

# Senate Health and Human Services Committee

*Sophie Walsh 271-3469*

**SB 547-FN**, relative to regulation and transparency of pharmacy benefit manager practices.

**Hearing Date:** January 14, 2026

**Time Opened:** 10:17 a.m.

**Time Closed:** 11:08 a.m.

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

**Members of the Committee Absent:** None

**Bill Analysis:** This bill amends the definitions of pharmacy benefit manager and rebate and adds additional terms governing pharmacy benefit manager business practices. The bill states that pharmacy benefit managers have a fiduciary duty to the health carrier client and are prohibited from retaining any portion of spread pricing.

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**Sponsors:**

Sen. Rosenwald

Sen. Rochefort

Sen. McGough

Sen. Fenton

Sen. Watters

Sen. Altschiller

Sen. Perkins Kwoka

Rep. Miles

Rep. Nagel

Rep. Weber

Rep. Burroughs

Rep. M. Pearson

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**Who supports the bill:** Sen. Rosenwald, Sen. Fenton, Samuel Burgess (New Futures), Amanda Morrill, Jennifer Towle, and Katelyn Comeau.

**Who opposes the bill:** Sabrina Dunlap (Anthem), Cam Lapine (Cigna, APCIA, & NHADIC), Margaret Reynolds (Cigna), Peter Bragdon (Harvard-Pilgrim), Sam Hallemeier (PCMA), Curtis J. Barry (PCMA), Julie Smith, and Daniel Richardson.

**Who is neutral on the bill:** Dr. Jason Aziz & DJ Bettencourt (NHID).

**Summary of testimony presented:**

Senator Cindy Rosenwald, Senate District 13

- Senator Rosenwald explained that this bill will make changes to the regulation of pharmacy benefits managers (PBMs)
- This is a fast-growing and concentrated industry with only three main players controlling nearly 80% of the prescription drug benefit market.
- Prescription drugs are growing quickly as percentage of New Hampshire's total health care spending.

- With the costs of prescription drugs also rising, this is a problem for granite staters. More than 25% of our residents do not take medications as prescribed because of costs.
- Senator Rosenwald said that while it may be easy to blame drug manufacturers for high prices, the answer is more complex. She emphasized this includes PBMs as the middlemen.
- This bill updates definitions to align with current business practices.
- This bill requires PBMs to have a fiduciary duty to the carriers or affiliates that hire them.
- The issue of being a fiduciary was litigated based on a 2004 Maine law. The First Circuit Court of Appeals upheld Maine's law, and the U.S. Supreme Court let the ruling stand. This ruling also applies to New Hampshire.
- This bill prohibits spread pricing, meaning that PBMs cannot charge their health carrier clients more than they reimburse the pharmacy. This will help retail pharmacies, especially New Hampshire's remaining independent pharmacies.
- Under this bill, neither a PBM nor a carrier can maintain business practices that steers customers to a pharmacy they own or that they are owned by. Senator Rosenwald thinks rural residents will benefit by being able to use any network pharmacy.
- The bill requires reporting about drug rebates and fees. Senator Rosenwald said there is discussion that many fees charged by PBMs are not called rebates, so they don't have to be passed back to the clients that hire PBMs.
- Senator Rosenwald believes this is important because to the extent that health care can be a free market, transparency is required so that buyers can make informed decisions.
- The bipartisan solutions contained in this bill is one approach to addressing the threat posed by rising drug prices to the wellbeing of our citizens. She acknowledged that there is another bill addressing this issue. Senator Rochefort confirmed and said the Committee will work on a solution to this issue.

DJ Bettencourt & Dr. Jason Aziz, New Hampshire Insurance Department

- Commissioner Bettencourt said he believes a number of the provisions in this bill are solid.
- He emphasized the importance of proceeding in an effective, durable, and consistent manner with market principles, while avoiding unintended consequences like premium increases and litigation.
- Commissioner Bettencourt offered directional guidance in crafting reform.
- PBM reform should begin with precision. If the objective is basic oversight and visibility, universal PBM registration may be appropriate. If the objective is consumer cost relief, then reform should focus on incentives affecting net drug

costs. If the objective is market conduct, the focus should be on anti-competitive behavior.

- Expanding statutory definitions or imposing mandates without clarity of purpose risks overregulation without measurable consumer benefits.
- It is important to respect market structure and contractual relationships. Prohibiting entire categories of reimbursement models risks eliminating tools that can reduce overall drug costs. Mandating duties to multiple parties with competing interests can create legal confusion and undermine accountability.
- It is important to be cautious when expanding scope beyond the fully insured market. In New Hampshire, PBM laws are largely embedded in RSA 420-J. When expanding PBM regulation to self-funded or government plans, it must be done carefully to avoid potential Employee Retirement Income Security Act (ERISA) preemptions.
- It is important to focus transparency on net cost transparency in a targeted manner. Existing proposals already contain workable transparency language that could be refined, rather than replaced.
- To avoid consumer protections that undermine cost control, it is important to ensure that proposals do not drive costs higher.
- Dr. Aziz said he is enthusiastic about the transparency measures in this bill. He provided an example with the GLP-1 market. Now that there is an oral GLP-1 drug for a fraction of the injectable drug costs, downward price pressure has been achieved largely through transparency and enabling market forces to work.
- Senator Rochefort asked if the cadence of reporting set in the bill is adequate.
- Dr. Aziz explained that while existing statute calls for annual reporting, the Department is happy to do whatever the legislature decides is best for citizens. He noted that quarterly reporting would be too frequent, given the nature of rebates. A plan year is generally an appropriate amount of time, but the concern is that contractual relationships can change within that time.
- Senator Rochefort asked if Dr. Aziz thinks quarterly reporting is too frequent due to more concern about data accuracy, rather than administrative burden. Dr. Aziz said both are reasons for quarterly reporting being too frequent.
- Senator Rochefort referenced the fiduciary duty component and noted that there are seven states doing this already, with federal legislation currently being considered. He asked if the Department has any input on this aspect of the bill.
- Dr. Aziz explained that it is implicit in the Third Party Administrator (TPA) contractual relationship that they are already fiduciaries.
- Ms. Heaton explained that the Department's interpretation has always been that PBMs are an agent of the health carrier. Since they are acting as an agent of the health carrier, there are duties that already exist there. The language of

this bill is codifying what the law currently is and how the Department has always interpreted it.

- Senator Rochefort referenced ERISA preemptions and noted that the *Rutledge v. Pharmaceutical Care Management Association* has provided some clarity to the issue. He asked if the Department is confident that this would fall within that decision.
- Ms. Heaton said she thinks this is where we need to be careful, as it is a narrow decision and more case law has been developing since then. She emphasized the importance of precision and clarity of purpose in crafting this legislation. She noted that all of the pending bills on this topic need technical work to ensure that terminology is consistent.
- Senator Prentiss asked if there is middle ground that could be reached between quarterly and annual reporting, noting that a lot can happen in a year.
- Dr. Aziz confirmed that reporting every six months would be middle ground, but noted that it would still necessitate estimation approaches instead of empirical approaches. He emphasized that he thinks annual reporting is sufficient, especially in terms of operationalizing data, but the Department is happy to do whatever the legislation directs them to do.
- Senator Prentiss asked if it would be fair to say that while annual gives a better view, mid-year will not give anything of more value based on the way this data and estimations are assessed.
- Dr. Aziz confirmed and explained that this bill is a product of National Academy for State Health Policy model PBM legislation, and New Hampshire has existing vigorous and robust PBM and health care oversight.

Cam Lapine & Margaret Reynolds, Cigna

- Mr. Lapine pointed out two technical drafting errors within the bill. On page 2 line 5, I-a should be labelled I-b. On page 4 line 16, the enacting clause should repeal both RSA 402-N:6, I and II.
- Ms. Reynolds stated that she represents Express Scripts, a PBM owned by Cigna. She submitted written testimony to the Committee outlining references and amendment language.
- Ms. Reynolds outlined the key issues she has identified with the bill.
- The definitions of both affiliate and PBM are overly broad. The inclusion of other third-party payers may pull in PBMs affiliated with workers' compensation coverage and other property and casualty carriers. Ms. Reynolds thinks this should be limited to health carriers.
- Cigna sees PBMs as fundamentally not fiduciaries. While fiduciaries have the agency to make management decisions independently, PBMs do not have that control.

- Ms. Reynolds referenced the prohibition on spread pricing and explained that since it is a contract term clients may choose, she suggests leaving it as an option. If the legislature would like to dictate that PBMs must also offer a pass through, that would be reasonable and clients would then have the option to look at both in their contract setting.

Cam Lapine, American Property Casualty Insurance Association & New Hampshire Association of Domestic Insurance Companies

- Mr. Lapine explained that these associations also represent worker's compensation carriers.
- On the issue of definitions, they do not think it is appropriate to include workers' compensation in this bill, especially if the intent is to address the cost that consumers pay, as consumers do not pay anything under workers' compensation claims.
- Mr. Lapine submitted written testimony to the Committee and noted that it included draft amendment language.

Peter Bragdon, Harvard-Pilgrim

- Mr. Bragdon stated that he is speaking in opposition to the bill as it is currently written.
- The prohibition of spread pricing is of particular concern to Harvard-Pilgrim. They feel that this will have the unintended consequence of raising insurance premiums for Harvard-Pilgrim members.
- Under spread pricing, the PBM and insurance carrier negotiate a fixed cost to the plan for the drug in advance. That provides insurance carriers with a level of certainty, thus transferring the pricing risk from the carrier to the PBM.
- Mr. Bragdon noted that the administrative charges are higher for pass-through pricing.
- Mr. Bragdon explained that carriers have many options and choices when choosing a PBM to contract with. They often hire consultants to assist in selecting a PBM and drafting reporting and auditing provisions for the contract. Comparing it to the process of selecting a health insurance plan, he emphasized that one size does not fit all.
- Harvard-Pilgrim's other concern is the duplication of administrative costs. This bill does not apply to self-insured companies, which Harvard-Pilgrim is the TPA for several. Self-insured companies typically prefer spread pricing, so if this bill were to pass, Harvard-Pilgrim would be paying one set of PBMs for one group of their members and another for their other members.
- Eliminating spread pricing could also put Harvard-Pilgrim at a competitive disadvantage. As a regional, not-for-profit insurance company, they do not own their own PBM.

- Mr. Bragdon asked the Committee to not adopt this one-size-fits-all approach and preserve the option of spread pricing for the carriers that want to use it.

Sam Hallemeier and Curtis Barry, Pharmaceutical Care Management Association

- Mr. Hallemeier stated that he is speaking in opposition to the bill.
- There is no state or federal law that requires a plan sponsor to contract with a PBM.
- Mr. Hallemeier emphasized that PBMs have no say in the price of a drug, as that is all done by drug manufacturers.
- If this bill were to pass, Mr. Hallemeier estimates that the cost would be \$100 million per year in New Hampshire alone over the next ten years, totaling \$1 billion.
- Mr. Hallemeier outlined five concerns with the bill.
- In the first section of the bill, the definition of PBM is changed and includes self-funded plans. PCMA interprets that to apply to self-funded plans and thinks that would apply in any statute that mentions the PBM definition. Mr. Hallemeier said he does not think the State can regulate self-funded plans in terms of plan design due to ERISA statute.
- The third section of the bill contains language requiring PBMs to act as fiduciaries to health carriers. PBMs are not fiduciaries because they do not exercise discretion in setting prices when prices are set according to contractual terms. PCMA has filed litigation in California on this issue.
- Spread pricing is a risk-mitigation contract for plan sponsors to choose. A plan can choose to do spread pricing, or they could choose a pass-through model. This bill would take away the option for a plan to design their benefit.
- The fourth section of the bill imposes reporting requirements on a quarterly basis. Mr. Hallemeier explained this is burdensome and thinks it should be changed to yearly. Some of the data being requested raises confidentiality and proprietary concerns specific to plans.
- Mr. Hallemeier emphasized that this bill does nothing to lower the costs of drugs and may raise costs for consumers and carriers. He also noted that he is not aware of health carriers asking for these changes.
- Mr. Barry emphasized that while the bill has elements aimed at protecting carriers, they are testifying in opposition.
- Mr. Barry noted that the intent section of the bill refers to competition and emphasized that three robust businesses can compete rigorously for business. He also noted that there are over 60 PBMs doing business in the United States currently. He questioned if the concern is about competition, why we would limit the number of options that PBMs can offer.

- Mr. Barry said this bill has the government dictate terms and conditions of contracts between private entities. He thinks this is at odds with prior remarks made about the free market.
- Senator Prentiss asked what comprises the estimated cost of \$100 million per year.
- Mr. Hallemeier explained that it is a combination of the impacts from the changes to fiduciary duties and pharmacy networks.
- Senator Prentiss confirmed that with the requirements of the bill, PBMs will be spreading costs, resulting in that \$100 million per year.
- Mr. Hallemeier confirmed and said it would be spreading costs over all plan types in New Hampshire.
- Mr. Barry provided the example of Ohio eliminating spread pricing in its Medicaid Managed Care Program in 2019. It cost them an increase of \$38 million in the first quarter alone due to higher ingredient costs and higher dispensing fees.
- Senator Rochefort explained that he was once hired to consult for a drug company. They spent about \$300 million bringing a drug to market. After working in focus groups, a monthly price of \$90 was settled on. Once it went to the plans, the cost came out to be \$365 per month after fees charged by the middle men. He emphasized that everyone has a role in drug pricing, from pharmacies and drug manufacturers to wholesalers and PBMs.

Senator Cindy Rosenwald, Senate District 13

- Senator Rosenwald referenced the prior testimony about how PBMs should not have fiduciary duties. She explained that while they do not set prices, they do send rebates back to the entities that hire them and generate fees from the drug manufacturers to put drugs in certain places on a formulary.
- Senator Rosenwald explained that the initial draft of the bill allowed plan sponsors to have spread pricing if desired, but that was removed while working with the Insurance Department. She asked the Committee to talk about this with the Department.