

SB 238-FN - AS AMENDED BY THE SENATE

03/16/2017 0794s

2017 SESSION

17-0855

01/10

SENATE BILL **238-FN**

AN ACT relative to the usual and customary price of filling a prescription.

SPONSORS: Sen. Soucy, Dist 18; Sen. Reagan, Dist 17; Rep. McGuire, Merr. 29

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill clarifies the terms "usual and customary price" and "contracted copayment" for the purposes of filling prescriptions.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the usual and customary price of filling a prescription.

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

1 1 Regulation of Pharmacies; Price of Filling Prescriptions. Amend RSA 318:47-h, I to read as
2 follows:

3 I. A pharmacy benefits manager or insurer shall require a contracted pharmacy to charge
4 an enrollee or insured person the pharmacy's usual and customary price of filling the prescription
5 or the contracted copayment, whichever is less. ***For the purposes of this paragraph, "usual
6 and customary price" means the price an individual would pay for a prescription at a
7 retail pharmacy if that individual did not have a prescription drug benefit or insurance.
8 For the purposes of this paragraph, "contracted copayment" means a fixed amount an
9 individual is responsible to pay for covered prescriptions as set forth in the health benefit
10 plan.***

11 2 Managed Care Law; Price of Filling Prescriptions. Amend RSA 420-J:7-b, X(a) to read as
12 follows:

13 (a) A pharmacy benefits manager or insurer shall require a contracted pharmacy to
14 charge an enrollee or insured person the pharmacy's usual and customary price of filling the
15 prescription or the contracted copayment, whichever is less. ***For the purposes of this
16 subparagraph, "usual and customary price" means the price an individual would pay for
17 a prescription at a retail pharmacy if that individual did not have a prescription drug
18 benefit or insurance. For the purposes of this subparagraph, "contracted copayment"
19 means a fixed amount an individual is responsible to pay for covered prescriptions as set
20 forth in the health benefit plan.***

21 3 Accident and Health Insurance; Price of Filling Prescriptions. Amend RSA 415:26, I to read
22 as follows:

23 I. A pharmacy benefits manager or insurer shall require a contracted pharmacy to charge
24 an enrollee or insured person the pharmacy's usual and customary price of filling the prescription
25 or the contracted copayment, whichever is less. ***For the purposes of this paragraph, "usual
26 and customary price" means the price an individual would pay for a prescription at a
27 retail pharmacy if that individual did not have a prescription drug benefit or insurance.
28 For the purposes of this paragraph, "contracted copayment" means a fixed amount an
29 individual is responsible to pay for covered prescriptions as set forth in the health benefit
30 plan.***

31 4 Effective Date. This act shall take effect 60 days after its passage.

SB 238-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the usual and customary price of filling a prescription.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
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 type="checkbox"/> Other

METHODOLOGY:

This bill clarifies the term “usual and customary price” for the purposes of filling prescriptions. The Department of Health and Human Services (DHHS) states current law provides that a pharmacy benefits manager or an insurer shall require a contracted pharmacy to charge an enrollee or insured person the pharmacy’s usual and customary price of filling the prescription or the contracted copayment, whichever is less. The bill adds a definition of usual and customary price to mean the price and individual would pay for a prescription at a retail pharmacy if that individual did not have a prescription drug benefit or insurance. The bill would effectively mean Medicaid recipients who are served under the traditional Medicaid fee for service (FFS) or Medicaid Care Management (MCO) programs would always pay to the pharmacy their Medicaid copay (of \$1 for preferred drugs and \$2 for non-preferred drugs) as this would qualify as the lesser amount. NH Health Protection Program (NHHPP) participants enrolled in Qualified Health Plans are subject to copays of \$4 for preferred drugs and \$8 for non-preferred drugs. Even with higher copays, NHHPP participants would be unlikely to pay more than the required copay, and any increased cost would be the responsibility of the participant and not DHHS.

The Insurance Department states the bill requires insurers, pharmacy benefit managers (PBMs) and other entities licensed by the Department to include certain provisions in their contracts with pharmacies. These provisions would require contracted pharmacies to charge the lesser of the contracted copay or the pharmacy’s retail price for every prescription. The Department’s analysis of claims indicates for most pharmacy transactions, the pharmacy charges the amount it has negotiated with the insurer or other entity when that amount is lower than the contracted copay. The Department assumes the negotiated amount is lower

than the pharmacy's retail price. Therefore, the Department assumes this bill will cause an insured's out-of-pocket expenses to increase, causing insureds to reach their out-of-pocket maximum at an accelerated rate. This may impact claim costs and premiums. The State is self-funded and the Department does not know what, if any, impact this may have on expenditures.

The Office of Professional Licensure and Certification indicates pharmacy budget managers would be required to charge an enrollee or insured person the pharmacy's "usual and customary price" for prescriptions or the contracted copayment. The Board of Pharmacy does not license or regulate pharmacy managers and has no jurisdiction over prescription drug pricing and insurance providers.

The Department of Administrative Services states the bill is not applicable to the State's self-funded Employee Health Benefit Plan and thus there is no fiscal impact on the State.

AGENCIES CONTACTED:

Departments of Health and Human Services, Insurance, Administrative Services, and the Office of Professional Licensure and Certification