

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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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:

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 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 ~~XXXVIII-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.