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Redundancy Elimination Report – RSA 400-A:68

TO: NH Health and Human Services oversight committee, the Speaker of the House of Representatives, the President of the Senate, the House clerk, the Senate clerk, the Governor, and the state library.

RE: Redundancy Elimination Report Required by RSA 400-A:68

DATE: October 1, 2024

Executive Summary

Recently enacted RSA 400-A:68, directs the New Hampshire Insurance Department (NHID), in collaboration with the New Hampshire Prescription Drug Affordability Board (NH PDAB), to produce a **Redundancy Elimination Report** with the overarching goal of promoting efficiency and economy. This report must be submitted to the Health and Human Services oversight committee established in RSA 126-A:13, the Speaker of the House of Representatives, the President of the Senate, the House Clerk, the Senate Clerk, the Governor, and the state library on or before October 1, 2024.

The primary purpose of the report is to identify and describe relevant oversight and/or regulatory redundancies with regards to the collection, analysis, and reporting on prescription drug prices among the NHID and NH PDAB. The report further details reporting requirements imposed by the federal government or other state agencies resulting in redundancies. Data submitters are defined in the report at the *insurer, pharmacy benefit manager (PBM), and drug manufacturer* levels. Finally, the report highlights recent legislative matters related to the topic including improvements to transparency and consumer protections in prescription drug markets and recommends legislative opportunities to eliminate and/or reduce redundancies.

Definition

It is critical to define redundancy both for the purpose of this report as well as the context in which the term might be applied to the statutory requirements and limitations of both the NHID and the NH PDAB. This is the first redundancy report requested by the General Court, and the definition of redundancy is not clearly expressed in the statute. Redundancy is defined as "*the state of being not or no*

longer needed or useful"[1]. However, the legislative intent is reflected in its supporting testimony and in the statute to imply that the goal of this report is to identify, and, *if possible*, eliminate unnecessary duplication of efforts in data collection, analysis and reporting that might enhance operational efficiency while decreasing cost as both entities work to fulfill their statutory requirements.

The report acknowledges the existence and sometimes benefit of overlap in data reporting and aims to identify both direct redundancies and areas where regulatory authority overlaps with the potential for regulatory consolidation. Examples of these include:

- Various prescription drug price transparency parameters—delineated in this report—are currently reported by the Insurance Department, in public-facing infographics, and similarly in tabular form in the NH PDAB annual report.
- The Insurance Department currently licenses insurers, PBMs, and Third-Party Administrators, including the assessment of annual registration and renewal fees. Any additional fees or assessments levied upon these entities reflect a direct redundancy.
- PBM-reported prescription drug rebates, pursuant to NH RSA 126-BB:(9), III(d), are currently reported to the Insurance Department, per NH RSA 402-N:6.

Data Reporting Redundancies

Insurer Reporting

Pursuant to RSA 420-G:11-a, the NHID is authorized to collect prescription drug claims and enrollment information for the New Hampshire All-payer Claims Database (NH CHIS). This database contains empirical data regarding price, utilization, and other relevant clinical information, and is a primary source of data used by the NH PDAB to produce an annual report required by RSA 126-BB:5 IV (a)(c). While the NH CHIS does not contain prescription drug or medical claims from all self-insured plans (*approx. 25% of the NH CHIS reflects self-funded large group plans*), it is a population-representative source of data suitable to derive summary statistics on prescription drug cost and utilization, including patient cost-sharing responsibilities in a large sample of New Hampshire citizens. Moreover, the NH CHIS reports prescription drug cost and utilization data for a majority of New Hampshire Medicaid members whose benefits are administered through one of the three managed care organizations contracted with the State of New Hampshire. Over 90% of the state's Medicaid members and expenditures are reflected in these data. The dataset also contains pharmacy and medical claims from private Medicare Supplemental (Med-Supp) plans. Within claims files for these plans are key variables to help regulators gain insights into unsubsidized portions of services

[1] Definition of Redundancy; Oxford Languages

covered by Medicare Part D plans. NH CHIS also includes data submitted by the self-funded state employee and retiree health benefit program.

Just as the NHID utilizes NH CHIS to analyze and monitor spending trends, so too does statute mandate NH PDAB to utilize data such as that collected in NH CHIS to analyze and monitor spending on prescription drugs to protect New Hampshire consumers. The statute creating the PDAB anticipates that the Board would not collect this data itself, but rather utilize the existing data such as NH CHIS for the purpose of analysis. The NHID acknowledges that some members of the NH PDAB do not feel that this represents a redundancy but rather a shared data asset. The NH PDAB has a memorandum of understanding with DHHS who is responsible for the public and limited data access to the NH CHIS through a formal application process. This formal process should allow the NH PDAB any query of the database necessary to fulfill its statutory obligations and ensure that any data use agreements apply the rigorous confidentiality provisions related to the collection, storage, analysis, and reporting of the data. To the extent that the NH Legislature deems this a redundancy or otherwise is a policy decision for them to make.

In January 2024, the NHID published on NH HealthCost, its flagship healthcare price transparency website, a series of prescription drug infographics reporting the *100 most frequently prescribed drugs in New Hampshire*, *the 100 costliest prescription drugs prescribed in New Hampshire*, and the *100 prescription drugs exhibiting the greatest year-to-year increase in New Hampshire*. These interactive dashboards enable the user to filter by the number of drugs (10, 25, 50, or 100) the number of individual patients (users), drug therapeutic class, and/or plan year. These infographics can be found on the NHID website at https://nhhealthcost.nh.gov/prescription-drug-cost-utilization-new-hampshire.

From a Federal Government perspective, the Centers for Medicare and Medicaid Services (CMS), under Section 204 (of Title II, Division BB) of the Consolidated Appropriations Act, 2021 (CAA), has been authorized to collect prescription drug data and healthcare spending from insurance companies and employer-based health plans. Formally, the Federal price transparency program is known as RxDC (Prescription Drug Data Collection). This database consists of eleven (11) different files, three of which, are reporting requirements to the NH PDAB, per NH RSA 126-BB:5(IV)(a,b,c) (Figure 1). Beginning in 2024, The US Department of Labor or the Department of the Treasury will publish an annual report of the data, intended to:

- Identify major drivers of increases in prescription drug and health care spending.
- Understand how prescription drug rebates impact premiums and out-of-pocket costs.
- Promote further transparency in prescription drug pricing.

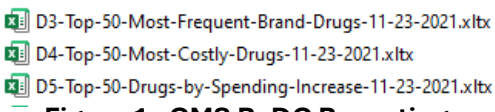

Figure 1: CMS RxDC Reporting

The insurer information collected or published, as noted above, includes data elements that are redundant with the data cited for collection under RSA 126-BB. It will be important to consider this federal analysis as the NH PDAB performs its own analysis and formulates recommendations, recognizing that the NH PDAB does not have access to this federal database but only that portion which is reported. It is noteworthy that, at the time of this report, due to several key factors including litigation at the state and federal levels, reporting of these data has not occurred, and as such, this area may not represent a redundancy.

PBM Reporting

This section delineates the historical reporting requirements for PBMs to NH Insurance Department. The passage of NH SB555 (https://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=1961&inflect=2) is described in detail in the Recent Legislation section of this report.

Pursuant to RSA 415-A:7[2], the NHID requires insurers to submit an annual attestation, declaring their compliance with PBM drug rebate remittance, pursuant to RSA 415-A:7, II (a) - (b):

> (a) Remitted directly to the covered person at the point of sale to reduce the out-of-pocket cost to the covered person associated with a particular prescription drug;
>
> (b) Remitted to, and retained by, the insurer. Rebates remitted to the insurer shall be applied by the insurer in its plan design and in future plan years to offset the premium for covered persons.

Under the current language in the statute, Section V specifies that: *an insurer shall not be required by the department to publish or otherwise reveal information regarding the amount of rebates it receives, including, but not limited to, information regarding the amount of rebates it receives on a product-, manufacturer-, or pharmacy-specific basis.* This information is considered a trade secret and not subject to public disclosure under the NH RSA 91-A:1, Right-to-Know statute.

Additionally, per RSA 402-N:6[3], the NHID has the authority to collect total, aggregated prescription drug expenditures and total, aggregated rebates remitted by drug manufacturers to insurance carriers or PBMs, on behalf of an insurance carrier. The aggregated nature of these reports precludes the identification of specific drug product, manufacturer, or pharmacy, for which the management and oversight of a point-of-sale or premium-based remittance requirement may be administered.

[2] SB555 includes amendments to RSA 415-A:7
[3] SB555 includes amendments to RSA 402-N

The NH PDAB has authority under RSA: 126-BB:9, III (d)[4] to request from a PBM or prescription drug wholesaler the following:

> (1) The dollar amount of all rebates or fees concerning the drug collected from the manufacturer that were covered by such health carriers during such calendar year; and
>
> (2) The dollar amount of all rebates and fees, excluding any portion of the rebates or fees received by health carriers, concerning the drug collected from the manufacturer.

These reporting requirements are similar to those delineated in NH RSA 402-N:6, mentioned above, and as such, are redundant.

Drug Manufacturer Price Reporting

Pursuant to RSA 126-BB:9, manufacturers are obligated to inform the NH PDAB of price information as follows:

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

Pursuant to RSA 318:67 and 318:68, under the authority of the New Hampshire Board of Pharmacy, the NHID collects and reports price information submitted by drug manufacturers for new, high-cost prescription drug releases. Manufacturers releasing new drugs (including generics), whose wholesale acquisition cost exceeds the Medicare Part D threshold defining *'specialty drug'*, are required to submit a report to the NHID within 30 days of commercial release. Quarterly, the NHID publishes a graphical, interactive New, High-Cost Rx Drug Dashboard, which is located at https://www.insurance.nh.gov/legal-information/high-cost-prescription-drugs.

The NH PDAB authority under RSA 126-BB:9, I (c) to collect this data reflects a direct redundancy. To the extent that the NH Legislature identifies the NH PDAB as a more appropriate repository of these data, statutory changes may be necessary. It is noteworthy that other states that have PDABs have acknowledged that a

[4] Note that NH PDAB authority to collect, analyze and report on prescription drug prices under RSA 126-BB:9 is suspended through June 30, 2025.

significant amount of resource is required to collect, oversee, and report on these metrics.

NHID - Annual Hearing on Healthcare Premiums and Claim-cost Drivers

Pursuant to RSA 420-G:14-a, V-VII, the NHID holds an annual public hearing concerning premium rates in the health insurance market and the factors, including health care costs and cost trends, that have contributed to rate increases during the prior year.

> *The commissioner shall identify variations in the price that health carriers pay for health care services and shall undertake further analysis to determine the cause of the observed price variations by utilizing the uniform hospital discharge data set, as described under RSA 126:25, the comprehensive health care information system as described in RSA 420-G:11-a, and other data sources as appropriate. In advance of holding the public hearing, the commissioner may require any health insurer or third-party administrator to produce documents and information deemed necessary and relevant to evaluate the factors that contribute to cost growth in health care services, increased utilization of health care, and health insurance premium costs.*

The statute authorizes the Insurance Commissioner to collect data from insurers and third-party administrators to inform state regulators and policymakers on cost drivers in our healthcare system. Data requests, specifically designed to fill-in any gaps identified from the NH CHIS are given to the payors prior to the Annual Hearing. These include a Supplemental Data Request and an Annual Hearing Data request. These data glean valuable insights into prescription drug utilization and costs. Importantly, these data reflect all New Hampshire sitused health insurance plans, not just NH CHIS submitters. Consequently, their representativeness is broader and delivers more utility to the policymaker and/or regulator. Pages 48 and 49 of the NHID 2023 Annual Report on Healthcare Premium and Claim-cost Drivers reports results from the actuarial analysis used to assess the cost partitioning effect induced by various types of prescription drugs, including generic vs. branded drugs, specialty drugs, drug costs gross and net of rebates, and those administered through the medical benefit, from 2019-2022, and can be located at https://mm.nh.gov/files/uploads/nhid/documents/nhid-annualhearing-report-2023.pdf.

NH RSA 126-BB:9, VIII: states in part *"…the board shall produce and post on its publicly accessible website an annual report, including information developed from the notifications and disclosures received pursuant to this section on trends in the cost of prescription drugs, analysis of manufacturer prices and price increases, the major components of prescription drug pricing along the supply chain and the impacts on insurance premiums and cost sharing, and any other information the*

board determines is relevant to providing greater consumer awareness of the factors contributing to the cost of prescription drugs in the state."

The substance of these reports suggests some overlap and/or redundancy, but also demonstrate distinct differences, although each may benefit from coordination to improve the efficiency of messaging by state agencies.

Registration/Licensing Redundancies

The NHID currently licenses PBMs and Third-party Administrators (TPAs) engaged in business in New Hampshire. The initial license fee for PBMs is $500 with an annual renewal fee of $100. In 2023 there were twenty-eight (28) entities registered as PBMs in New Hampshire. Of these, the majority were not actively performing pharmacy benefit services in New Hampshire at the time of this report.

Enforcement/Civil Penalties Redundancies

The New Hampshire Attorney General has authority, per RSA 318:68, V (https://www.gencourt.state.nh.us/rsa/html/XXX/318/318-68.htm) to bring civil penalties of not more than $1,000/day for every day that a drug manufacturer required to submit price information under that statute's Section I, is not reported. RSA 126-BB:10, which provided the NH PDAB with redundant authority to level civil penalties, was repealed effective July 1, 2023.

Recent Legislation

The New Hampshire Legislature passed, and Governor Sununu signed NH SB555 (https://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=1961&inflect=2) relative to PBM expenditure and rebate data submission to the NHID. NH-licensed PBMs, which are regulated by the NHID and for which the NH Insurance Commissioner has examination authority over are required to submit to the NHID annually:

(a) The aggregate number of rebates and total value received by the pharmacy benefit manager;

(b) The aggregate number of rebates and total value distributed to the appropriate health care insurer;

(c) The aggregate number of rebates and total value passed on to an insured of each health care insurer at the point of sale that reduced the insured's applicable deductible, copayment, coinsurance, or other cost-sharing amount;

(d) The individual and aggregate amount paid by the health care insurer to the pharmacy benefit manager for pharmacist services itemized by pharmacy, by product (at the unique NDC level), and by goods and services; and

(e) The individual and aggregate amount a pharmacy benefit manager paid for pharmacist services itemized by pharmacy, by product, and by goods and services.

This PBM Annual Rebate Summary is required for submission to NHID by March 1 of each year, (reflecting the previous year's revenues) to confirm PBM eligibility for licensure in NH. These additional levels of reporting requirements strengthen the transparency in this important sector of the healthcare system and fortifies the examination authority of the Insurance Commissioner to regulate such entities. The bill also proposes amending RSA 415-A:7 (https://www.gencourt.state.nh.us/rsa/html/XXXVII/415-A/415-A-7.htm) relative to insurers attestation of rebate remittance to align with consumer economic benefit. The intent of amendments to this statute was to enable the NHID to reconcile the actuarial value of prescription drug rebates for remuneration to NH insureds. The new reporting requirements for insurers to NHID are:

(1) All discounts and rebates received by health insurers were used to reduce costs for policyholders in compliance with paragraph II.

(2) How rebates were remitted in the individual, small, and large group market.

(3) If applied pursuant to subparagraph II(b), an explanation of how remittance was applied to both plan design, based on estimated rebates, and in future plan years to offset premium.

(4) A description of the methodology employed to calculate the estimated rebate amount, for the purpose of applying to plan design.

(b) Methodology for determining estimated rebate amount:

(1) Insurers shall employ actuarial and analytical methodologies to estimate the total rebate amount expected to be received from drug manufacturers over a defined period.

(2) The determination of the estimated rebate amount shall account for factors such as historical rebate data, anticipated changes in drug utilization, formulary modifications, and other pertinent variables.

(3) The calculated estimated rebate amount shall adhere to generally accepted actuarial principles and industry best practices to ensure precision and dependability.

(4) The calculation shall be documented and made available for review by the insurance commissioner, upon request.

Together, these statutes operate synergistically, to harmonize regulatory matters across entities with varying levels of oversight. It remains essential that enforcement of data submission requirements rests with the licenser/regulator mandating the collection of such data.

Responses to Public Comments to the Redundancy Elimination Report

Three commentaries from the Public were submitted in writing to the New Hampshire Prescription Drug Affordability Board. NHID has met, in person with one of the authors, and is willing to address and hear concerns from the others.

Proposed Legislative Targets to Reduce/Eliminate Redundancies

This section of the report proposes new legislation and/or amendments to existing New Hampshire statutes with the overarching goal of eliminating redundancies and improving efficiencies. The recommendations aim to balance the competing interests of healthcare consumer protection and the enablement of free-market forces. Additionally, they consider prior experiences of various state agencies in their efforts to regulate such important markets.

- Recommendation 1: Review statute regarding data reporting requirements of NHID and PDAB recognizing that these reports have different goals. Where appropriate, statute should allow NHID and PDAB to use citation of source data if it has already been reported elsewhere.
- Recommendation 2: Amend RSA 126-BB:9, I to remove sub-paragraph (c) which requests data that is required to be reported under RSA 318:68. This reporting requirement is duplicative and redundant. The NH PDAB may consider the genesis of a High-Cost Drug Review Taskforce, to review quarterly reports of drugs eligible for reporting to NHID under NH RSA 318:68 and make recommendations for referrals for enforcement action to the NH Attorney General's Office. The membership of this 'Taskforce' may consist of NH PDAB members and NH PDAB Advisory Board members with subject matter expertise in prescription drug oversight and regulation. Alternatively, the NH Legislature may prefer to shift this statutory reporting requirement from the NHID per NH RSA 318:68, back to the PDAB, resulting in drug manufacturers to report this parameter to only one NH state entity.
- Recommendation 3: Amend NH RSA 126-BB:5(IV)(a-c) (https://www.gencourt.state.nh.us/rsa/html/X/126-BB/126-BB-5.htm) to require the NH PDAB to, in its Annual Report, list the drugs meeting the criteria for the 'Top 50 most frequently prescribed, most costly, and highest year-to-year cost increases, as this reflects the most current reporting schema suggested by the National Academy for State Health Policy (NASHP). Additionally, the language in lines (a-c) shall agree with the regulatory population of interest (i.e.: public payor VS. 'the state'), as indicated in the passage immediately preceding (a-c).
- Recommendation 4: Amend RSA 126-BB:7-II, removing section (c), which requires that "Payors, providers, prescription drug manufacturers, wholesale drug distributors, and pharmacy benefits managers pay all assessments as required by RSA 126-BB:8", as these entities are currently licensed and/or regulated by other state agencies. This RSA may be further amended by enabling the NH PDAB to refer entities to their licensing authority or the NH Attorney General for enforcement action.