

SB 247 - AS AMENDED BY THE SENATE

03/27/2025 1401s

2025 SESSION

25-0984

05/11

SENATE BILL **247**

AN ACT prohibiting network exclusion for pharmacies that refuse to dispense a prescription of the PBM reimbursement that is below the pharmacy's acquisition cost.

SPONSORS: Sen. Rochefort, Dist 1; Sen. Avard, Dist 12; Sen. Innis, Dist 7; Rep. Cole, Hills. 26; Rep. Spier, Hills. 6

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill:

I. Permits a pharmacy to decline to fill a prescription if reimbursement from the pharmacy benefits manager is less than the pharmacy's acquisition cost and excludes Medicaid and Medicaid care management from this option and other provider contract standards.

II. Defines pharmacy services administrative organization for purposes of pharmacy and PBM contract requirements; and makes the failure of a pharmacy services administrative organization to comply with such requirements a violation of the consumer protection act.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT prohibiting network exclusion for pharmacies that refuse to dispense a prescription of the PBM reimbursement that is below the pharmacy's acquisition cost.

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

1 1 Managed Care Law; Pharmacy and Pharmacist Contracting Standards. Amend RSA 420-J:8,
2 XV to read as follows:

3 XV.(a) All contracts between a carrier or pharmacy benefit manager and a contracted
4 pharmacy shall include:

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

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

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

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

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

16 (i) Provide the reason for the denial; and

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

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

21 (i) Make the change in the maximum allowable cost; and

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

24 (b) For every drug for which the *health carrier or* pharmacy benefit manager
25 establishes a maximum allowable cost to determine the drug product reimbursement, the *health*
26 *carrier or* pharmacy benefit manager shall:

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

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

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

5 (c) [Repealed.]

6 (d) [Repealed.]

7 (e) *A pharmacist or pharmacy in a network plan with a health carrier or*
8 *pharmacy benefits manager may decline to provide a brand-name drug, multi-source*
9 *generic drug, supply, or service if the reimbursement amount is less than the acquisition*
10 *cost paid by the pharmacy or pharmacist. If a pharmacist or pharmacy declines to provide*
11 *the prescription or service, the pharmacy or pharmacist shall advise the patient to contact*
12 *the health carrier or pharmacy benefits manager using the contact information on the*
13 *prescription drug card for information as to where the prescription for the drug, supply, or*
14 *service may be filled.*

15 2 New Paragraph; Managed Care Law; Provider Contract Standards; Medicaid Exclusion.
16 Amend RSA 420-J:8 by inserting after paragraph XVIII the following new paragraph:

17 XIX. Nothing in this section shall be construed to apply to Medicaid or Medicaid care
18 management.

19 3 New Paragraph; Regulation of Business Practices for Consumer Protection; Pharmacy
20 Services Administrative Organizations. Amend RSA 358-A:2 by inserting after paragraph XIX the
21 following new paragraph:

22 XX. Failure of a pharmacy services administrative organization to adhere to the
23 requirements of this paragraph.

24 (a) Pharmacy services administrative organizations shall provide the contracted
25 pharmacy a copy of any contract with a pharmacy benefit manager, and amendments, payment
26 schedules, or reimbursement rates, within 3 calendar days after the execution of a contract, or an
27 amendment to a contract, signed on behalf of the independent pharmacy.

28 (b) Contracts between a pharmacy services administrative organization and a pharmacy
29 shall not require that the pharmacy purchase any drugs and/or medical devices from a specific
30 entity.

31 (c) In this paragraph, "pharmacy services administrative organization" means an entity
32 operating within the state that contracts with one or more independent pharmacies to provide
33 administrative services to pharmacies and negotiate and enter contracts with third-party payers or
34 pharmacy benefit managers on behalf of pharmacies. A person or entity is a pharmacy services
35 administrative organization under this section if it performs one or more of the following
36 administrative services
37 on behalf of one or more pharmacies:

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- 1 (1) Assistance with claims.
- 2 (2) Assistance with audits.
- 3 (3) Assistance with access to pharmacy networks.
- 4 (4) Assistance with interactions between the pharmacy and pharmacy benefits
5 manager.
- 6 (5) Centralized payment.
- 7 (6) Certification in specialized care programs.
- 8 (7) Compliance support.
- 9 (8) Setting flat fees for generic drugs.
- 10 (9) Assistance with store layout.
- 11 (10) Marketing support.
- 12 (11) Management and analysis of payment and drug dispensing data.
- 13 (12) Provision of resources for retail cash cards.
- 14 4 Effective Date. This act shall take effect January 1, 2026.

**SB 247- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2025-1401s)**

AN ACT prohibiting network exclusion for pharmacies that refuse to dispense a prescription of the PBM reimbursement that is below the pharmacy's acquisition cost.

FISCAL IMPACT:

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund</i>	None			
Expenditures*	Indeterminable			
<i>Funding Source</i>	General Fund- Consumer Protection Funds			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source</i>	None			

***Expenditure = Cost of bill *Appropriation = Authorized funding to cover cost of bill**

Estimated Political Subdivision Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	Indeterminable			
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	Indeterminable			

METHODOLOGY:

This bill permits a pharmacy to decline to fill a prescription if reimbursement from the pharmacy benefits manager is less than the pharmacy's acquisition cost and excludes Medicaid and Medicaid care management from this option and other provider contract standards. The bill also defines pharmacy services administrative organization for purposes of pharmacy and PBM contract requirements; and makes the failure of a pharmacy services administrative organization to comply with such requirements a violation of the consumer protection act.

The bill adds, deletes, or modifies a criminal penalty, or changes statute to which there is a penalty for violation. Therefore, this bill may have an impact on the judicial and correctional systems, which could affect prosecution, incarceration, probation, and parole costs, for the state,

as well as county and local governments. A summary of such costs can be found at: https://gencourt.state.nh.us/lba/Budget/Fiscal_Notes/JudicialCorrectionalCosts.pdf

The Department of Justice indicates this bill would amend RSA 358-A:2 by creating a new delineated unfair or deceptive act of practice that applies to pharmacy services administrative organizations. The new section in RSA 358-A:2 could lead to additional complaints to the attorney general. If those complaints are merited, the number of investigations and enforcement actions brought by the Consumer Protection and Antitrust Bureau would increase. Accordingly, there is a potential fiscal impact on the Department of Justice. Because the number of additional complaints, investigations, and enforcement actions cannot be determined at this time, the amount of the fiscal impact is indeterminate.

If additional complaints, investigations and enforcement actions are significant, additional staff would be needed. The Department has estimated the cost of such staff, including benefits below:

Position	FY 2026*	FY 2027	FY 2028
Assistant Attorney General	\$66,000	\$133,000	\$133,000
Investigative Paralegal	\$45,000	\$91,000	\$94,000

*Amounts for FY 2026 are for ½ year since the effective date is January 1, 2026.

Because the number of potential complaints cannot be determined in advance the number of additional staff that may be needed is unknown. Depending on the number of complaints, the Department estimated cost could range from \$100,000 to \$500,000. The Department states there would be no impact on state revenue.

AGENCIES CONTACTED:

Judicial Branch, Judicial Council, Department of Justice, Department of Corrections, New Hampshire Association of Counties, and New Hampshire Municipal Association