CONSENT CALENDAR

November 8, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Commerce and Consumer Affairs to which was referred HB 383,

AN ACT relative to provider contract standards for pharmacy benefit managers. Having considered the same, report the same with the following resolution:

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. John Potucek

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Commerce and Consumer Affairs**
Bill Number:	**HB 383**
Title:	**relative to provider contract standards for pharmacy benefit managers.**
Date:	**November 8, 2023**
Consent Calendar:	**CONSENT**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

Relative to provider contract standards for pharmacy benefit managers (PBMs). This bill would require PBMs to inform the independent pharmacy which wholesale distributor has a lower price than where the independent pharmacist is acquiring the drug from. The subcommittee felt this should not be the responsibility of the PBMs and therefore it was recommended to the entire Commerce and Consumer Affairs Committee as Inexpedient to Legislate.

Vote 19-0.

Rep. John Potucek
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Commerce and Consumer Affairs
HB 383, relative to provider contract standards for pharmacy benefit managers. **INEXPEDIENT TO LEGISLATE.**
Rep. John Potucek for Commerce and Consumer Affairs. Relative to provider contract standards for pharmacy benefit managers (PBMs). This bill would require PBMs to inform the independent pharmacy which wholesale distributor has a lower price than where the independent pharmacist is acquiring the drug from. The subcommittee felt this should not be the responsibility of the PBMs and therefore it was recommended to the entire Commerce and Consumer Affairs Committee as Inexpedient to Legislate. **Vote 19-0.**

Original: House Clerk
Cc: Committee Bill File

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 383

BILL TITLE: relative to provider contract standards for pharmacy benefit managers.

DATE: November 8, 2023

LOB ROOM: 302-304

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Potucek Seconded by Rep. Burroughs Vote: 19-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Jane Beaulieu, Clerk

OFFICE OF THE HOUSE CLERK

4/25/2023 8:24:20 AM
Roll Call Committee Registers Report

2023 SESSION

Commerce and Consumer Affairs

Bill #: 383 **Motion:** ITL **AM #:** _____ **Exec Session Date:** 11/8/23

Members	YEAS	Nays	NV
Hunt, John B. Chairman	✓		
Ammon, Keith Michael Vice Chairman	✓		
~~Osborne, Jason M.~~ McGough	✓		
Potucek, John M.	✓		
Terry, Paul A	✓		
Post, Lisa C.M.	✓		
Cole, Brian D	✓		
Porcelli, Susan M	✓		
Thackston, Dick H	✓		
Walsh, Lilli M	✓		
Burroughs, Anita D.	✓		
Herbert, Christopher J.	✓		
Beaulieu, Jane E. Clerk	✓		
~~McAleer, Chris R.~~ Howard	✓		
Vincent, Kenneth S.	✓		
Calabro, Karen E	✓		
Filiault, Shaun M			
Gibbs, Merryl	✓		
Spier, Carry	✓		
Sullivan, Jared	✓		
TOTAL VOTE:	19	0	

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION on HB 383

BILL TITLE: relative to provider contract standards for pharmacy benefit managers.

DATE: September 20, 2023

Subcommittee Members: Reps. Terry, Post, Porcelli, Hunt, Calabro, Vincent, Gibbs and Burroughs

Comments and Recommendations:

MOTIONS: **INEXPEDIENT TO LEGISLATE**

Moved by Rep. Rep. Burroughs Seconded by Rep. Rep. Hunt Vote: 8-0

Respectfully submitted,

Rep. Jane Beaulieu
Subcommittee Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 383

BILL TITLE: relative to provider contract standards for pharmacy benefit managers.

DATE: March 8, 2023

LOB ROOM: 302-304

MOTIONS: RETAINED

Moved by Rep. Hunt Seconded by Rep. Terry Vote: 19-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Jane Beaulieu, Clerk

HOUSE COMMITTEE ON Commerce and Consumer Affairs

BILL NUMBER: **HB 383**

BILL TITLE: **relative to provider contract standards for pharmacy benefit managers.**

DATE: **March 8, 2023**

THE COMMITEE HAS VOTED TO RETAIN THIS BILL.

_____

Rep. Hunt, Chair

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/5/2023 1:24:24 PM
Roll Call Committee Registers Report

2023 SESSION

Commerce and Consumer Affairs

Bill #: 383 Motion: retain AM #: _____ Exec Session Date: 3/8/23

Members	YEAS	Nays	NV
Hunt, John B. Chairman	✓		
Ammon, Keith Michael Vice Chairman	✓		
Osborne, Jason M.	✓		
Potucek, John M.	✓		
Terry, Paul A	✓		
Post, Lisa C.M.	✓		
Cole, Brian D	✓		
Porcelli, Susan M	✓		
Thackston, Dick H	✓		
Walsh, Lilli M	✓		
Burroughs, Anita D.	✓		
Herbert, Christopher J.	✓		
Beaulieu, Jane E. Clerk	✓		
McAleer, Chris R.	✓		
Vincent, Kenneth S.			
Calabro, Karen E	✓		
Filiault, Shaun M	✓		
Gibbs, Merryl	✓		
Spier, Carry	✓		
Sullivan, Jared	✓		
TOTAL VOTE:	19	0	

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION on HB 383

BILL TITLE: relative to provider contract standards for pharmacy benefit managers.

DATE: February 8, 2023

Subcommittee Members: Reps. Terry, Post, Porcelli, Hunt, J. Sullivan, Calabro, Gibbs and Burroughs

Comments and Recommendations:

MOTIONS: **RETAINED**

Moved by Rep. Rep. Hunt Seconded by Rep. Rep. Terry Vote: 7-0

Respectfully submitted,

Rep. John Hunt
Subcommittee Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 383

BILL TITLE: **relative to provider contract standards for pharmacy benefit managers.**

DATE: **January 18, 2023**

LOB ROOM: **302-304** **Time Public Hearing Called to Order:** **1:20 pm**

Time Adjourned: **2:15 pm**

Committee Members: Reps. Hunt, Ammon, Beaulieu, Osborne, Potucek, Terry, Post, Cole, Porcelli, Thackston, L. Walsh, Burroughs, Herbert, McAleer, Vincent, Calabro, Filiault, Gibbs, Spier and J. Sullivan

Bill Sponsors:
Rep. Rochefort **Rep. Merchant** **Sen. Rosenwald**

TESTIMONY

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

*Rep David Rochefort
- It is not a new concept
- Modernization of current law
- Pharmacy benefit managers are middleman companies contact with insurance carriers
- MAC price - maximum allowable cost contracted agreement with a PBM and MAC
- Transparency - room for improvement

*Glen Perreault - NH RPH
- Supports pharmacy owner
- Right now pharmacists may have to buy a medicine and sell it below the purchase price (wholesale price)
- NDC - Underwater claims have increased substantially over the last 20 years

*Curtis Barry - Representing PCMA
- Opposes

*Sam Hallemeier - PCMA
- Opposes
- Negotiated rates - wholesalers can reveal the price of but may not be able to sell
- Actual Cost - what is the definition
- Pharmacists have the opportunity to go to a portal to get actual pricing in real time within 14 days

*Stephen Kavadias - Pharmacy Owner
- Wants to know where they can get the lowest wholesale price
- Cannot get answers from PBMs

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: HB 383 Date: 1/18/23

Committee: Commerce

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Heidi Kroll	AHIP 214 N Main St, Concord, NH	603-496-2345	AHIP		X
Steve Kavadias	18 Amy Way Peacock	496-9257	NA 20k	X	
Glenn Perreault	333 Otterville Rd New London	603 496-8557	WH RPh	X	
Joni Grimbilas	Concord NH	603-496-2638	CVS Health		X
Gary Merchant	272 Claremont NH	6035581388	myself	X	
George Rabbat	Agwa				X

House Remote Testify

Commerce and Consumer Affairs Committee Testify List for Bill HB383 on 2023-01-18

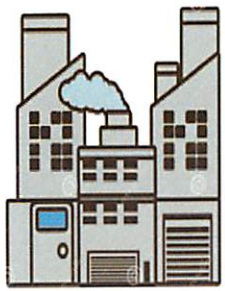
Support: 1 Oppose: 1 Neutral: 0 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane	Signed Up
Rosenwald, Cindy	Nashua, NH cindy.rosenwald@leg.state.nh.us	An Elected Official	SD 13	Support	No	No	1/11/2023 12:28 PM
Smith, Julie	Nashua, NH cantdog@comcast.net	A Member of the Public	Myself	Oppose	No	No	1/11/2023 8:07 PM

Curtis Barry's testimony

Drug Supply Chain



DRUG MAKERS

Set Drug List Prices

Drug Makers negotiate with PSAOs to distribute their drugs to Pharmacies

Drug Makers pays Rebates to PBMs per Negotiated Agreements (on some drugs)



PBMs

Negotiates Discounts with Drug Makers on Behalf of their Health Plan Clients or Large Employer Clients

PSAOs Negotiate Drug Reimbursement on Behalf of their Pharmacy Clients with PBMs



PSAO / WHOLESALER

PSAOs sell/distribute drugs to their Pharmacy Clients

PBMs/Health Plans pay pharmacy for drugs dispensed



HEALTH INSURANCE PROVIDERS

Health Insurance Providers Cover Enrollees' Drug Costs



PHARMACY

Patient pays copays for Drugs

Pharmacy Dispenses Drugs To Patient



PATIENT

PCMA

Drug Wholesalers Own 3 Largest PSAOs

- Over 80% of independent pharmacies belong to pharmacy services administrative organizations (PSAOs), which provide a range of services, including: negotiating third-party payer contracts, providing access to pooled purchasing power/inventory, and back-office functions.
- PSAOs give independent pharmacies significant bargaining clout in negotiations with payers.

Largest Pharmacy Services Administrative Organizations, by Members and Ownership, 2019

PROGRAM	Health Mart Atlas	LeaderNET/MS InterNet/ Managed Care Connection	Elevate Provider Network	Arete Pharmacy Network	Pharmacy First	EPIC Pharmacy Network, Inc.	Unify Rx	Sav-Mor Pharmacy Services
Ownership	McKesson/APCI	Cardinal Health	Cardinal Health	AAP	Wholesale Alliance LLC	Member-owned	PBA Health/PPOK	Independent
# of Participating Pharmacies	7,000	5,600	4,600	2,900	2,300	1,700	1,200	565

Source: Drug Channels Institute research and estimates. Figures show number of pharmacies using PSAO services.

PCMA

CHAPTER 402-N
PHARMACY BENEFITS MANAGERS

Section 402-N:3

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

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

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

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

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

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

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

(A) Provide the reason for the denial; and

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

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

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

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

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

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

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

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

III. [Repealed.]

Source. 2019, 320:2, eff. Jan. 1, 2020; 320:7, eff. June 30, 2020.

PCMA

January 18, 2023

The Honorable John Hunt
Members, House Commerce and Consumer Affairs Committee
LOB Room 302
Concord, NH 03301

RE: HB 383 AN ACT relative to provider contract standards for pharmacy benefit managers; Oppose

Dear Chair Hunt, Vice-Chair Ammon, Members of the Committee:

My name is Sam Hallemeier, Director of State Affairs writing on behalf of the Pharmaceutical Care Management Association (PCMA) to oppose HB 383. PCMA is the national association representing America's pharmacy benefit managers (PBMs). PBMs administer prescription drug plans and operate mail-order and specialty pharmacies for more than 266 million Americans with health coverage through large employers, health insurers, labor unions, and federal and state-sponsored health programs.

Pharmacies are reimbursed for generic drugs via maximum allowable cost ("MAC") lists. To determine a fair reimbursement for generic drugs, PBMs survey market data to calculate the average cost for those drugs including information from nationally recognized pricing reference services, wholesalers and drug manufacturers. The resulting reimbursement is established using that estimated market price while balancing the contractual requirements established by each unique pharmacy and plan sponsor. MAC lists are important because network pharmacies purchase their supply of prescription drugs at different prices and terms from various wholesalers. MAC lists encourage pharmacies to buy their inventory cost effectively as possible to provide patients and payers significant savings. Moreover, PSAOs (Pharmacy Services Administrative Organizations), the largest of which are owned by wholesalers and contract with PBMs on behalf independent pharmacies use "off-invoice" discounting with pharmacies they are selling to such as purchasing volume discounts and others. These price adjustments are not typically included on the pharmacy's invoice and include various types of rebates and price concessions. PBMs are not involved in these transactions and have no insight into the prices that pharmacies pay. As a result, pharmacies may buy a drug cheaper than their submitted invoice actually reflects.

§1 (B) would amend 402-N:3 to identify the source of a drug product that may be purchased at or below the maximum allowable cost. As stated previously, PBMs have no way of knowing where or at what price a pharmacy purchases their drugs. These are confidential contracted rates between a pharmacy and a wholesaler. If the intent of the bill is to identify the source used by the pharmacy benefit manager to calculate the drug product reimbursement paid for

Pharmaceutical Care Management Association
325 7th Street, NW, 9th Floor
Washington, DC 20004
www.pcmanet.org

PCMA

covered generic drugs, that is already in NH statute in 402-N:3 (I)(a). Otherwise that information may be obtained from wholesalers, not PBMs or health insurance carriers.

§2 (B) is drafted to permit all affected pharmacies and pharmacists in the state to reverse and rebill a claim in question. PCMA requests that **pharmacists** be struck from the language as it is unnecessary.

§2 (B) states that a pharmacy can reverse and rebill any claim affected dating back to when the maximum allowable cost fell below actual cost. There is no definition for actual cost in New Hampshire statute so it is unclear to what the intent is with portion of the bill. Further, reimbursing for the actual cost of the drug could encourage wholesalers to increase their cost to pharmacies, knowing the pharmacy would be reimbursed, which would be counter-productive to keeping costs down.

§2 (B) states the pharmacy benefit manager shall notify all pharmacies in the network of the date that all claims can be reprocessed. PCMA requests that this line be struck as we do not know the price at which the pharmacy purchased their drug from a wholesaler. PBMs already notify the pharmacy that made the MAC appeal of the change.

§2 (d) would require PBMs to make available all MAC lists to the insurance department. These lists are hundred of pages long and are updated constantly. PCMA does not understand the intent here and are also concerned about confidentiality. MAC lists are already available to participating pharmacies through a portal. PCMA requests that providing MAC lists to the insurance department be struck. Additionally current statute already requires this information in 402-N:3 II (b), and (c) requires MAC reimbursement cost adjustment at least every 14 days.

In the interest of New Hampshire patients and payers, it is for these problematic provisions noted above that we must respectfully oppose HB 383 as we believe they are already in statute or unnecessary and burdensome. I want to thank the Committee for opportunity to testify and we look forward to working with key stakeholders on this issue.

Sincerely,

Sam Hallemeier
Director
State Affairs

Pharmaceutical Care Management Association
325 7th Street, NW, 9th Floor
Washington, DC 20004
www.pcmanet.org

KEEPING GENERIC DRUGS AFFORDABLE

The Value of Maximum Allowable Cost (MAC) Lists

What is a MAC list?

- A MAC list specifies the most a PBM will reimburse a pharmacy for a particular generic drug
- Identical generic drugs can be made by several manufacturers and listed at different prices
- PBMs set and regularly update MAC lists at a level that reflects the average acquisition cost of a well-run pharmacy
- MAC lists encourage pharmacies to purchase generics at the lowest possible cost, driving competition among wholesalers and generic drug manufacturers

MAC lists help PBMs fairly compensate pharmacies and provide cost-effective drug benefits to health plan and employer clients.

MAC lists are effectively:

- ✓ Increasing and maintaining high generic dispensing rates
- ✓ Ensuring pharmacies are paid fairly but not overpaid for dispensing generics
- ✓ Making the generic market more competitive and more efficient



Who uses MAC lists?

79% of private employers[1]

45 State Medicaid[2] Programs

Medicare Part D Plans

Unions

1 Express Scripts. (2016). Available at: http://lab.express-scripts.com/lab/insights/drug-options/mac-pricing-incents-more-affordable-rx

2 Office of the Inspector General, Department of Health and Human Services. *Medicaid Drug Pricing in State Maximum Allowable Cost Programs.* (July 2013).

Generic drugs are driving significant savings in commercial insurance, Medicare, and Medicaid

$111.5
billion in commercial insurance savings



$32.7
billion in Medicaid savings



$67.6
billion in Medicare savings

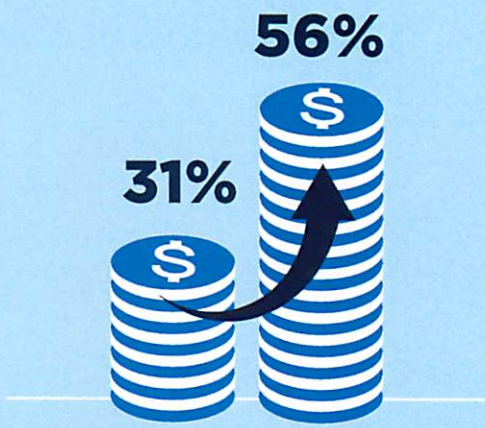




Generic drugs saved U.S. consumers $207 billion in 2015.

Increased generic drug dispensing rates = more money in the pocket of consumers through lower copays and premiums

If the use of generic drugs and MAC lists are restricted:



A 2015 analysis of more than 800 affected generic prescriptions found that restrictions on MAC lists could:

- Increase costs by **31% to 56%** for affected generic prescriptions
- Increase expenditures nationally by up to **$6.2 billion** annually

Generic drugs account for 89% of filled prescriptions and account for only 27% of drug expenditures



Reference: IMS Institute for Health Informatics, for the Generic Pharmaceutical Association. (2016).

© Pharmaceutical Care Management Association

HB 383 - AS INTRODUCED

2023 SESSION

23-0683
09/05

HOUSE BILL ***383***

AN ACT relative to provider contract standards for pharmacy benefit managers.

SPONSORS: Rep. Rochefort, Graf. 1; Rep. Merchant, Sull. 6; Sen. Rosenwald, Dist 13

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill provides new provider contract standards for pharmacy benefit managers.

- -

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.

HB 383 - AS INTRODUCED

23-0683
09/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to provider contract standards for pharmacy benefit managers.

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

1 Provider Contract Standards for Pharmacy Benefit Managers. Amend RSA 402-N:3, I(b)(3)(B) to read as follows:

(B) Identify the national drug code***, and the source*** of a drug product that may be purchased by contracted pharmacies at a price at or below the maximum allowable cost; and ***provide the name of a wholesaler servicing New Hampshire where the drug can be purchased; and***

2 Rebilling; Pharmacy Benefit Managers. Amend RSA 402-N:3, I(b)(4)(B) to read as follows:

(B) Permit [~~the challenging pharmacy~~] ***all affected pharmacies*** or [~~pharmacist~~] ***pharmacists in this state*** to reverse and rebill the claim in question ***or any claim affected dating back to when the maximum allowable cost fell below actual cost. The pharmacy benefit manager shall notify all pharmacies in the network of the date that all claims can be reprocessed.***

3 New Subparagraph; Pharmacy Benefit Managers; Department of Insurance Cost Lists. Amend RSA 402-N:3, II by inserting after subparagraph (c) the following new subparagraph:

(d) Make available to the pharmacy and the insurance department all maximum allowable cost lists in use by the pharmacy benefits manager for all insurance plans administered within New Hampshire by the pharmacy benefits manager.

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