

Amendment to SB 686-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to prescription drug benefits paid by health plans and establishing the New  
4 Hampshire prescription drug competitive marketplace.

5

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

7

8 1 New Chapter; Health Plans That Provide Prescription Drug Benefits. Amend RSA by  
9 inserting after chapter 402-N the following new chapter:

10

CHAPTER 402-O

11

HEALTH PLANS THAT PROVIDE PRESCRIPTION DRUG BENEFITS

12

402-O:1 Definitions. In this chapter:

13

I. "Average wholesale price" means the average wholesale price of a prescription drug as  
14 identified by a national drug pricing source selected by a health insurer. The average wholesale  
15 price must be identified by the 11-digit national drug code, as amended from time to time, for the  
16 prescription drug dispensed for the quantity dispensed.

17

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

19

III. "Commissioner" means the insurance commissioner.

20

IV. "Compensation" means any direct or indirect financial benefit, including, but not limited  
21 to, rebates, discounts, credits, fees, grants, charge-backs or other payments or benefits of any kind.

22

V. "Contracted pharmacy" means "contracted pharmacy" as defined in RSA 420-J:3, X-a.

23

VI. "Cost-sharing amount" means the amount paid by a covered person as required under  
24 the covered person's health plan for a prescription drug at the point of sale.

25

VII. "Covered person" means "covered person" as defined in RSA 420-J:3, XII.

26

VIII. "Dispensing fee" means the professional fee incurred at the point of sale or service that  
27 pays for pharmacy costs, in excess of ingredient cost, associated with ensuring that possession of the  
28 appropriate prescription drug is transferred to a covered person.

29

IX. "Formulary" means a list of prescription drugs covered by a health benefit plan and any  
30 tier levels applicable to a prescription drug.

31

X. "Generic drug" means a prescription drug, whether identified by its chemical, proprietary  
32 or nonproprietary name, that is not a brand-name drug and is therapeutically equivalent to a brand-

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1 name drug in dosage, safety, strength, method of consumption, quality, performance and intended  
2 use. "Generic drug" includes a biosimilar product.

3 XI. "Health carrier" means "health carrier" as defined in RSA 420-J:3, XXIII.

4 XII. "Health benefit plan" means "health benefit plan" as defined in RSA 420-J:3, XIX.

5 XIII. "Ingredient cost" means the actual amount paid to a pharmacy provider by a carrier or  
6 the carrier's pharmacy benefits manager for a prescription drug, not including the dispensing fee or  
7 cost-sharing amount.

8 XIV. "Mail order pharmacy" means "mail order pharmacy" as defined in RSA 318:1, VII-b.

9 XV. "Maximum allowable cost" means the maximum amount a health insurer will pay for a  
10 generic drug or brand-name drug that has at least one generic alternative available.

11 XVI. "Pharmacy" means "pharmacy" as defined in RSA 318:1, XI.

12 XVII. "Pharmacy and therapeutics committee" means a committee, board or equivalent body  
13 established by a health carrier to develop and maintain formularies.

14 XVIII. "Pharmacy benefits manager" means a person who performs pharmacy benefits  
15 management services, including a person acting on behalf of a pharmacy benefits manager in a  
16 contractual or employment relationship in the performance of pharmacy benefits management  
17 services for a covered entity. "Pharmacy benefits manager" shall include a health insurer licensed in  
18 this state if the health insurer or its subsidiary is providing pharmacy benefits management services  
19 exclusively to its own insureds. "Pharmacy benefits manager" shall not include a private single  
20 employer self-funded plan that provides such benefits or services directly to its beneficiaries.  
21 "Pharmacy benefits management" means the administration of prescription drug benefits provided  
22 by a covered entity under the terms and conditions of the contract between the pharmacy benefits  
23 manager and the covered entity and the provision of mail order pharmacy services.

24 XIX. "Pharmacy provider" means a retail pharmacy, mail order pharmacy, or licensed  
25 pharmacist.

26 XX. "Retail pharmacy" means a chain pharmacy, a supermarket pharmacy, a mass  
27 merchandiser pharmacy, an independent pharmacy or a network of independent pharmacies that is  
28 licensed as a pharmacy by this state and that dispenses medications to the public.

29 402-O:2 Oversight and Contracting Responsibilities.

30 I. A health insurer shall ensure that oversight and management of its prescription drug  
31 benefits, whether managed and administered directly by the insurer, or by a pharmacy benefits  
32 manager under contract with the insurer, meets the requirements of this chapter.

33 II. A health carrier that contracts with a pharmacy benefits manager to perform any  
34 activities related to the health carrier's prescription drug benefits is responsible for ensuring that,  
35 under the contract, the pharmacy benefits manager acts as the health carrier's agent and owes a  
36 fiduciary duty to the health carrier in the pharmacy benefits manager's management of activities  
37 related to the health carrier's prescription drug benefits.

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1           III. A health carrier shall not enter into a contract or agreement or allow a pharmacy  
2 benefits manager or any person acting on the health carrier's behalf to enter into a contract or  
3 agreement that prohibits a pharmacy provider from:

4           (a) Providing a covered person with the option of paying the pharmacy provider's cash  
5 price for the purchase of a prescription drug and not filing a claim with the covered person's health  
6 carrier if the cash price is less than the covered person's cost-sharing amount; or

7           (b) Providing information to a state or federal agency, law enforcement agency, or the  
8 commissioner when such information is required by law.

9           IV.(a) A health carrier or pharmacy benefits manager shall not require a covered person to  
10 make a payment at the point of sale for a covered prescription drug in an amount greater than the  
11 least of:

12                   (1) The applicable cost-sharing amount for the prescription drug.

13                   (2) The amount a covered person would pay for the prescription drug if the covered  
14 person purchased the prescription drug without using a health plan or any other source of  
15 prescription drug benefits or discounts.

16                   (3) The total amount the pharmacy will be reimbursed for the prescription drug from  
17 the pharmacy benefits manager or carrier, including the cost-sharing amount paid by a covered  
18 person.

19                   (4) The amount a health carrier or pharmacy benefits manager would pay for the  
20 prescription drug if the carrier or pharmacy benefits manager paid the pharmacy the full amount for  
21 the drug, with no cost sharing due.

22           (b) When calculating the cost-sharing for any prescription subject to a co-insurance, a  
23 health carrier or pharmacy benefits manager shall use the amount the pharmacy will be reimbursed  
24 for the prescription drug from the health carrier or pharmacy benefits manager minus any cost-  
25 sharing to be paid by a covered person.

26           V. A health carrier shall provide a reasonably adequate retail pharmacy network for the  
27 provision of prescription drugs for its covered persons. A mail order pharmacy shall not be included  
28 in determining the adequacy of a retail pharmacy network.

29           402-O:3 Prescription Drug Pricing; Maximum Allowable Cost.

30           I. A health carrier, or a pharmacy benefits manager under contract with a health carrier,  
31 shall use a single maximum allowable cost list to establish the maximum amount to be paid by a  
32 health plan to a pharmacy provider for a generic drug or a brand-name drug that has at least one  
33 generic alternative available. A health carrier, or a pharmacy benefits manager under contract with  
34 a health carrier, shall use the same maximum allowable cost list for each pharmacy provider.

35           II. A maximum allowable cost may be set for a prescription drug, or a prescription drug may  
36 be allowed to continue on a maximum allowable cost list, only if that prescription drug:

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1           (a) Is rated as "A" or "B" in the most recent version of the United States Food and Drug  
2 Administration's (FDA) "Approved Drug Products with Therapeutic Equivalence Evaluations," also  
3 known as "the Orange Book," or an equivalent rating from a successor publication, or is rated as  
4 "NR" or "NA" or a similar rating by a nationally recognized pricing reference; and

5           (b) Is not obsolete and is generally available for purchase in New Hampshire from a  
6 national or regional wholesale distributor by pharmacies having a contract with the pharmacy  
7 benefits manager.

8           III. A health carrier, or a pharmacy benefits manager under contract with a health carrier,  
9 shall provide a reasonable administrative appeal procedure, including a right to appeal that is  
10 limited to 14 days following the initial claim, to allow pharmacies with which the health carrier or  
11 pharmacy benefits manager has a contract to challenge maximum allowable costs for a specified  
12 drug.

13           IV. A health carrier, or a pharmacy benefits manager under contract with a health carrier,  
14 shall respond to, investigate, and resolve an appeal under paragraph III within 14 days after the  
15 receipt of the appeal. The health carrier or pharmacy benefits manager shall respond to an appeal  
16 as follows:

17           (a) If the appeal is upheld, the health carrier or pharmacy benefits manager shall make  
18 the appropriate adjustment in the maximum allowable cost and permit the challenging pharmacy or  
19 pharmacist to reverse and rebill the claim in question; or

20           (b) If the appeal is denied, the health carrier or pharmacy benefits manager shall  
21 provide the challenging pharmacy or pharmacist the national drug code from national or regional  
22 wholesalers of a comparable prescription drug that may be purchased at or below the maximum  
23 allowable cost.

24           V. A health carrier, or a pharmacy benefits manager under contract with a health carrier,  
25 shall use the average wholesale price to establish the maximum payment for a brand-name drug for  
26 which a generic equivalent is not available or a prescription drug not included on a maximum  
27 allowable cost list. In order to use the average wholesale price of a brand-name drug or prescription  
28 drug not included on a maximum allowable cost list, a health carrier, or a pharmacy benefits  
29 manager under contract with a health carrier, shall use only one national drug pricing source during  
30 a calendar year, except that a health carrier, or a pharmacy benefits manager under contract with a  
31 health carrier, may use a different national drug pricing source if the original pricing source is no  
32 longer available. A health carrier, or a pharmacy benefits manager under contract with a health  
33 carrier, shall use the same national drug pricing source for each pharmacy provider and identify on  
34 its publicly accessible website the name of the national drug pricing source used to determine the  
35 average wholesale price of a prescription drug not included on the maximum allowable cost list.

36           VI. This paragraph governs payments between a health carrier or a health carrier's  
37 pharmacy benefits manager and a pharmacy provider.

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1           (a) The amount paid by a health carrier or a health carrier's pharmacy benefits manager  
2 to a pharmacy provider under contract with the health carrier or the health carrier's pharmacy  
3 benefits manager for dispensing a prescription drug shall be the ingredient cost plus the dispensing  
4 fee less any cost-sharing amount paid by a covered person.

5           (b) The ingredient cost may not exceed the maximum allowable cost or average  
6 wholesale price, as applicable, and shall be disclosed by the health carrier's pharmacy benefits  
7 manager to the carrier.

8           (c) Only the pharmacy provider that dispensed the prescription drug may retain the  
9 payment described in this paragraph.

10           (d) A pharmacy provider shall not be denied payment or be subject to a reduced payment  
11 retroactively unless the original claim was submitted fraudulently or in error.

12           402-O:4 Prescription Drug Formularies; Pharmacy and Therapeutics Committee.

13           I. A health carrier, or a pharmacy benefits manager under contract with a health carrier,  
14 shall establish a pharmacy and therapeutics committee. A health carrier shall require its pharmacy  
15 and therapeutics committee or the pharmacy and therapeutics committee of the health carrier's  
16 pharmacy benefits manager to use one or more formularies.

17           II. A health carrier, or a pharmacy benefits manager under contract with a health carrier,  
18 shall not allow a person with a conflict of interest, as described in subparagraphs (a) and (b), to be a  
19 member of its pharmacy and therapeutics committee. A person shall not serve as a member of a  
20 pharmacy and therapeutics committee if the person:

21           (a) Is employed, or was employed within the preceding year, by a pharmaceutical  
22 manufacturer, developer, labeler, wholesaler, or distributor; or

23           (b) Receives compensation, or received compensation within the preceding year, from a  
24 pharmaceutical manufacturer, developer, labeler, wholesaler, or distributor.

25           III. A health carrier, or a pharmacy benefits manager under contract with a health carrier,  
26 shall prohibit its pharmacy and therapeutics committee or any member of the committee from  
27 receiving any compensation from a pharmaceutical manufacturer, developer, labeler, wholesaler, or  
28 distributor.

29           402-O:5 Treatment of Pharmacy Benefits Manager Compensation.

30           I. In this section:

31           (a) "Anticipated loss ratio" means the ratio of the present value of the future benefits  
32 payments to the present value of the future premiums of a policy form over the entire period for  
33 which rates are computed to provide health insurance coverage.

34           (b) "Pharmacy benefits manager compensation" means the difference between:

35           (1) The value of payments made by a health carrier of a health plan to its pharmacy  
36 benefits manager; and

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1           (2) The value of payments made by the pharmacy benefits manager to dispensing  
2 pharmacists for the provision of prescription drugs or pharmacy services with regard to pharmacy  
3 benefits covered by the health benefit plan.

4           II.(a) If a health carrier uses a pharmacy benefits manager to administer or manage  
5 prescription drug benefits provided for the benefit of covered persons, for purposes of calculating a  
6 carrier's anticipated loss ratio, any pharmacy benefits manager compensation:

7               (1) Constitutes an administrative cost incurred by the carrier in connection with a  
8 health benefit plan; and

9               (2) May not constitute a benefit provided under a health benefit plan.

10           (b) A health carrier shall claim only the amounts paid by the pharmacy benefits  
11 manager to a pharmacy or pharmacist as an incurred claim.

12           III. Each rate filing submitted by a health carrier with respect to a health benefit plan that  
13 provides coverage for prescription drugs or pharmacy services that is administered or managed by a  
14 pharmacy benefits manager shall include:

15               (a) A memorandum prepared by a qualified actuary describing the calculation of the  
16 pharmacy benefits manager compensation; and

17               (b) Such records and supporting information as the commissioner reasonably determines  
18 is necessary to confirm the calculation of the pharmacy benefits manager compensation.

19           IV. Upon request, a health carrier shall provide any records to the commissioner that relate  
20 to the calculation of the pharmacy benefits manager compensation.

21           V. A pharmacy benefits manager shall provide any necessary documentation requested by a  
22 health carrier that relates to pharmacy benefits manager compensation in order to comply with the  
23 requirements of this section.

24           2 Managed Care Law. Amend RSA 420-J:8, XV(b)(3) to read as follows:

25               (3) Review and make necessary adjustments to the maximum allowable cost for  
26 every drug for which the price has changed at least every [~~14~~] 7 days.

27           3 New Subdivision; New Hampshire Prescription Drug Competitive Marketplace. Amend RSA  
28 21-I by inserting after section 95 the following new subdivision:

New Hampshire Prescription Drug Competitive Marketplace

29           21-I:96 Purpose and Intent. The purpose and intent of this subdivision is to authorize the  
30 commissioner of the department of administrative services, with the approval of the governor and  
31 the executive council, to establish the New Hampshire prescription drug competitive marketplace in  
32 accordance with this subdivision. The objective of this subdivision is to optimize prescription drug  
33 savings by the state of New Hampshire through the following:  
34

35               I. Adoption of a dynamically competitive reverse auction process for the state health plan  
36 selection of pharmacy benefit managers (PBM).

1           II. Ongoing, real-time electronic review and validation of PBM claims invoices as the  
2 foundation for reconciling pharmacy bills.

3           III. Conduct of market checks using technology driven evaluation of the incumbent PBM's  
4 prescription drug pricing based on benchmark comparators.

5           21-I:97 Definitions. In this subdivision:

6           I. "Department" means the department of administrative services.

7           II. "Pharmacy benefits manager" means a person, business, or other entity, including a  
8 wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that, pursuant to  
9 a contract with the health carrier or self-funded health benefit plan, manages the prescription drug  
10 coverage provided by the health carrier or self-funded health benefit plan, including, but not limited  
11 to, providing claims processing services for prescription drugs, performing drug utilization review,  
12 processing drug prior authorization requests, adjudication of grievances or appeals related to  
13 prescription drug coverage, contracting with network pharmacies, and controlling the cost of covered  
14 prescription drugs.

15           III. "PBM reverse auction" means an automated, transparent, and dynamically competitive  
16 bidding process conducted online that starts with an opening round of bids and allows qualified PBM  
17 bidders to counter-offer a lower price for as many rounds of bidding as determined by the  
18 department of administrative services or its authorized representative conducting the reverse  
19 auction for a multiple health plan prescription drug purchasing group.

20           IV. "Price" means the projected cost of a PBM proposal or "bid" for providing prescription  
21 drug benefits pursuant to this part, to enable "apples-to-apples" comparison of the costs of competing  
22 PBM proposals over the duration of the PBM services contract.

23           V. "Real-time" means within no more than 12 hours.

24           VI. "PBA" means a participant bidding agreement entered into by all participants in the  
25 PBM reverse auction prior to participation therein.

26           21-I:98 New Hampshire Prescription Drug Competitive Marketplace.

27           I. Notwithstanding any provision of law to the contrary, a contract for the services of a PBM  
28 for the administration of benefits under this subdivision may be procured by the department, at its  
29 sole discretion, in a transparent, online competitive process, or "PBM reverse auction" as set forth in  
30 this subdivision. If the department, acting in its discretion, opts to conduct such a process, it shall  
31 procure, through the solicitation of proposals from qualified professional services vendors, the  
32 following products and services based upon price, capabilities, and other factors as determined by  
33 the department:

34           (a) Technical assistance from a technology operator with respect to all of the following:

35           (1) Evaluating the qualifications of PBM bidders.

36           (2) Conducting online-automated reverse auction services to support the department  
37 or its authorized representatives in comparing the pricing for the PBM procurement.

1                   (3) Providing related professional services.

2                   (b) Technology platform with the required capabilities for conducting a PBM reverse  
3 auction, along with the related services of a technology operator, as described in subparagraph (a).  
4 The technology platform shall, at a minimum, possess the capacity to do the following:

5                   (1) Conduct an automated, online, reverse auction of PBM services.

6                   (2) Automate repricing of diverse and complex PBM prescription drug pricing  
7 proposals to enable "apples-to-apples" comparisons of the price of PBM bids utilizing 100 percent of  
8 annual prescription drug claims data available for state-funded health plans or a multiple health  
9 plan prescription drug purchasing group and using code-based classification of drugs from nationally  
10 accepted drug sources.

11                   (3) Produce an automated report and analysis of PBM bids, including the ranking of  
12 PBM bids based on the comparative costs and qualitative aspects thereof within a 48-hour time  
13 period following the close of each round of reverse auction bidding.

14                   (4) Perform real-time, electronic, line-by-line, claim-by-claim review of 100 percent of  
15 invoiced PBM prescription drug claims, and identify all deviations from the specific terms of the  
16 PBM services contract resulting from the reverse auction process.

17                   (c) The contract for procurement of the technology platform and technology operator  
18 services shall not be awarded to any of the following:

19                   (1) A vendor that is a PBM.

20                   (2) A vendor that is a subsidiary or affiliate of a PBM.

21                   (3) A vendor that is managed by a PBM or receives remuneration from a PBM for  
22 aggregating clients into a contractual relationship with a PBM.

23                   (d) The vendor shall not outsource any part of the PBM reverse auction or the  
24 automated, real-time, electronic, line-by-line, claim-by-claim review of invoiced PBM prescription  
25 drug claims.

26                   (e) With technical assistance and support provided by the technology operator, the  
27 department or its authorized representative shall specify the terms of the PBA. The terms of the  
28 PBA shall not be modified except by specific consent of the department of administrative services or  
29 its authorized representatives.

30                   II. When and if procured, the technology platform used to conduct the reverse auction shall  
31 be repurposed over the duration of the PBM services contract as an automated pharmacy claims  
32 adjudication engine to perform real-time, electronic, line-by-line, claim-by-claim review of 100  
33 percent of invoiced PBM prescription drug claims, and identify all deviations from the specific terms  
34 of PBM services contracts.

35                   III. An entity may request in writing and subject to the approval of the commissioner to  
36 participate in a joint purchasing group with the state employee and retiree group insurance program  
37 for procuring for PBM services through a PBM reverse auction or otherwise. All entities

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1 participating in a joint purchasing group shall share proportionally in the cost of procurement  
2 including all support services.

3 IV. If the department opts, at its discretion, to conduct a transparent, online competitive  
4 PBM selection process, as set forth in this subdivision, the processes and procedures set forth in this  
5 section shall apply to prescription drug coverage in connection with the state employee health plan  
6 for benefits under this part including for state employees, retirees, spouses, and eligible dependents  
7 in accordance with the provisions of RSA 21-I:30 and any applicable collective bargaining  
8 agreements. Any other state-funded health plan or self-funded municipal employee or other local  
9 government employee health plan, public school employee health plans, operating individually or  
10 collectively, and the health plans of the university system of New Hampshire and the community  
11 college system of New Hampshire may utilize the processes and procedures set forth in this section  
12 individually or collectively or as a joint purchasing group with the state employee health plan.

13 V. After completion of a first PBM reverse auction by the department for the administration  
14 of benefits under the state employee health plan, and at the discretion of the department, self-  
15 funded private sector employer or multi-employer health plans with substantial participation by  
16 New Hampshire employees and their dependents may be permitted to participate in a joint  
17 purchasing pool with state employees for conduct of subsequent PBM reverse auctions provided that  
18 such participation shall comply with and shall be consistent with all applicable state and federal law  
19 and requirements of ERISA.

20 VI. The state employee health plan and any self-funded public or private sector health plans  
21 that may be permitted to participate with the state in a joint PBM reverse auction purchasing pool  
22 shall retain full autonomy over determination of their respective prescription drug formularies and  
23 pharmacy benefit designs and shall not be required to adopt a common drug formulary or common  
24 prescription pharmacy benefit design. Any such entity or purchasing group shall agree, before  
25 participating in the PBM reverse auction, to accept the prescription drug pricing plan that is  
26 selected through the PBM reverse auction process.

27 VII. Any PBM providing services to the department or a self-funded health plan as described  
28 in paragraphs IV and V, shall provide the department and the plan the complete pharmacy claims  
29 data necessary to conduct the reverse auction and carry out their administrative and management  
30 duties.

31 VIII. The department may adopt rules, pursuant to RSA 541-A, to implement the provisions  
32 of this subdivision.

33 4 Severability. If any provision of this act or the application thereof to any person or  
34 circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act  
35 which can be given effect without the invalid provision or application, and to this end the provisions  
36 of this act are severable.

37

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- 1       5 Effective Date.
- 2           I. Sections 1 and 2 of this act shall take effect January 1, 2021.
- 3           II. The remainder of this act shall take effect upon passage.

2020-1063s

AMENDED ANALYSIS

This bill regulates the maximum allowable cost for prescription drug benefits paid by health insurers or pharmacy benefit managers.

This bill also establishes the New Hampshire prescription drug competitive marketplace.