

Senate Health and Human Services Committee

Sophie Walsh 271-3469

SB 478-FN, relative to strengthening prescription drug affordability and pharmacy benefits manager accountability.

Hearing Date: January 21, 2026

Time Opened: 2:39 p.m.

Time Closed: 3:44 p.m.

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

Members of the Committee Absent: None

Bill Analysis: This bill regulates prescription drug costs and increases transparency and accountability by banning spread pricing, adopting pass through pricing, and ensuring all manufacturer rebates go toward lowering premiums or point-of sale costs. The bill also bans retroactive fees on clean claims, requires timely access to pricing lists, allows audits to prevent misuse, and prioritizes lowest net cost drugs.

Sponsors:

Sen. McGough

Sen. Gannon

Sen. Rosenwald

Sen. Pearl

Sen. Birdsell

Sen. Innis

Rep. W. MacDonald

Rep. Miles

Rep. Potucek

Rep. L. Walsh

Rep. Cole

Who supports the bill: Sen. McGough, Sen. Innis, Sen. Rosenwald, Rep. Julie Miles, Rep. Yury Polozov, Morgan Halloran (PhRMA), Sam Burgess (New Futures), Sam Hawkins (NAMI NH), Melanie Kasparian, Francis Hayes, Katharine Fox, Frank Muller, and Krysten Evans (ABLE NH).

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

Who is neutral on the bill: Michelle Heaton and Dr. Jason Aziz (NHID), Henry Lipman (DHHS), Kristen Gordon (Epilepsy Foundation New England), and Paula Rogers (AHIP).

Summary of testimony presented:

Senator Tim McGough, Senate District 11

- Senator McGough explained that this bill aims to end opaque spread pricing, require pass-through pricing for pharmacy benefit manager (PBM)

compensation, protect patients, and reinforce the federal 340B program safety net.

- This bill will also strengthen the maximum allowable cost transparency and the clean claims rules. This will give employers and carriers confidential reporting to the Insurance Department, so that savings show up at the counter or in premiums.
- This bill respects the free market, protects trade secrets, and keeps all enforcement within the Insurance Department. There are no private rights of action or surprise penalties.
- The issue at hand is that prices at the pharmacy counter and premiums are not falling.
- One proven driver of this is spread pricing, which is when a PBM charges a plan more than it pays to the pharmacy. In Ohio, the state auditor found that PBMs retained over \$200 million in a single year on generics alone. The state responded by moving to transparent pass-through contracting.
- Senator McGough noted that there is an amendment to the bill and that more changes may still need to be made. The amendment follows the advice of the Insurance Department, containing targeted definitions, confidential filings, non-public contracts, and a plan year cadence consistent with the Department's 2025 rebate framework. It is also compliant with the *Rutledge v. Pharmaceutical Care Management Association* decision, which confirms that states can regulate PBM reimbursement practices without intruding on employer plan design.
- Spread pricing raises the price paid by patients because it creates a margin. It inflates the plan claim costs relative to pharmacy reimbursement, which flows into premiums.
- This bill will de-link the PBM pay from list price and route value straightforward into lower prices at the counter or lower premiums.
- Senator McGough acknowledged that while PBMs do not set prices, their contracting choices determine net prices and a patients' out-of-pocket amount.
- The amendment clarifies the bill by defining and prohibiting spread pricing, delinking the PBM compensation with an annual CEO and CFO certification, strengthening clean claims protections, preventing forced steering to mail-order or affiliated pharmacies when an in-network retail health system can meet clinical guidelines, prohibiting any gag clause on the lowest price, and reinforcing the 340B non-discrimination. The amendment also resets the effective date to January 1st with remainder on passage.
- Senator McGough emphasized the need for confidential, standardized reporting and a prohibition on spread pricing.

- Senator McGough noted that there has been comments about quarterly reporting being burdensome. This bill aligns with the Insurance Department's cadence and keeps disclosures confidential and aggregated.
- Senator McGough said the Committee will hear that this dictates private contracts and explained that the state already sets market guardrails, which is okay in some circumstances. Ending spread pricing and delinking pay are the modern guardrails that need to be set to protect patients.

Representative Julie Miles, Hillsborough – District 12

- Representative Miles stated that she is a nurse with experience at the bedside and with insurance and reimbursement.
- She has watched families ration and skip medications and has seen these same pressures show up in employer and municipal premiums when the claim system pays more than the medicine is worth.
- This bill addresses both of these realities by ending spread pricing and delinking PBM compensation from a drug's price list.
- This bill strengthens the transparency of the maximum allowable costs and clean claims protections, so that community pharmacies can dispense without post-claim claw backs.
- This bill protects 340B safety net care from discriminatory terms, while allowing reasonable audits.
- This bill channels savings where patients can actually feel it.
- Representative Miles emphasized that there are many transparent PBMs.
- Predictability matters for employer and municipal plans. This bill keeps market flexibility and preserves the preferred networks. It also pays PBMs a transparent fee for their service.
- Representative Miles emphasized that this moves us toward a system that pays for medicine, not margins.

Michelle Heaton and Dr. Jason Aziz, New Hampshire Insurance Department

- The Department is aware that there are a number of PBM bills in the legislature and they are happy to work with all stakeholders to come to a consensus on some of these issues.
- Ms. Heaton emphasized the importance of precision in making regulatory changes.
- The Department would like to see a priority of transparency, as opposed to setting prescriptive prices or price setting models.
- We must be cognizant of the contractual relationships between carriers and PBMs, as well as the legal issues regarding those relationships. If any efforts go beyond the fully insured market, there is a higher risk of litigation. There is also a risk of federal preemption, depending on circumstances.

- Ms. Heaton noted that there are some technical issues with the bill in its current form and the amendment that would conflict with existing law. She emphasized that the regulation of PBMs is separate from the regulation of prescription drugs in statute.
- Dr. Aziz referenced a suggestion made by Senator Prentiss in a different hearing about a reporting cadence of every 6 months and said he appreciates that insight.
- Senator Rochefort referenced Ms. Heaton's comments about precision and asked if this bill or SB 547-FN would up-end the system.
- Ms. Heaton explained that both bills contain positive and problematic aspects. Both bills look to amend the definition of PBMs, which opens up a broad range of possibilities. This could cause issues with federal preemption.
- Senator Rochefort said the Committee will work closely with the Department on these efforts.

Henry Lipman, Department of Health and Human Services

- Mr. Lipman explained that spread pricing and claw backs are already prohibited under Managed Care Organizations (MCOs) for Medicaid.
- He explained that rebates are used to fund Medicaid.
- Mr. Lipman asked for a technical correction to exclude Medicaid from the bill, as he does not think Medicaid fits into it.

Cam Lapine and Margaret Reynolds, Cigna

- Mr. Lapine reviewed the technical issues found within the bill, noting that most of them were not addressed in the amendment.
- Ms. Reynolds explained that Express Scripts is a PBM operating within the Cigna group. Her comments will be specific to Express Scripts.
- Ms. Reynolds submitted written testimony to the Committee on the original bill and noted that some of it is addressed by the amendment.
- She noted that the new definition of "insurer" references federal statute, which could bring in Employee Retirement Income Security Act (ERISA) plans.
- Ms. Reynolds noted that the definition of PBM is overly broad and potentially unenforceable.
- Ms. Reynolds outlined more technical issues with the bill and made suggestions to correct them. She emphasized that delinking legislation undermines performance-based PBM compensation frameworks and would result in a windfall to drug manufacturers. Delinking legislation paves the way for drug manufacturers to raise prices without any negative financial consequences.
- While Express Scripts is moving to a bona fide service fee arrangement for fully insured products in 2027, they still want to maintain the option to work with

plan sponsors and employers to determine how they want to structure their plans.

- Ms. Reynolds noted that contracts are in place for 2026, so the effective date would need to be changed.
- Ms. Reynolds suggested defining what specified thresholds are, noting that wholesale acquisition cost is a metric that would be visible to entities along the drug supply chain.
- Ms. Reynolds referenced the 340B modifier, noting that it was addressed in the amendment. There were some concerns with federal and state standards because the National Council for Prescription Drug Programs (NCPDP) is utilized by CMS, but it is not necessarily a federal standard.
- Senator Rochefort noted that NCPDP is the format for how everyone typically transmits data.
- Ms. Reynolds explained that the duty of care in this bill would assign the duty to enrollees, health plans, and providers, giving precedent to an enrollee. She noted that there could be conflicting interests between the parties and that PBMs contract directly with health plan sponsors or employers.
- She suggested having a standard of good faith and fair dealing between the PBM and its contracted entities.
- Senator Rochefort referenced page 6 line 12 and noted that carriers sound like a bank.
- Ms. Reynolds explained that from the perspective of Express Scripts, it is a duty to the carrier, not the PBM. From the perspective of Cigna, Ms. Reynolds is not sure how this fits into a PBM bill.

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

- Mr. Lapine stated that there are concerns about the definitions contained in the bill potentially including worker's compensation carriers.
- Mr. Lapine requested an exemption to exclude worker's compensation for many of the same reasons Mr. Lipman raised.
- The potential inclusion of private rights of action is also a concern for property and casualty carriers.

Morgan Halloran, Pharmaceutical Research and Manufacturers of America

- Ms. Halloran stated that she is speaking in support of this bill because it prioritizes patients by fixing misaligned incentives in the prescription drug supply chain.
- This bill contains a number of provisions to reform how PBMs operate.

- The reforms to PBM compensation are needed, as PBMs administer prescription drug benefits to over 289 million people, with 3 PBMs controlling almost 80% of the national market.
- Many PBM contracts rely on percentage-based formulas, while PBM compensation is tied to the list price of the medicine or the size of the rebate associated with it. PBMs may also collect administrative fees that are calculated as a percentage of a drug's price.
- Experts find that percentage-based arrangements create misaligned incentives that may lead to PBMs favoring medications with higher list prices and larger rebates. This can impact what medications are included on formularies, whether lower cost alternatives are covered, and how much patients pay at the counter.
- This bill would remove those incentives with a simple administrative fee by bringing clarity and transparency to how PBMs operate in New Hampshire.
- This bill will reform how PBMs are paid by requiring PBM-insurer contracts to use flat services fees. This creates a transparent and consistent compensation model.
- This bill bans spread pricing so that patients, employers, and taxpayers are not overcharged.
- This bill also includes two other essential pillars of accountability: enhanced PBM transparency and a statutory duty of care. These reforms address long-standing gaps that allow PBMs to operate with little oversight.
- This bill ensures policy makers and plans understand PBM practices, identifies harmful pricing behavior, and ensures incentives are aligned with patient and plan value.

Kristen Gordon, Epilepsy Foundation New England

- Ms. Gordon stated that she is speaking in support of the bill.
- The Epilepsy Foundation sees first-hand how prescription drug costs affect people's health, safety, and stability.
- For most people with epilepsy, daily medication is essential to control seizures and maintain independence. Many people need to take several medications.
- Needing several high-cost medications can have an unsustainable cumulative financial effect for those living with epilepsy.
- This bill provides transparency, fair pricing, and lower costs for patients. Ms. Gordon emphasized that from her perspective, affordability is a critical issue.
- New Hampshire families report to the Foundation that they struggle to afford medications. When this is the case, people are more likely to skip doses or stop treatment. For those with epilepsy, this can result in more seizures, emergency room visits, significant injury, and harmful outcomes.

Peter Bragdon, Harvard-Pilgrim

- Mr. Bragdon explained that as a regional non-profit insurance company, Harvard-Pilgrim contracts with PBMs.
- Spread pricing is a considerable factor in cost saving for Harvard-Pilgrim, as it spreads the pricing risk to the PBM. This allows Harvard-Pilgrim to keep pricing down.
- The self-insured groups that Harvard-Pilgrim administers also prefer spread pricing because it transfers risk away from them.
- Mr. Bragdon noted that Connecticut recently required that spread pricing and pass through pricing be offered, rather than just banning spread pricing. He noted something like that might work.
- Mr. Bragdon emphasized that as insurance prices rise, people are more inclined to stop coverage or take higher co-pays and deductibles.
- Mr. Bragdon noted page 4 line 22 on the 340B program and asked for more clarity.
- Mr. Bragdon noted Senator Rochefort's earlier comment about page 6 line 12 and emphasized that providing interest-free loans to people to meet their copays is going to increase costs and premiums.

Paula Rogers, AHIP

- Ms. Rogers referenced spread pricing and explained that her understanding is that PBMs are using different models with different companies.
- She emphasized that we should be careful in pushing spread pricing entirely to the side, as the market has responded and adopted more transparent models.
- Ms. Rogers referenced the smoothing option on page 6 line 12 and advised caution about including this in the bill. She expressed concern about this being a very new concept being utilized in a federal program.
- Ms. Rogers referenced the duty of care on page 8 and noted that there is a rulemaking opportunity to define duty of care.
- Senator Rochefort referenced spread pricing and the value of transparency that Ms. Rogers raised, and Ms. Rogers explained that spread pricing may not sound right at first glance, but it yields something that has been utilized over time. She noted that there are other options, such as pass-through pricing for plans to utilize. She emphasized that these things need to be looked at because it is a business.
- She noted that there is not much to be done at the state level to address pricing at the drug manufacturing level.

Curtis J. Barry and Sam Hallemeier, Pharmaceutical Care Management Association

- Mr. Barry explained that PBMs manage the pharmacy benefits for a plan sponsor. He noted that there has been little discussion about the people sponsoring plans.

- He noted that he has not seen the amendment, and he thinks many of the issues have been covered.
- Mr. Barry stated that while he has not seen a revised fiscal note, this bill clearly applies to the employee state plan. He said he would look to the Department of Administrative Services for an analysis on that.
- He emphasized the importance of consistency across statute, as this bill creates policy that is already created in other statute.
- Mr. Barry explained that if state departments are asking to be carved out because it is too expensive, logic dictates that it is also expensive for the plan sponsors.
- Mr. Hallemeier stated that he is speaking in opposition to the bill.
- He emphasized that no one is required to use a PBM. Plans hire the services of PBMs to control costs due to their purchasing power and ability to negotiate networks.
- This bill would prohibit plan sponsors from choosing performance-based arrangements with their PBM and require PBMs to move to a flat fee. This changes business models and how PBMs negotiate rebates and discounts.
- Mr. Hallemeier stated that section 4 of the bill takes choice away from employers and plan sponsors, forcing them into a state-mandated contract arrangement.
- Mr. Hallemeier said he thinks this policy will result in pharma offering less of a rebate and anticipates that plan sponsors will see an increase in premiums, which is ultimately paid by New Hampshire consumers.
- Mr. Hallemeier explained that New Mexico considered the same policy from section 4 of this bill. New Mexico's fiscal note shows that changing how PBMs are compensated would generate a cost of \$60 million for the state employee plan in 2026 due to the impact on rebates.
- Mr. Hallemeier emphasized that this language does nothing to the cost of the drug set by the manufacturer, as it only impacts how health plan sponsors pay their PBM.
- Mr. Hallemeier referenced ERISA concerns in section 2 of the bill and explained the bill expands the definition of “insurer” to include a federal definition, which PCMA thinks would include self-funded plans.
- Mr. Hallemeier referenced section 5 on mail orders and said this inappropriately applies to PBMs because the use of mail order is a decision for plan sponsors.
- He emphasized that there are conflicting duties of care between the enrollee, the health plan sponsor, and the provider.
- He noted that the bill establishes a private right of action in addition to the current enforcement of the Insurance Department.

- He said this does nothing to lower the cost of drugs in New Hampshire and may increase premiums for New Hampshire patients.
- Senator Rochefort referenced section 5 and explained that there are Any Willing Provider provisions in place. He understands it to be if pharmacy is willing to accept the terms of the contract, they can participate. He said the whole point in designing this was to get rid of mandated mail orders and open up networks. He asked if PBMs and plan sponsors mandate mail orders in New Hampshire.
- Mr. Hallemeier said that it is a plan decision made with PBMs. He said it would check with the Any Willing Provider law in New Hampshire, but he is under the assumption that plans could still require mail order.