

Amendment to SB 687-FN

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

2
3 1 New Chapter; Prescription Drug Affordability Board. Amend RSA by inserting after chapter
4 126-AA the following new chapter:

5 CHAPTER 126-BB

6 NEW HAMPSHIRE PRESCRIPTION DRUG AFFORDABILITY BOARD

7 126-BB:1 Definitions. In this chapter:

8 I. "Board" means the New Hampshire prescription drug affordability board.

9 II. "Brand-name drug" means a prescription drug marketed under a proprietary name or
10 registered trademark name, including a biological product.

11 III. "Generic drug" means a prescription drug, whether identified by its chemical,
12 proprietary, or nonproprietary name, that is not a brand-name drug and is therapeutically
13 equivalent to a brand-name drug in dosage, safety, strength, method of consumption, quality,
14 performance, and intended use. "Generic drug" includes a biosimilar product.

15 IV. "Manufacturer" means a manufacturer of prescription drugs that are distributed in the
16 state.

17 V. "Pricing unit" means the smallest dispensable amount of a prescription drug that could
18 be dispensed.

19 VI. "Public payor" means any division of state, county, or municipal government that
20 administers a health plan for its employees or an association of state, county, or municipal
21 employers that administers a health plan for its employees.

22 VII. "Wholesale acquisition cost" means a manufacturer's listed price for sale to a wholesale
23 drug distributor or other entity that purchases a prescription drug directly from the manufacturer,
24 not including any price concessions.

25 126-BB:2 New Hampshire Prescription Drug Affordability Board Established. There is
26 established the New Hampshire prescription drug affordability board to carry out the purposes of
27 this chapter.

28 I. The board shall consist of 5 members with expertise in health care economics or clinical
29 medicine, who shall not be, or be directly related to, anyone affiliated with, employed by, or
30 representing the interests of a public payor, pharmaceutical or pharmacy company, pharmacy
31 benefits management company, or health insurance provider and who have completed a conflict of
32 interest statement. They shall be appointed as follows:

Amendment to SB 687-FN
- Page 2 -

1 (a) Two members by the president of the senate. The president of the senate shall also
2 appoint one alternate board member who will participate in deliberations of the board in the event a
3 member appointed by the president of the senate elects to be recused as provided in RSA 126-BB:3.

4 (b) Two members by the speaker of the house of representatives. The speaker of the
5 house of representatives shall also appoint one alternate board member who will participate in
6 deliberations of the board in the event a member appointed by the speaker of the house of
7 representatives elects to be recused as provided in RSA 126-BB:3.

8 (c) One member by the governor. The governor shall also appoint one alternate board
9 member who shall participate in deliberations of the board in the event the member appointed by
10 the governor elects to be recused as provided in RSA 126-BB:3.

11 II. Members shall be appointed to 5-year terms. Of the initial appointees, the member
12 appointed by the governor shall serve an initial term of 5 years, one member appointed by the
13 president of the senate and one member appointed by the speaker of the house of representatives
14 shall serve an initial term of 4 years and one member appointed by the president of the senate and
15 one member appointed by the speaker of the house of representatives shall serve an initial term of 3
16 years.

17 III. A majority of board members shall constitute a quorum.

18 IV. The chair of the board shall be elected by an affirmative vote of at least 4 of the 5
19 members of the board.

20 V. Beginning no later than March 1, 2021, the board shall meet in public session at least
21 every 12 weeks to review prescription drug information and to make recommendations pursuant to
22 RSA 126-BB:5. The first meeting shall be called by the first-named appointee of the senate
23 president.

24 (a) Each public meeting shall be announced 2 weeks in advance, and materials for the
25 meeting shall be made public at least one week in advance.

26 (b) Each public meeting shall provide opportunity for comment from the public in
27 attendance at the meeting, and the board shall provide the opportunity for the public to submit
28 written comments on pending decisions.

29 (c) The board may allow expert testimony at public meetings and any meeting conducted
30 in executive session as permitted by subparagraph (d).

31 (d) Notwithstanding requirements of RSA 91-A, the board may meet in executive
32 session, except that any decision of the board shall be made in public.

33 VI. The board shall be administratively attached to the department of health and human
34 services. The board may employ an executive director who shall be a classified employee.

35 126-BB:3 Conflicts of Interest. The following provisions govern any conflict of interest for a
36 member of the board, a member of the advisory council established in RSA 126-BB:4 or any staff
37 member or contractor of the board.

Amendment to SB 687-FN
- Page 3 -

I. When appointing a member of the board or the advisory council, the appointing authority shall consider any conflict of interest disclosed by the prospective member. A member shall elect to be recused from any board activity in the case in which the member or an immediate family member of the member has a conflict of interest. For the purposes of this paragraph, "conflict of interest" means an association, including a financial or personal association, that has the potential to bias or have the appearance of biasing an individual's decisions in matters related to the board or the conduct of the board's activities.

II. A board member or staff or contractor of the board with a conflict of interest shall elect to be recused. For purposes of this paragraph, "conflict of interest" means any instance in which a member of the board or an immediate family member of the member has received or could receive either of the following:

(a) A direct financial benefit of any amount deriving from the results or findings of a study or determination by or for the board; or

(b) A financial benefit from individuals or companies that own or manufacture prescription drugs, services, or items to be studied by the board that in the aggregate exceeds \$5,000 per year. For purposes of this subparagraph, "financial benefit" includes honoraria, fees, stock, or other financial benefit and the current value of the member's or immediate family member's already existing stock holdings, in addition to any direct financial benefit deriving from the results or findings conducted under this section.

(c) A conflict of interest shall be disclosed in the following manner:

(1) By the board in the employment of board senior staff.

(2) By the governor, president of the senate, or speaker of the house of representatives when appointing members to the board and advisory council.

(3) By the board in describing any recusals as part of any final decision relating to a prescription drug.

(4) By the 5th day after a conflict is identified or, if a public meeting of the board will occur within that 5-day period, in advance of the public meeting.

(d) Conflicts of interest shall be publicly posted on the website of the board. The information disclosed shall include the type, nature, and magnitude of the interests of the individual involved, except to the extent that the individual elects to be recused from participation in any activity with respect to which the potential conflict exists.

(e) The board, the advisory council, a member of the board or staff, or a contractor of the board may not accept gifts, bequests, or donations of services or property that suggest a conflict of interest or have the appearance of creating bias in the work of the board or advisory council.

(f) A member of the advisory council who accepts a gift, bequest, or donation of services or property that suggests a conflict of interest or has the appearance of creating bias in the work of the advisory council shall disclose the gift, bequest, or donation publicly.

Amendment to SB 687-FN
- Page 4 -

126-BB:4 Advisory Council. A 12-member advisory council is established to advise the board on establishing annual spending targets pursuant to RSA 126-BB:5, I and determining methods for meeting those spending targets pursuant to RSA 126-BB:5, III. The advisory council shall consist of the following members:

- I. The governor, or designee.
- II. The commissioner of the department of administrative services, or designee.
- III. The commissioner of the department of corrections, or designee.
- IV. The commissioner of department of health and human services, or designee.
- V. The attorney general, or designee.
- VI. The director of the division of risk and benefits, department of administrative services, or designee.
- VII. The president of the New Hampshire State Employees Association, or designee.
- VIII. The president of the New Hampshire Education Association, or designee.
- IX. The executive director of the New Hampshire Municipal Association or designee.
- X. The chancellor of the university system of New Hampshire, or designee.
- XI. The chancellor of the New Hampshire community college system, or designee.
- XII. A representative of consumer interests, appointed by the governor, who shall serve a 3-year term.

126-BB:5 Powers and Duties of the Board. The board has the following powers and duties:

I.(a) Beginning with the year 2022 and in consultation with the advisory council, the board shall identify strategies that optimize spending by public payors for pharmaceutical products while reasonably ensuring subscriber access to needed pharmaceutical products. To achieve this goal, the board shall determine annual spending targets for prescription drugs purchased by public payors based upon a 10-year rolling average of the medical care services component of the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, medical care services index, plus a reasonable percentage for inflation and minus a spending target for pharmacy savings as determined by the board.

(b) The board shall determine spending targets on specific prescription drugs that may cause affordability challenges to enrollees in a public payor health plan. Such targets shall consider any medical cost offsets achieved by utilization of the drug.

(c) The board shall determine which public payors are likely to exceed the spending targets determined under subparagraph (a).

II. The board may consider the following data to accomplish its duties under this section:

(a) A public payor's prescription drug spending data, which the 3rd-party administrator or insurer for the public payor's health plan shall provide to the board on behalf of the public payor upon request notwithstanding any provision of law to the contrary, including:

Amendment to SB 687-FN
- Page 5 -

1 (1) Expenditures and utilization data for prescription drugs for each plan offered by
2 a public payor.

3 (2) The formulary for each plan offered by a public payor and prescription drugs
4 common to each formulary.

5 (3) Pharmacy benefit management services and other administrative expenses of the
6 prescription drug benefit for each plan offered by a public payor.

7 (4) Enrollee cost sharing for each plan offered by a public payor.

8 (5) Aggregate net spending on the prescription drug benefit.

9 (b) Data compiled by the department of health and human services. Prescription drug
10 spending data provided to the board under this subparagraph is confidential to the same extent it is
11 confidential while in the custody of the entity that provided the data to the board.

12 III. Based upon the prescription drug spending data received under paragraph II, the board,
13 in consultation with a representative of each public payor shall determine methods for the public
14 payor to meet the spending targets established under paragraph I. While continuing to ensure
15 adequate access by subscribers to needed prescribed pharmaceutical products, the board shall
16 determine whether the following methods reduce costs to individuals purchasing prescription drugs
17 through a public payor and allow public payors to meet the spending targets established under
18 paragraph I:

19 (a) Negotiating specific rebate amounts on the prescription drugs that contribute most to
20 spending that exceeds the spending targets.

21 (b) Changing a formulary when sufficient rebates cannot be secured under
22 subparagraph (a).

23 (c) Establishing a common prescription drug formulary for all public payors.

24 (d) Prohibiting health insurance carriers in the state administering benefits for a public
25 payor from offering on their formularies prescription drugs when the method described in
26 subparagraph (b) is implemented.

27 (e) Purchasing prescription drugs in bulk or through a single purchasing agreement for
28 use among public payors.

29 (f) Collaborating with other states and state prescription drug purchasing consortia to
30 purchase prescription drugs in bulk or to jointly negotiate rebates.

31 (g) Allowing health insurance carriers providing coverage to small businesses and
32 individuals in the state to participate in the public payor prescription drug benefit for a fee.

33 (h) Procuring common expert services for public payor, including but not limited to
34 pharmacy benefit management services and actuarial services.

35 IV. By November 1, 2020 and annually thereafter, the board shall report its
36 recommendations, including prescription drug spending targets, their strategies for optimization of
37 affordability of prescription drugs for the state and all of its residents, the progress of implementing

Amendment to SB 687-FN
- Page 6 -

1 those recommendations, as well as the annual net spending by public payors on prescription
2 pharmaceutical products as a measure of the efficacy of implementation of those recommendations to
3 date, to the standing committees of the general court with jurisdiction over health coverage and
4 insurance matters and to the governor. This report shall also contain the following information
5 about prescription drugs, both brand name and generic:

6 (a) The 25 most frequently prescribed drugs in the state;

7 (b) The 25 costliest drugs as determined by the total amount spent on those drugs in the
8 state; and

9 (c) The 25 drugs with the highest year-over-year cost increases as determined by the
10 total amount spent on those drugs in the state.

11 V. The board may apply for and receive funds, grants, or contracts from public and private
12 sources.

13 126-BB:6 Rulemaking. The board shall adopt rules under RSA 541-A for the following:

14 I. Procedures for drug price transparency as required under RSA 126-BB:7.

15 II. The adoption of all fees under RSA 126-BB:8.

16 III. Proceedings for assessing civil fines under RSA 126-BB:10.

17 IV. Any other matter required to implement this chapter.

18 126-BB:7 Drug Price Transparency; Non-disclosure Requirements.

19 I. The board shall develop and implement policies and procedures for its collection,
20 processing, storage, and analysis of clinical, financial, quality restructuring and prescription drug
21 price data for the following purposes:

22 (a) To use, build, and improve upon and coordinate existing data sources and
23 measurement efforts through the integration of data systems and standardization of concepts.

24 (b) To coordinate the development of a linked public and private sector information
25 system.

26 (c) To emphasize data that is useful, relevant, and not duplicative of existing data.

27 (d) To minimize the burden on those providing data.

28 (e) To preserve the reliability, accuracy, and integrity of collected data.

29 II. The board shall adopt rules to ensure that:

30 (a) Payors, providers, prescription drug manufacturers, wholesale drug distributors, and
31 pharmacy benefits managers file data as required by RSA 126-BB:9.

32 (b) Users that obtain health data and information from the board safeguard the
33 identification of patients and health care practitioners.

34 (c) Payors, providers, prescription drug manufacturers, wholesale drug distributors, and
35 pharmacy benefits managers pay all assessments as required by RSA 126-BB:8.

36 (d)(1) Only the board and employees assigned to the board may access the information
37 received pursuant to this chapter and only for purpose of effectuating the powers and duties granted

Amendment to SB 687-FN
- Page 7 -

1 the board by this chapter. The board shall limit access to any information that it receives pursuant
2 to this chapter to the smallest number of employees and other personnel possible; and all such
3 individuals shall, as a condition of employment, be required to execute non-disclosure agreements
4 under which they are restricted from disclosing any information they may receive in connection with
5 this chapter during their employment term and in perpetuity post-employment.

6 (2) If the board, its members, employees, or personnel willfully shares or discloses
7 for unauthorized purposes information that is trade secret information, confidential, commercial or
8 proprietary information, or information designated as "confidential" by the owner of the information,
9 the board or the individual who made the unauthorized disclosure may be subject to any penalties
10 available under federal and state laws, including trade secret misappropriation laws, to the extent
11 permitted by law.

12 126-BB:8 Funding; Assessment of Fees.

13 I. The expenses and cost of operation of the board shall be funded by reasonable user fees
14 and assessments determined in rules adopted by the board.

15 (a) Fees may be charged for the reasonable costs of duplicating, mailing, publishing, and
16 supplies.

17 (b) Reasonable user fees shall be charged on a sliding scale for the right to access and
18 use the health data and information available from the board. Fees may be charged for services
19 provided to the department on a contractual basis. Fees may be reduced or waived for users that
20 demonstrate a plan to use the data or information in research of general value to the public health or
21 inability to pay the scheduled fees, as provided by rules adopted by the board.

22 (c) Annual assessments of not less than \$100 assessed against the following entities:

23 (1) Health insurance carriers and health maintenance organizations on the basis of
24 the total annual health care premium.

25 (2) Third-party administrators.

26 (3) Health carriers that provide only administrative services for a plan sponsor.

27 (4) Pharmacy benefits managers that process and pay claims on the basis of claims
28 processed or paid for each plan sponsor.

29 (d) Health care policies issued for specified disease, accident, injury, hospital indemnity,
30 disability, long-term care or other limited benefit health insurance policies are not subject to
31 assessment under subparagraph (c). For purposes of this paragraph, policies issued for dental
32 services are not considered to be limited benefit health insurance policies.

33 (e) Annual assessments of not less than \$500 assessed by the board against prescription
34 drug manufacturers, wholesale drug distributors, and pharmacy benefits managers.

35 II. The aggregate level of annual assessments under subparagraphs (c) and (e) shall be an
36 amount sufficient to meet the board's expenditures authorized. The board may waive assessments

Amendment to SB 687-FN
- Page 8 -

otherwise due under subparagraphs (c) and (e) when a waiver is determined to be in the interests of the board and the parties to be assessed.

126-BB:9 Drug Price Notifications and Disclosures; Confidentiality; Registration.

I. No later than January 30, 2021 and annually thereafter, a manufacturer shall notify the board when the manufacturer has during the prior calendar year:

(a) Increased the wholesale acquisition cost of a brand-name drug by more than 20 percent per pricing unit;

(b) Increased the wholesale acquisition cost of a generic drug that costs at least \$10 per pricing unit by more than 20 percent per pricing unit; or

(c) Introduced a new drug for distribution in this state when the wholesale acquisition cost is greater than the amount that would cause the drug to be considered a specialty drug under the Medicare Part D program. For the purposes of this section, "Medicare Part D" means prescription drug benefit in accordance with the requirements of the federal Medicare Prescription Drug Improvement and Modernization Act of 2003.

II.(a) To develop the report under paragraph VIII, the board shall first assess public information that is readily available. To the extent there is no public information or not enough public information readily available to the board to produce its report, the board may request information from:

(1) The manufacturer that provided notice to the board pursuant to paragraph I;

(2) A pharmacy benefit manager or health insurance carrier providing services involving the drug that is the subject of the notification provided pursuant to paragraph I.

(b) Once the board requests information of a manufacturer, pharmacy benefit manager, or health insurance carrier, the entity shall have 60 days to produce the requested information regarding the prescription drug that is the subject of the request. If, after a complete review of all information and data available to the board or as received from the entities, the board makes a determination that additional data is required for a particular prescription drug to produce the report under paragraph VIII, the board may request that additional information from wholesale drug distributors that distribute the prescription drug that is the subject of the report. Once the board requests information of a wholesale drug distributor, it shall have 60 days to produce information regarding the prescription drug that is the subject of the request.

III.(a) Upon receipt of a request from the board relating to a specific prescription drug for which notice was provided pursuant to paragraphs I and II, a manufacturer shall provide to the board, in a form and manner specified by the board, (i) a written, narrative description, suitable for public release, of all factors that caused the increase in the wholesale acquisition cost of the listed outpatient prescription drug, and (ii) aggregate, company-level research and development costs and such other capital expenditures that the board, in its discretion, deems relevant for the most recent year for which final audited data are available.

Amendment to SB 687-FN
- Page 9 -

1 (b) The data that a pharmaceutical manufacturer submits to the board under this
2 section may be limited to the information and data that the pharmaceutical manufacturer includes
3 in such pharmaceutical manufacturer's annual consolidated report on Securities and Exchange
4 Commission Form 10-K, or any other public disclosure.

5 (c) The board shall establish a standardized form for reporting information and data
6 pursuant to this section after consulting with pharmaceutical manufacturers. The form shall be
7 designed to minimize the administrative burden and cost of reporting on the office and
8 pharmaceutical manufacturers.

9 (d) Upon a request from the board relating to a specific prescription drug for which
10 notice was provided pursuant to paragraphs I and II, a pharmacy benefit manager or wholesaler
11 shall provide:

12 (1) The dollar amount of all rebates or fees concerning the drug collected from the
13 manufacturer that were covered by such health carriers during such calendar year; and

14 (2) The dollar amount of all rebates and fees, excluding any portion of the rebates or
15 fees received by health carriers, concerning the drug collected from the manufacturer.

16 (e) The board shall establish a standardized form for reporting information pursuant to
17 subparagraph (d) after consultation with pharmacy benefits managers and wholesalers. The form
18 shall be designed to minimize the administrative burden and cost of reporting on pharmacy benefits
19 managers and wholesalers.

20 IV. Information provided to the board as required by this section by a manufacturer,
21 wholesale drug distributor, or pharmacy benefits manager that has not been publicly reported is
22 confidential and not a public record under RSA 91-A, except that the board may share information:

23 (a) With the insurance department, to the extent necessary for the department to
24 enforce insurance laws, as long as any information shared is kept confidential; and

25 (b) As long as it is not released in a manner that represents a breach of confidential
26 information provided by a manufacturer, wholesale drug distributor, or pharmacy benefits manager.

27 V. Beginning January 1, 2021, a manufacturer, pharmacy benefits manager, and wholesale
28 drug distributor subject to this section shall register annually with the board in a manner prescribed
29 by the board.

30 VI. A manufacturer, wholesale drug distributor, or pharmacy benefits manager that submits
31 a notification or report to the board pursuant to this section shall submit with the notification or
32 report a signed written certification of the notification's or report's accuracy. Any confidential or
33 proprietary information contained within such notification or report shall be clearly identified as
34 such. Any breach of confidential information not so identified shall not be subject to RSA 126-BB:7,
35 II(d).

Amendment to SB 687-FN
- Page 10 -

1 VII.(a) The board may audit the data submitted by a manufacturer, wholesale drug
2 distributor, or pharmacy benefits manager pursuant to this section. The costs of the audit shall be
3 paid for by the manufacturer, wholesale drug distributor, or pharmacy benefits manager.

4 (b) The board may require a manufacturer, wholesale drug distributor, or pharmacy
5 benefits manager subject to this section to develop a corrective action plan to correct any deficiencies
6 the board finds with the manufacturer's, wholesale drug distributor's, or pharmacy benefits
7 manager's compliance with this section.

8 VIII. Beginning November 1, 2021 and annually thereafter, the board shall produce and post
9 on its publicly accessible website an annual report, including information developed from the
10 notifications and disclosures received pursuant to this section on trends in the cost of prescription
11 drugs, analysis of manufacturer prices and price increases, the major components of prescription
12 drug pricing along the supply chain and the impacts on insurance premiums and cost sharing, and
13 any other information the board determines is relevant to providing greater consumer awareness of
14 the factors contributing to the cost of prescription drugs in the state. The report may not disclose
15 information attributable to any particular manufacturer, wholesale drug distributor, or pharmacy
16 benefits manager subject to this section and may not make public any information that is
17 confidential. The board shall submit the report required by this section to the standing committees
18 of the general court with jurisdiction over health data reporting and prescription drug matters and
19 the governor.

20 126-BB:10 Civil Penalties. When a person or entity that is a health care facility payor,
21 prescription drug manufacturer, wholesale drug distributor, or pharmacy benefits manager violates
22 any requirement of this chapter, that person or entity commits a civil violation for which a fine of not
23 more than \$1,000 per day may be imposed. A fine imposed under this paragraph may not exceed
24 \$25,000 for any one occurrence.

25 2 Effective Date. This act shall take effect July 1, 2020.