- Some of the reporting and rulemaking is very extensive and goes into confidential and proprietary information.

- Pharmacy audits are already addressed in statute.
- In terms of the effective date, to get a regulatory scheme in place by July is very quick and is concerned about the ability to do that.
- Committed to working towards a resolution on the appropriate level of regulation.
- Supportive of re-establishing the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs.
- Senator Rosenwald pointed out a handout from PHARMA where it shows more money being spent on a drug than the actual price of the drug.
 - Ms. Grimbilas stated that she will get back to the Committee on that.
 - Ms. Rawley explained that PHARMA represents the pharmaceutical industry and would suggest looking at more empirical data that has third party validation.

Neutral Information Presented:

Jennifer Patterson (Insurance Department)

- Would repeat her comments from SB222.
- The Department did participate in the study commission and agrees this is an important area to examine.
- Remains committed to assisting on this language.
- There have been legal challenges to these kind of laws in other states.
- Believes those legal challenges are why the study commission recommended registration rather than licensure.

jch
Date Hearing Report completed: February 4, 2019

Sen Donna Soucy (C)
Sen Shannon Chandley
Sen John Reagan
Rep Edward Butler
Rep John Hunt
Rep Richard Abel
Rep Greg Indruk

**COMMITTEE OF CONFERENCE
NOTICE**

Date: June 13, 2019

Wednesday	06/19/2019
(Day)	(Date)
SB 226-FN	103, SH
(Committee of Conference)	(Place)
	11:30 a.m.
	(Time)

11:30 a.m. 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.

Sen Donna Soucy
District 18

Chairman

POC is Marlene Taylor 271-3040

Speakers

Senate Executive Departments & Administration Committee SIGN-IN SHEET

Date: 01/30/2019 Time: 10:30 a.m.

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.

Name/Representing (please print neatly)

Name/Representing	Support	Oppose	Speaking?	Yes	No
Rep Erin Hennessey Grafton 1	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
#13 SEN. CINDY ROSENWALD - DISTRICT	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jennifer Patterson NHID	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
RBP Gary Merchant	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Dr. Paul Bull Board of Pharmacy	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Malorie Lovesque	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Holly Stevens New Futures	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen Donna Soucy prime	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rick Newman PH Independent Pharmacy Ass	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Richard A Cohen RPH NHPA	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jodi Grimbilas + Lauren Rowley. asthma PCMA	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lindsey Nadeau - Cigna	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heidi Kell - AHTP	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
JAY WARD SEA	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fran Wendler NHIPA	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Testimony



The Senate of the State of New Hampshire

107 North Main Street, Concord, N.H. 03301-4951

MEMORANDUM

Date: October 31, 2018

To: Honorable Chris Sununu, Governor
Honorable Chuck Morse, President of the Senate
Honorable Gene Chandler, Speaker of the House
Honorable Tammy Wright, Senate Clerk
Honorable Paul Smith, House Clerk
Michael York, State Librarian

From: Senator Donna Soucy, Chair

Subject: Final Report of SB481, Chapter 143:2, Laws of 2018

Pursuant to SB481, Chapter 143:2, Laws of 2018, enclosed please find the final report of the committee to study the impact of pharmacy benefit manager operations on cost, administration, and distribution of prescription drugs.

Should you have any questions or comments regarding the report, please don't hesitate to contact me.

Enclosure

cc: committee members

**COMMITTEE TO STUDY THE IMPACT OF PHARMACY BENEFIT MANAGER
OPERATIONS ON COST, ADMINISTRATION, AND DISTRIBUTION OF
PRESCRIPTION DRUGS.**

SB481, Chapter 143:2, Laws of 2018

FINAL REPORT

Members:

Senator Donna Soucy

Representative Erin Hennessey

Representative Valerie Fraser

Representative David Luneau

Charge of the study:

I. Study the role pharmacy benefit managers (PBM) play in the cost, administration, and distribution of prescription drugs. The committee's study shall include, but not be limited to:

- (a) The effects of PBMs on the overall costs of health insurers.
- (b) PBMs use of "clawbacks" and "gag clauses" and the impact on consumer costs and rebates.
- (c) The impact of PBMs with respect to retail pharmacy pricing decisions.
- (d) A review of appropriate PBM oversight and the potential for such oversight to aid in lowering drug costs to consumers.
- (e) A review of the potential differences in costs for insurers that use PBMs to manage pharmacy benefits and insurers that independently manage this benefit.
- (f) Access to pharmacies.

The Committee received testimony from the following:

Tyler Brannen - NH Insurance Dept. (handout)

April Alexander - PCMA (handout)

Kelly Ryan - PhRMA (handout)

Robert Popovian - Pfizer (handout)

Richard Cohen - Pharmacists (handout)

Charlie Arlinghaus and Joyce Pitman (Dept. of Administrative Services) (handout)

Robert Stoker - (handout)
Corey Greenblatt - Global Healthy Living Foundation (handout)
Holly Stevens - New Futures (handout)
Daniel Nam - AHIP (handout)
Paula Rogers - Anthem (handout)
Lucy Hodder - UNH Law (handout)
Rep. Dianne Schuett

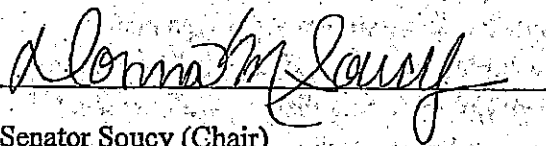
All handouts can be found under the documents section on the committee's webpage at <http://www.gencourt.state.nh.us/statstudcomm/committees/1383/>.

Summary of discussion:

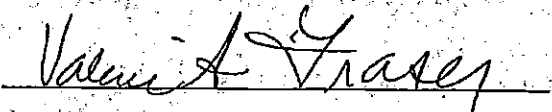
1. Pharmacy benefit managers are regulated by the Board of Pharmacy when dispensing prescriptions. In addition, some NH insurance laws apply to pharmacy benefit managers as a third party administrator.
2. Pharmacy benefit managers are hired to manage the prescription drug benefit programs for commercial health plans, self-insured employer plans, Medicare Part D plans, the Federal Employees Health Benefits Program, and state government employee plans.
3. Pharmacy benefit manager services include: developing and maintaining the formulary, contracting with pharmacies, mail service pharmacy, negotiating discounts and rebates with drug manufacturers, processing and paying prescription drug claims, drug utilization review programs.
4. A clawback is a pharmacy benefit manager claims processing function that results in overpayment by the patient and a reduction in what the pharmacy receives for payment of the drug. Clawbacks are now prohibited by law.
5. In 2018, legislation was passed prohibiting gag clauses, which is when pharmacists are prohibited, by pharmacy benefit managers, from telling a patient they are paying a higher price for a drug covered by their insurance than if they had just paid cash without billing the insurance company.
6. Spread price is the difference between what the pharmacy benefit manager charges the health plan and what they reimburse the pharmacy.
7. With regard to high drug prices, the challenge is that brand drug manufacturers sell drugs in a way that gives them a monopoly for that drug. It's very difficult to get discounts on products when there's no competition. Manufacturers have shown they will charge whatever the market will bear.
8. Copay coupons are provided by a drug manufacturer directly to the patient. They are often associated with higher priced brand name drugs. While they do help patients access medications, some argue that they ultimately drive prices higher and contribute to higher overall costs because they give the patient incentive to opt for the more expensive drugs. They are prohibited for use with Medicaid and Medicare by the federal government.

Recommendations

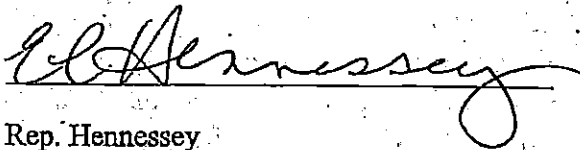
1. The committee recommends that legislation be filed to establish a registration requirement for pharmacy benefit managers with the Department of Insurance. The committee further recommends increased reporting by pharmacy benefit managers to the Department of Insurance in order to increase transparency. NH should look at what other states have done in this regard when developing the legislation.
2. The committee recommends that a more robust and distinct consumer complaint process be developed to address issues with pharmacy benefit managers.
3. The committee recommends that the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs, established by HB1418 in 2018, continue as a standing commission and that they monitor any developments at the federal level.



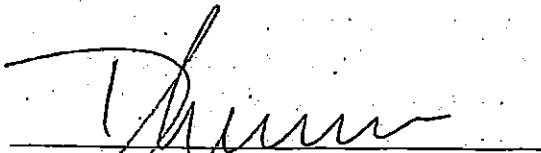
Senator Soucy (Chair)



Rep. Fraser



Rep. Hennessey



Rep. Luneau

January 30, 2019

The Tom Sherman, Chair
Senate Health and Human Services
Legislative Office Building Room 101
Concord, NH 03301

Re: New Futures' support of SB 226

Dear Chairman Sherman 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.¹ Due to rising drug costs, people resort to rationing medication because they simply cannot afford to pay for the medications every month.² They must make hard choices about picking up their medications or paying their other bills.³

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.⁴ This

¹ New Hampshire Insurance Department 2017 Annual Hearing Medical Cost Drivers Fact Sheet

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

³ *Ibid.*

⁴ 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.⁵

Additionally, PBM engage in arrangements for compensation after the point of sale, which is called direct and indirect remuneration (DIR).⁶ The Centers of Medicare and Medicaid Services (CMS) has noticed an increase in DIR payments in recent years.⁷ 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.⁸

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 is able to pocket the extra \$2.00, which again is called a spread.

The shroud surrounding PBM is extremely opaque. New Hampshire having the ability to licence 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

[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>

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

⁶ 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>

⁷ *Ibid.*

⁸ Health Affairs, Prescription Drug Pricing, Health Policy Brief Series, September 2017.

https://www.healthaffairs.org/doi/10.1377/hpb20171409.000178/full/healthpolicybrief_178.pdf

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.

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

Please do not hesitate to contact me if you have any questions. I have attached three resources to my testimony that you may find helpful in considering this legislation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Holly A. Stevens", with a long horizontal flourish extending to the right.

Holly A. Stevens, Esq.
Health Policy Coordinator

Outline of Testimony for SB 222 & SB 226 before Senate ED & A Committee

Jodi Grimbilas on behalf of CVS Health

January 30, 2019

Overall – Oppose both bills as written but willing to work towards a compromise registration bill.

Difference between bills:

- SB 222 uses “licensure”; SB 226 uses “registration
- SB 226 adds the word “annual” before reporting on Pg 2, line 20
- SB 226 adds a section relative to consumer complaint forms on page 2, line 32.

Concerns about both bills:

- Statutory placement of RSA 318. Should be RSA 420 (Insurance code)
- Registration vs. Licensure. Registration was the recommendation of the SB 481 Committee and is preferable to the industry, if regulation is a warranted solution to problems perceived.
- Bills based on NCOIL licensure model bill – not a fully supported stakeholder solution.
- Conflicting definitions of PBM – creates new, confuses with existing, problematic
- Reporting/Rulemaking too extensive.
 - o Goes into confidential and proprietary information,
 - o Covers issues already in existing law (ex. Pharmacy audits),
 - o Goes way beyond a registration form of regulation.
- Effective date is July – condensed timeframe.

Next Steps:

- Committed to working with Committee, sponsors and stakeholders on amendments that industry could support.

Voting Sheets

Senate Executive Departments and Administration Committee EXECUTIVE SESSION

Bill # 63226

Hearing date: _____

Executive session date: _____

Motion of: 6822

VOTE: 5-0

<u>Made by</u> Carson <input type="checkbox"/>	<u>Seconded</u> Carson <input type="checkbox"/>	<u>Reported</u> Carson <input type="checkbox"/>
<u>Senator:</u> Cavanaugh <input type="checkbox"/>	<u>by Senator:</u> Cavanaugh <input type="checkbox"/>	<u>by Senator:</u> Cavanaugh <input type="checkbox"/>
Chandley <input type="checkbox"/>	Chandley <input type="checkbox"/>	Chandley <input type="checkbox"/>
Reagan <input checked="" type="checkbox"/>	Reagan <input type="checkbox"/>	Reagan <input type="checkbox"/>
Rosenwald <input type="checkbox"/>	Rosenwald <input checked="" type="checkbox"/>	Rosenwald <input type="checkbox"/>

Motion of: OTPA

VOTE: 5-0

<u>Made by</u> Carson <input type="checkbox"/>	<u>Seconded</u> Carson <input type="checkbox"/>	<u>Reported</u> Carson <input type="checkbox"/>
<u>Senator:</u> Cavanaugh <input type="checkbox"/>	<u>by Senator:</u> Cavanaugh <input checked="" type="checkbox"/>	<u>by Senator:</u> Cavanaugh <input type="checkbox"/>
Chandley <input type="checkbox"/>	Chandley <input type="checkbox"/>	Chandley <input type="checkbox"/>
Reagan <input checked="" type="checkbox"/>	Reagan <input type="checkbox"/>	Reagan <input type="checkbox"/>
Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>

consent Reagan -> Chandley

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Carson, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cavanaugh, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Chandley	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Reagan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Rosenwald	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

*Amendments: _____

Notes: defines
moves to us dept

Committee Report

FOR THE CONSENT CALENDAR

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

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. Ought to Pass with Amendment, Vote 5-0.
Senator Cindy Rosenwald for the committee.

This bill establishes the registration and regulation of pharmacy benefits managers by the Insurance commissioner and re-establishes the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs. The Committee amended the bill to clarify the role of the Insurance Department and believes this is an important step for transparency regarding pharmacy benefit managers.

Docket of SB226

Docket Abbreviations

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

Official Docket of SB226.:

Date	Body	Description
1/22/2019	S	Introduced 01/03/2019 and Referred to Executive Departments and Administration; SJ 4
1/23/2019	S	Hearing: 01/30/2019, Room 101, LOB, 10:30 am; SC 8
3/6/2019	S	Committee Report: Ought to Pass with Amendment #2019-0871s , 03/14/2019; Vote 5-0; CC; SC 13
3/14/2019	S	Committee Amendment #2019-0871s , AA, VV; 03/14/2019; SJ 8
3/14/2019	S	Ought to Pass with Amendment 2019-0871s, MA, VV; OT3rdg; 03/14/2019; SJ 8
3/21/2019	H	Introduced 03/20/2019 and referred to Commerce and Consumer Affairs HJ 11 P. 71
4/9/2019	H	Public Hearing: 04/24/2019 10:30 am LOB 302
4/24/2019	H	Full Committee Work Session: 05/02/2019 09:00 am LOB 302
5/8/2019	H	Full Committee Work Session: 05/16/2019 09:30 am LOB 302
5/8/2019	H	Executive Session: 05/21/2019 11:00 am LOB 302
5/29/2019	H	Majority Committee Report: Ought to Pass with Amendment #2019-2128h for 06/05/2019 (Vote 12-8; RC) HC 27 P. 11
5/29/2019	H	Minority Committee Report: Inexpedient to Legislate
6/5/2019	H	Amendment #2019-2128h : AA VV 06/05/2019 HJ 17 P. 35
6/5/2019	H	Ought to Pass with Amendment 2019-2128h: MA VV 06/05/2019 HJ 17 P. 35
6/13/2019	S	Sen. Carson Moved Nonconcur with the House Amendment; Requests C of C, MA, VV; (In Recess 06/06/2019); SJ 20
6/13/2019	S	President Appoints: Senators Soucy, Morgan, French; (In Recess 06/06/2019); SJ 20
6/13/2019	H	House Accedes to Senate Request for CofC (Rep. Butler): MA VV 06/06/2019 HJ 18 P. 45
6/13/2019	H	Speaker Appoints: Reps. Butler, Hunt, Abel, Indruk 06/06/2019 HJ 18 P. 45
6/13/2019	S	Conferee Change; Senator Chandley Replaces Senator Morgan; SJ 20
6/13/2019	S	Conferee Change; Senator Reagan Replaces Senator French; SJ 20
6/19/2019	S	Committee of Conference Meeting: 06/19/2019, 11:30 am, Room 103, SH
6/20/2019	H	Conference Committee Report #2019-2610c Filed 06/13/2019; House Amendment + New Amendment
6/27/2019	H	Conference Committee Report 2610c: Adopted, RC 208-143 06/27/2019 HJ 20 P. 15
6/27/2019	S	Conference Committee Report #2019-2610c , Adopted, VV; 06/27/2019; SJ 21
7/9/2019	H	Enrolled Bill Amendment #2019-2669e : AA VV 06/27/2019 HJ 20 P. 56
7/10/2019	S	Enrolled Bill Amendment #2019-2669e Adopted, VV, (In recess of

		06/27/2019); SJ 21
7/12/2019	H	Enrolled 06/27/2019 HJ 20 P. 56
7/12/2019	S	Enrolled (In recess 06/27/2019); SJ 21
8/13/2019	S	Signed by the Governor on 08/12/2019; Chapter 320
8/13/2019	S	I. Sections 1-4 Effective 01/01/2020
8/13/2019	S	II. Section 6 Effective 11/01/2020
8/13/2019	S	III. Section 7 Effective 06/30/2020
8/13/2019	S	IV. Section 9 of this act shall take effect as provided in Section 10
8/13/2019	S	V. Remainder Effective 08/12/2019

NH House	NH Senate
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Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 226-FN

Senate Committee: EIDA

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 0622

- amendment # 0671

___ - amendment # _____

___ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____

___ - amendment # _____

___ - amendment # _____

___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference): 2610

Enrolled Bill Amendment(s) 2669

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate

as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Committee Aide

Date

Senate Clerk's Office jm

1 Committee of Conference Report on SB 226-FN, relative to registration of pharmacy benefit
2 managers, and reestablishing the commission to study greater transparency in pharmaceutical costs
3 and drug rebate programs.

4

5 Recommendation:

6 That the Senate recede from its position of nonconcurrence with the House amendment, and
7 concur with the House amendment, and

8 That the Senate and House adopt the following new amendment to the bill as amended by the
9 House, and pass the bill as so amended:

10

11 Amend RSA 402-N:6, II as inserted by section 2 of the bill by replacing it with the following:

12

13 II. Information reported to the commissioner pursuant to this section shall be confidential
14 and protected from disclosure under the commissioner's examination authority and shall not be
15 considered a public record subject to disclosure under RSA 91-A. Based on this reporting, the
16 commissioner shall make public aggregated data on the overall amount of rebates collected on behalf
17 of covered persons in the state, but shall not release data that identifies a specific insurer or
18 pharmacy benefit manager.

19

20 Amend RSA 402-N:7 as inserted by section 2 of the bill by replacing it with the following:

21

22 402-N:7 Authority to Examine and Directly Bill Pharmacy Benefits Managers for Certain
23 Examinations. The commissioner may examine and directly bill a pharmacy benefits manager
24 required to be registered under this chapter for the costs of any examination pursuant to RSA 400-
25 A:37 as necessary to determine and enforce compliance with this chapter. In addition, if the
26 commissioner finds through an investigation or examination that a carrier has not received
27 information required under RSA 420-J:7-b, XI from a pharmacy benefit manager, the commissioner
28 may require that the pharmacy benefit manager provide the required information, and the
29 commissioner may investigate or examine and directly bill the pharmacy benefit manager for the
30 cost of any portion of the examination or investigation pertaining to obtaining the required
31 information.

32

33 Amend the bill by replacing all after section 8 with the following:

34

Committee of Conference Report on SB 226-FN

- Page 2 -

35 9 Pharmacy Benefits Managers; Reference. Amend RSA 402-N:7 as inserted by section 2 of the
36 bill by replacing it with the following:

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

47 10 Contingency. If HB 670-FN of the 2019 regular legislative session becomes law, RSA 402-N:7
48 as inserted by section 2 of this act shall take effect January 1, 2020 and section 9 shall not take
49 effect. If HB 670-FN of the regular 2019 legislative session does not become law, RSA 402-N:7 as
50 inserted by section 9 of this act shall take effect at 12:01 am on January 1, 2020.

51 11 Effective Date.

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

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

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

55 IV. Section 9 of this act shall take effect as provided in section 10 of this act.

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

Committee of Conference Report on SB 226-FN
- Page 3 -

The signatures below attest to the authenticity of this Report on 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.

Conferees on the Part of the Senate

Conferees on the Part of the House

Sen. Soucy, Dist. 18

Rep. Butler, Carr. 7

Sen. Chandley, Dist. 11

Rep. Hunt, Ches. 11

Sen. Reagan, Dist. 17

Rep. Abel, Graf. 13

Rep. Indruk, Hills. 34

July 2, 2019
2019-2669-EBA
05/08

Enrolled Bill Amendment to SB 226-FN

The Committee on Enrolled Bills 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 as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to SB 226-FN

This enrolled bill amendment makes a technical correction.

Enrolled Bill Amendment to SB 226-FN

Amend section 8 of the bill by replacing line 3 with the following:

transparency in pharmaceutical costs and drug rebate programs established in section 5 of this act