

Senate Health and Human Services Committee

Sophie Walsh 271-3469

SB 247, prohibiting network exclusion for pharmacies that refuse to dispense a prescription of the PBM reimbursement that is below the pharmacy's acquisition cost.

Hearing Date: March 12, 2025

Time Opened: 10:30 a.m.

Time Closed: 10:51 a.m.

Members of the Committee Present: Senators Rochefort, Avard, Birdsell, Prentiss and Long

Members of the Committee Absent: None

Bill Analysis: 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. The bill also defines pharmacy services administrative organization for purposes of pharmacy and PBM contract negotiation and administration.

Sponsors:

Sen. Rochefort

Sen. Avard

Sen. Innis

Rep. Cole

Rep. Spier

Who supports the bill: 55 people signed in support of the bill. Full sign in sheets are available upon request by contacting the Legislative Aide, Sophie Walsh (Sophie.Walsh@gc.nh.gov).

Who opposes the bill: 1 person signed in opposition of the bill. Full sign in sheets are available upon request by contacting the Legislative Aide, Sophie Walsh (Sophie.Walsh@gc.nh.gov).

Who is neutral on the bill: 1 person signed in neutral to the bill. Full sign in sheets are available upon request by contacting the Legislative Aide, Sophie Walsh (Sophie.Walsh@gc.nh.gov).

Summary of testimony presented:

Senator David Rochefort, Senate District 1

- Senator Rochefort explained that this bill deals with prohibiting network exclusion from pharmacies that refuse to dispense a prescription for the Pharmacy Benefit Manager (PBM) reimbursement that is below the pharmacy's acquisition cost.

- While pharmacies accept insurance, they usually contract with PBMs or Pharmacy Services Administration Organizations (PSAOs), rather than directly with the insurance company.
- Many contracts currently require pharmacies to fill all prescriptions presented to them under contract from their PBM provider, even if the reimbursement for that drug is below-cost.
- If a pharmacy does not fill the prescription, they are at risk of being excluded from the network.
- This bill will give pharmacies the ability to refuse prescriptions if the reimbursement is below-cost without affecting their network provisions.
- This bill also addresses PSAOs. Senator Rochefort described them as middlemen of the middlemen.
- While work has been done by the State over the years to regulate PBMs, not much has been done in regards to PSAOs.
- Senator Rochefort explained that PSAOs have become problematic, and this bill starts to address that. He emphasized that this is not wide sweeping reform.
- Senator Rochefort explained that upon discussion with the Insurance Department, an amendment is being drafted to address some necessary changes. These include changing the section of law this bill is being put into and putting this under consumer protection.

Michelle Heaton, New Hampshire Insurance Department

- Ms. Heaton explained that the Department had some concerns with the placement of these provisions, as the current version of the bill would make it difficult to implement the law.
- The Department is working on an amendment to address Senator Rochefort's concerns and place the provisions to better align with the intent of the bill.

Glenn Perreault, Colonial Pharmacy

- Mr. Perreault stated that he has a lot of experience dealing with PBMs and contracting as a pharmacist and owner of Colonial Pharmacy. He actively participated in the PBM study committee over the summer.
- As proposed, this bill would address a lot of Mr. Perreault's concerns around the significant underwater reimbursements of brand name medications.
- Mr. Perreault's pharmacy lost over \$6,000 in a two-month window on underwater reimbursements on brand name drugs. As a recourse, he has stopped stocking brand name drugs.
- If a customer is seeking a brand name drug, he will order it if he can get appropriately reimbursed. Alternatively, he can also ask the PBM where he can purchase the drug for the reimbursable price. However, this often does not work out and patients are often switching from brand name drugs to generics.

- Mr. Perreault has personally reached out to his PBM with concerns about his contract and proposed changes. He was told it cannot be done, and the PBM explained to him that contracts are awarded to the lowest bidders.
- Mr. Perreault emphasized that if something is not done, this will be a race to the bottom. He does not see an end to the negative contract reimbursements as this trend continues.
- Mr. Perreault emphasized that he does not believe the problem is on the buyer's side.
- Senator Avard asked how bidding on contracts affects customers.
- Mr. Perreault explained that if a PBM is not willing to negotiate with him beyond their contract, he tells the patient that he cannot fill their prescription because he cannot obtain the drug for the price their insurance is willing to pay for it. In these cases, he offers to transfer the patient's prescription to any pharmacy that can fill it.
- He can also reach out to doctors to explore any appropriate clinical changes that could be made to address the situation.
- Senator Avard asked how PSAOs and PBMs become involved after pharmacies purchase a drug.
- Mr. Perreault explained that the PSAO negotiates on his behalf and accepts or declines contracts with the PBM who bundles insurers into plans, and then negotiates and sells that bundle of plans for insurance companies.
- According to the PSAO he works with, there is not a lot of back and forth in negotiations; it is usually take it or leave it from the PBM.
- Senator Avard asked if there is a fee to be a part of a PSAO, and Mr. Perreault confirmed.
- Senator Avard asked if getting rid of PSAOs and PBMs would help customers.
- Mr. Perreault explained that he has discussed this with people many times. If the drug payment system is changed to something like EBT or HSA cards, patients would be able to decide where they want their medications filled.
- Senator Avard confirmed this would all be for the best costs for consumers, and Mr. Perreault confirmed.
- Senator Rochefort referenced Page 1 Lines 11-15 of the bill and explained he included this provision because he believes there needs to be more transparency on contracts between PSAOs and PBMs. He asked if Mr. Perreault also wants this information as a pharmacist.
- Mr. Perreault confirmed he would, and noted that PBM contracts are very vague. He referenced the use of maximum allowable costs (MAC) and explained that the PBM study committee learned that PBMs have over 148 MAC lists.
- Senator Avard asked how many PSAOs there are, and if this bill would give pharmacies a better ability to shop around PSAOs.

- Mr. Perreault said it is both yes and no. He knows of 6 PSAOs. They are generally affiliated with wholesalers, meaning that there are some restrictions in choosing PSAOs depending on one's affiliation. However, he does know of 2 independent PSAOs.

Rob Berry, Department of Health and Human Services

- Senator Rochefort explained that he was contacted by the Department with concerns around federal guidelines and potentially putting Medicaid in jeopardy. This will be addressed with an amendment to the bill.
- Mr. Berry confirmed that is correct and noted that the Department was also concerned about this bill potentially conflicting with SB 119-FN.

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Date Hearing Report completed: March 18, 2025