

Amendment to SB 665-FN

1 Amend the bill by replacing all after the enacting clause with the following:

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3 1 Pharmacy Benefits Managers; Definitions. Amend RSA 402-N:1, VIII to read as follows:

4 VIII.(a) "Pharmacy benefits manager" means a person, business, or other entity, including a
5 wholly or partially owned or controlled subsidiary of a pharmacy benefits manager *or of a licensed*
6 *health insurer*, that, pursuant to a contract with a health carrier, manages the prescription drug
7 coverage provided by the health carrier *for health coverage as defined in RSA 420-G:2, IX*,
8 including, but not limited to, providing claims processing services for prescription drugs, performing
9 drug utilization review, processing drug prior authorization requests, adjudication of grievances or
10 appeals related to prescription drug coverage, contracting with network pharmacies, and controlling
11 the cost of covered prescription drugs.

12 (b) "Pharmacy benefits manager" shall not include any:

13 (1) Health care facility licensed in this state;

14 (2) Health care professional licensed in this state;

15 (3) Consultant who only provides advice as to the selection or performance of a
16 pharmacy benefits manager; *or*

17 (4) Service provided to the Centers for Medicare and Medicaid Services~~[-or-]~~.

18 ~~(5) Health insurer licensed in this state if the health insurer or its subsidiary is~~
19 ~~providing pharmacy benefits management services exclusively to its own insureds.]~~

20 2 Pharmacy Benefits Managers; Registration to do Business; Rulemaking; Penalties. Amend
21 RSA 402-N:2, III(a) to read as follows:

22 (a) ~~[For each separate violation, a penalty in the amount of \$2,500]~~ *An administrative*
23 *fine not to exceed \$5,000 per violation.*

24 3 New Section; Written Agreements. Amend RSA 402-N by inserting after section 2 the
25 following new section:

26 402-N:2-a. Written Agreement.

27 I. No pharmacy benefits manager shall act as such without a written agreement between
28 the pharmacy benefits manager and the health carrier. The written agreement shall be retained as
29 part of the official records of both the health carrier and the pharmacy benefits manager for the
30 duration of the agreement and for 5 years thereafter. The agreement shall contain all provisions
31 required by this chapter, except insofar as those requirements do not apply to the functions
32 performed by the pharmacy benefits manager.

Amendment to SB 665-FN
- Page 2 -

1 II. The written agreement shall include the following:

2 (a) A statement of duties that the pharmacy benefits manager is expected to perform on
3 behalf of the health carrier.

4 (b) A statement that the pharmacy benefits manager shall maintain and make available
5 to the health carrier complete books and records of all transactions performed on behalf of the health
6 carrier.

7 (c) The instructions for how the pharmacy benefits manager will undertake the duties
8 delegated by the health carrier.

9 III. In cases in which pharmacy benefits manager administers benefits for more than 100
10 covered lives in New Hampshire on behalf of the health carrier, the health carrier may, at least
11 semi-annually, conduct an on-site or virtual audit of the operations of the pharmacy benefits
12 manager.

13 4 Pharmacy Benefits Manager Reporting. RSA 402-N:6 is repealed and reenacted to read as
14 follows:

15 402-N:6 Pharmacy Benefits Manager Reporting.

16 I. Each pharmacy benefits manager shall submit to the commissioner annually a report
17 containing a list of health benefit plans it administered and the rebates it collected from
18 pharmaceutical manufacturers that were attributable to patient utilization in the state of New
19 Hampshire during the prior calendar year. The report submitted to the commissioner shall include
20 the following information:

21 (a) The aggregate dollar amount spent on drugs prior to rebates;

22 (b) The aggregate dollar amount of all rebates that pharmacy benefit manager received
23 from all pharmaceutical manufacturers;

24 (c) The aggregate dollar amount of all administrative fees that the pharmacy benefit
25 manager received;

26 (d) The aggregate dollar amount of all health carrier administrative service fees that the
27 pharmacy benefit manager received;

28 (e) The aggregate dollar amount of all rebates that the pharmacy benefit manager
29 received from all pharmaceutical manufacturers and did not pass through to health plans or health
30 carriers;

31 (f) The aggregate dollar amount of all administrative fees that the pharmacy benefit
32 manager received from all pharmaceutical manufacturers and did not pass through to health plans
33 or health carriers;

34 (g) The aggregate retained rebate percentage; and

35 (h) Across all of the pharmacy benefit manager's contractual or other relationships with
36 all health plans or health carriers, the highest aggregate retained rebate percentage, the lowest
37 aggregate retained rebate percentage, and the mean aggregate retained rebate percentage.

1 II. Information reported to the commissioner pursuant to this section shall be confidential
2 and protected from disclosure under the commissioner's examination authority and shall not be
3 considered a public record subject to disclosure under RSA 91-A. Based on this reporting, the
4 commissioner shall make public aggregated data on the overall amount of rebates collected on behalf
5 of covered persons in the state, but shall not release data that identifies a specific health carrier or
6 pharmacy benefit manager.

7 III. The commissioner shall prescribe the format of the report and procedure for filing the
8 report. Any forms, templates, or guidance regarding the report required by the section shall be
9 exempt from the requirements of RSA 541-A.

10 IV. This section shall not apply to data related to Medicaid, the Medicaid Care Management
11 program, the Ryan White HIV/AIDS program administered by the department of health and human
12 services, self-funded plans, the state employee health benefit plan, or any other plan outside the
13 jurisdiction of the commissioner.

14 5 Pharmacy Benefits Managers; Authority to Examine and Directly Bill Pharmacy Benefits
15 Managers for Examinations. RSA 402-N:7 is repealed and reenacted to read as follows:

16 402-N:7 Authority to Examine and Directly Bill Pharmacy Benefits Managers for Examinations.

17 I. The acts of the pharmacy benefits manager shall be considered the acts of the health
18 carrier on whose behalf it is acting. A pharmacy benefits manager may be examined as if it were the
19 health carrier pursuant to RSA 400-A:37 and the commissioner may directly bill a pharmacy benefits
20 manager for the costs of any examination.

21 II. The commissioner may investigate the acts of a pharmacy benefits manager pursuant to
22 RSA 400-A:16.

23 III. The pharmacy benefits manager shall make all records and books of account available to
24 the examiners or consultants and shall otherwise facilitate the performance of the examination or
25 investigation.

26 6 Managed Care Law; Provider Contract Standards. Amend RSA 420-J:8, XV to read as follows:

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

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

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

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

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

Amendment to SB 665-FN
- Page 4 -

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

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

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

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

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

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

11 **(3) All claims adjudications, appeals, and utilization review processes shall**
12 **comply with the requirements of RSA 420-J and rules promulgated thereunder.**

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

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

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

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

22 (c) [Repealed.]

23 (d) [Repealed.]

24 **(e) Grant at least 7 days' advance notice of the initial on-site audit for each**
25 **audit cycle. A pharmacy that requests an additional 7 days prior to the commencement of**
26 **an audit shall be granted 7 additional days.**

27 7 Managed Care Law; Retroactive Denials Prohibited; Exceptions. Amend RSA 420-J:8-b, III to
28 read as follows:

29 III. A health carrier shall notify a health care provider at least 15 days in advance of the
30 imposition of any retroactive denials of previously paid claims. The health care provider shall have 6
31 months from the date of notification under this paragraph to determine whether the insured has
32 other appropriate insurance, which was in effect on the date of service. Notwithstanding the
33 contractual terms between the health carrier and provider, the health carrier shall allow for the
34 submission of a claim that was previously denied by another insurer due to the insured's transfer or
35 termination of coverage. **If the health care provider files an appeal within 15 days of the date**
36 **of the notice by the health carrier, the recoupment of the previously paid claim shall occur**
37 **only after the appeal and external review process has concluded.**

Amendment to SB 665-FN
- Page 5 -

1 8 New Subparagraphs; Standards for Accident and Health Insurance; Establishing Excess Cost
2 Sharing. Amend RSA 415-A:7, I by inserting after subparagraph (b) the following new
3 subparagraphs:

4 (c) “Pharmacy benefits manager” means “pharmacy benefits manager” as defined in RSA
5 402-N:1, VIII.

6 (d) “Spread pricing” means the model of drug pricing in which the pharmacy benefit
7 manager charges a health benefit plan a contracted price for drugs, and the contracted price for the
8 drugs differs from the amount the pharmacy benefit manager directly or indirectly pays the
9 pharmacist or pharmacy for the drugs, pharmacist services, or drug and dispensing fees.

10 9 Standards for Accident and Health Insurance; Establishing Excess Cost Sharing. Amend RSA
11 415-A:7, IV(b) to read as follows:

12 (b) A civil fine not to exceed [~~\$2,500~~] **\$5,000** may be imposed for each violation.
13 [~~Repeated violations of the same provision shall constitute separate civil offenses.~~]

14 10 New Paragraphs; Standards for Accident and Health Insurance; Establishing Excess Cost
15 Sharing. Amend RSA 415-A:7 by inserting after paragraph V the following new paragraphs:

16 VI. An insurer providing health coverage as defined in RSA 420-G:2, IX to a group shall
17 disclose at the time the plan is sold how rebates will be treated in accordance with this section and,
18 if a pharmacy benefits manager is used to administer the prescription drug benefit, whether spread
19 pricing is used to compensate the pharmacy benefits manager.

20 VII. Nothing in this section shall prohibit the use of spread pricing.

21 11 Effective Date. This act shall take effect January 1, 2027.

2026-1758h

AMENDED ANALYSIS

This bill:

- I. Requires written agreement to be formed between pharmacy benefits managers and health carriers before benefits managers can operate.
- II. Amends pharmacy benefits manager reporting and examination requirements.
- III. Raises the value of the maximum administrative fine that can be levied for violations of the state's pharmacy benefits manger laws.