

Amendment to SB 685-FN

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

2
3 AN ACT establishing a wholesale prescription drug importation program and establishing the
4 New Hampshire prescription drug competitive marketplace.
5

6 Amend RSA 126-BB:2, II(e) as inserted by section 1 of the bill by replacing it with the following:

7
8 (e) Ensure that the program complies with the transaction and tracing requirements of
9 21 U.S.C. sections 360eee and 360eee-1 to the extent feasible and practical prior to imported
10 prescription drugs coming into the possession of the licensed United States drug wholesaler and that
11 the program complies fully with those federal requirements after imported prescription drugs are in
12 the possession of the licensed drug wholesaler.
13

14 Amend RSA 126-BB:3, IV-IX as inserted by section 1 of the bill by replacing them with the following:

15
16 IV. Seek the appropriate federal approvals, exemptions, or agreements, or a combination
17 thereof, as needed to enable all covered entities enrolled in or eligible for the federal 340B Drug
18 Pricing Program to participate in the program to the fullest extent possible without jeopardizing
19 their eligibility for the 340B Program.

20 V. Consult with health insurance carriers, employers, pharmacies, pharmacists, health care
21 providers and consumers.

22 VI. Develop a registration process for health insurance carriers, pharmacies and health care
23 providers authorized to prescribe and administer prescription drugs that are willing to participate in
24 the program.

25 VII. Create a publicly accessible website for listing the prices of prescription drugs to be
26 imported under the program.

27 VIII. Create an outreach and marketing plan to work with health carriers, provider
28 associations to generate public awareness of the program.

29 IX. Develop a 2-year audit work plan.

30 X. Conduct any other activity determined necessary to successfully implement and operate
31 the program.
32

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1 Amend the bill by replacing all after section 1 with the following:

2
3 2 New Subdivision; New Hampshire Prescription Drug Competitive Marketplace. Amend RSA
4 21-I by inserting after section 95 the following new subdivision:

5 New Hampshire Prescription Drug Competitive Marketplace

6 21-I:96 Purpose and Intent. The purpose and intent of this subdivision is to authorize the
7 commissioner of the department of administrative services, with the approval of the governor and
8 the executive council, to establish the New Hampshire prescription drug competitive marketplace in
9 accordance with this subdivision. The objective of this subdivision is to optimize prescription drug
10 savings by the state of New Hampshire through the following:

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

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

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

17 21-I:97 Definitions. In this subdivision:

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

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

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

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

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

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

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

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

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

(1) Evaluating the qualifications of PBM bidders.

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

(3) Providing related professional services.

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

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

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

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

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

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

(1) A vendor that is a PBM.

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

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

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

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

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

10 III. An entity may request in writing and subject to the approval of the commissioner to
11 participate in a joint purchasing group with the state employee and retiree group insurance program
12 for procuring for PBM services through a PBM reverse auction or otherwise. All entities
13 participating in a joint purchasing group shall share proportionally in the cost of procurement
14 including all support services.

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

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

32 VI. The state employee health plan and any self-funded public or private sector health plans
33 that may be permitted to participate with the state in a joint PBM reverse auction purchasing pool
34 shall retain full autonomy over determination of their respective prescription drug formularies and
35 pharmacy benefit designs and shall not be required to adopt a common drug formulary or common
36 prescription pharmacy benefit design. Any such entity or purchasing group shall agree, before

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1 participating in the PBM reverse auction, to accept the prescription drug pricing plan that is
2 selected through the PBM reverse auction process.

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

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

9 3 Effective Date.

10 I. Section 1 of this act shall take effect 60 days after its passage.

11 II. The remainder of this act shall take effect upon its passage.

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2020-1074s

AMENDED ANALYSIS

This bill establishes a wholesale importation program for prescription drugs from Canada by or on behalf of the state. This bill requires the department of health and human services to design the program and obtain federal approval for the program. This bill also establishes the New Hampshire prescription drug competitive marketplace.