

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