A BILL TO BE ENTITLED
AN ACT TO PROMOTE PRICING TRANSPARENCY FOR PATIENTS AND TO
ESTABLISH STANDARDS AND CRITERIA FOR THE REGULATION AND
LICENSURE OF PHARMACY BENEFITS MANAGERS PROVIDING SERVICES FOR
HEALTH BENEFIT PLANS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-56A-10 is recodified as G.S. 58-56A-30.

SECTION 1.(b) Article 56A of Chapter 58 of the General Statutes, as amended by
Section 1(a) of this act, reads as rewritten:

"Article 56A.

"Pharmacy Benefits Management.

The following definitions apply in this Article:

(1) Claim. – A request from a pharmacy or pharmacist to be reimbursed for the
cost of filling or refilling a prescription for a drug or for providing a medical
supply or device.

(2) Claims processing service. – The administrative services performed in
connection with the processing and adjudicating of claims relating to
pharmacist services that include either or both of the following activities:

a. Receiving payments for pharmacist services.
b. Making payments to pharmacists or pharmacies for pharmacist
services.

(4) Health benefit plan. – As defined in G.S. 58-50-110(11). This definition
specifically excludes the State Health Plan for Teachers and State
Employees, G.S. 58-3-167.

(4a) Insured. – An individual covered by a health benefit plan.

(2)(5) Insurer. – Any entity that provides or offers a health benefit plan.

(6) Maximum allowable cost list. – A listing of generic or multiple source drugs
used by a pharmacy benefits manager to set the maximum allowable cost on
which reimbursement of a pharmacy is made.

(3)(7) Maximum allowable cost price. – The maximum per unit reimbursement for
amount that a pharmacy benefits manager will reimburse a pharmacy for the
cost of generic or multiple source prescription drugs, medical products, or
devices.
(8) Out-of-pocket costs. – With respect to the acquisition of a drug, the amount to be paid by the insured under the plan or coverage, including any cost-sharing, copayment, coinsurance, or deductible.

(9) Pharmacy services administration organization (PSAO). – An entity operating within the State that contracts with independent pharmacies to conduct business on their behalf with third-party payers. PSAOs provide administrative services to pharmacies and negotiate and enter into contracts with third-party payers or pharmacy benefits managers on behalf of pharmacies. A person or entity is a PSAO under this Article if it performs one or more of the following administrative services to pharmacies:

a. Assistance with claims.
b. Assistance with audits.
c. Centralized payment.
d. Certification in specialized care programs.
e. Compliance support.
f. Setting flat fees for generic drugs.
g. Assistance with store layout.
h. Inventory management.
i. Marketing support.
j. Management and analysis of payment and drug dispensing data.
k. Provision of services for retail cash cards.

(3a)(10) Pharmacist. – A person licensed to practice pharmacy under Article 4A of Chapter 90 of the General Statutes.

(11) Pharmacist services. – Products, goods, or services provided as a part of the practice of pharmacy.

(4)(12) Pharmacy. – A pharmacy registered with the North Carolina Board of Pharmacy.

(5)(13) Pharmacy benefits manager. – An entity who contracts with a pharmacy on behalf of an insurer or third-party administrator to administer or manage prescription drug benefits to perform any of the following functions:

a. Negotiating rebates with manufacturers for drugs paid for or procured as described in this Article.
b. Processing claims for prescription drugs or medical supplies or providing retail network management for pharmacies or pharmacists.
c. Paying pharmacies or pharmacists for prescription drugs or medical supplies.

(14) Pharmacy benefits manager affiliate. – A pharmacy or pharmacist that directly or indirectly, through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with a pharmacy benefits manager.

(6)(15) Third-party administrator. – As defined in G.S. 58-56-2.


(a) A person or organization may not establish or operate as a pharmacy benefits manager for health benefit plans in this State without obtaining a license from the Commissioner of the Department of Insurance.

(b) The Commissioner shall develop an application for licensure to operate in this State as a pharmacy benefits manager and may charge an initial application fee of two thousand dollars ($2,000) and an annual renewal fee of one thousand five hundred dollars ($1,500). The pharmacy benefits manager application form must collect only the following information:

(1) The name, address, and telephone contact number of the pharmacy benefits manager.
(2) The name and address of the pharmacy benefits manager’s agent for service of process in this State.

(3) The name and address of each person with management or control over the pharmacy benefits manager.

(4) The name and address of each person with a beneficial ownership interest in the pharmacy benefits manager.

(5) Either (i) a signed statement that, to the best of the applicant’s knowledge, no officer with management or control of the pharmacy benefits manager has been convicted of a felony or has violated any requirement of State or federal law applicable to pharmacy benefits management or (ii) a description of any felony or any violation of any requirement of State or federal law applicable to pharmacy benefits management committed by any officer with management or control of the pharmacy benefits manager.

(c) Unless otherwise provided for in this Article, an applicant or a pharmacy benefits manager that is licensed to conduct business in the State shall file a notice describing any material modification of the information required under this section.


(a) A pharmacy or pharmacist shall have the right to provide an insured information regarding the amount of the insured’s cost share for a prescription drug. Neither a pharmacy nor a pharmacist shall be penalized by a pharmacy benefits manager for discussing any information described in this section or for selling a lower-priced drug to the insured if one is available.

(b) A pharmacy benefits manager shall not, through contract, prohibit a pharmacy from offering and providing direct and limited delivery services to an insured as an ancillary service of the pharmacy, as delineated in the contract between the pharmacy benefits manager and the pharmacy.

(b1) A pharmacy benefits manager shall not prohibit a pharmacist or pharmacy from charging a minimal shipping and handling fee to the insured for a mailed or delivered prescription if the pharmacist or pharmacy discloses all of the following to the insured before delivery:

(1) The fee will be charged.

(2) The fee may not be reimbursed by the health benefit plan, insurer, or pharmacy benefits manager.

(3) The charge is specifically agreed to by the health benefit plan or pharmacy benefits manager.

(c) A pharmacy benefits manager shall not charge, or attempt to collect from, an insured a co-payment that exceeds the total submitted charges by the network pharmacy.

(d) Any contract for the provision of a network to deliver health care services between a pharmacy benefits manager and insurer shall be made available for review by the Department.

(e) The Department shall report to the Attorney General any violations of this section or § 58-56A-4 in accordance with G.S. 58-240(5).

§ 58-56A-4. Pharmacy and pharmacist protections.

(a) A pharmacy benefits manager may only charge a fee or otherwise hold a pharmacy responsible for a fee relating to the adjudication of a claim if the fee is reported on the remittance advice of the adjudicated claim or is set out in contract between the pharmacy benefits manager and the pharmacy. No fee or adjustment for the receipt and processing of a claim, or otherwise related to the adjudication of a claim, shall be charged without a justification on the remittance advice or as set out in contract and agreed upon by the pharmacy or pharmacist for each adjustment or fee. This section shall not apply with respect to claims under an employee benefit plan under the Employee Retirement Income Security Act of 1974 or Medicare Part D.

(b) Nothing in this Article shall abridge the right of a pharmacist to refuse to fill or refill a prescription if the pharmacist believes it would be harmful to the patient or is not in the patient’s best interest, or if there is a question to the validity of the prescription.
(c) A pharmacy or pharmacist shall not be prohibited or in any way restricted by a pharmacy benefits manager from dispensing any prescription drug, including specialty drugs dispensed by a credentialed and accredited pharmacy, allowed to be dispensed under a license to practice pharmacy under Article 4A of Chapter 90 of the General Statutes.

(d) A pharmacy benefits manager shall not penalize or retaliate against a pharmacist or pharmacy for exercising rights provided under this Article. This subsection does not apply to breach of contract between a pharmacy and a pharmacy benefits manager.

(e) A claim for pharmacist services may not be retroactively denied or reduced after adjudication of the claim unless any of the following apply:

1. The original claim was submitted fraudulently.
2. The original claim payment was incorrect because the pharmacy or pharmacist had already been paid for the pharmacist services.
3. The pharmacist services were not rendered by the pharmacy or pharmacist.
4. The adjustments were agreed to by the pharmacy or pharmacist.
5. The adjustments were part of an attempt to limit overpayment recovery efforts by a pharmacy benefits manager.

(f) Nothing in this section shall be construed to limit overpayment recovery efforts by a pharmacy benefits manager.


(a) In order to place a prescription drug on the maximum allowable cost price list, the drug must be available for purchase by pharmacies in North Carolina from national or regional wholesalers, must not be obsolete, and must meet one of the following conditions:

1. The drug is listed as "A" or "B" rated in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book.
2. The drug has a "NR" or "NA" rating, or a similar rating, by a nationally recognized reference.

(b) A pharmacy benefits manager shall adjust or remove the maximum allowable cost price for a prescription drug to remain consistent with changes in the national marketplace for prescription drugs. A review of the maximum allowable cost prices for removal or modification shall be completed by the pharmacy benefits manager at least once every seven business days, and any removal or modification shall occur within seven business days of the review. A pharmacy benefits manager shall provide a means by which the contracted pharmacies may promptly review current prices in an electronic, print, or telephonic format within one business day of the removal or modification.

(c) A pharmacy benefits manager shall ensure that dispensing fees are not included in the calculation of maximum allowable cost price.

(d) A pharmacy benefits manager shall establish an administrative appeals procedure by which a contracted pharmacy or pharmacist, or a designee, may appeal the provider's reimbursement for a prescription drug subject to maximum allowable cost pricing if the amount of reimbursement for the drug is less than the net amount that the network provider paid to the suppliers of the drug. The reasonable administrative appeal procedure must include all of the following:

1. A dedicated telephone number and email address or website for the purpose of submitting administrative appeals.
2. The ability to submit an administrative appeal regarding the pharmacy benefits plan or program directly to the pharmacy benefits manager or through a pharmacy service administrative organization if the pharmacy service administrative organization has a contract with the pharmacy benefits manager that allows for the submission of appeals.
(3) No less than 10 calendar days after the applicable prescription fill date to file an administrative appeal.

(4) A period of no more than 10 calendar days after receipt of notice of the filing of the administrative appeal by the pharmacy benefits manager for a decision to be made on the appeal.

(5) A requirement that if an appeal is upheld, then, within 10 calendar days of the decision, the pharmacy benefits manager shall take all of the following actions:
   a. Notify the appellant of the decision.
   b. Apply the change in the maximum allowable cost effective as of the date the appeal was resolved and make the change effective for all similarly situated pharmacies or pharmacists, as defined by the payor subject to the Maximum Allowable Cost list.
   c. Permit the appellant to reverse and rebill the claim that was appealed.

(6) A requirement that if the appeal is denied, then, within 10 calendar days of the decision, the pharmacy benefits manager shall notify the appellant of the decision and provide all of the following information:
   a. The reason for denial.
   b. The National Drug Code number for the prescription drug that is the subject of the appeal.
   c. The names of the national or regional pharmaceutical wholesalers operating in the State.


(a) A pharmacy benefits manager shall not deny the right to any properly licensed pharmacist or pharmacy to participate in a network on the same terms and conditions of other participants in the network.

(b) A pharmacist or pharmacy that is a member of a pharmacy service administration organization that enters into a contract with a health benefit plan issuer or a pharmacy benefits manager on the pharmacy's behalf is entitled to receive from the pharmacy service administration organization a copy of the contract provisions applicable to the pharmacy, including each provision relating to the pharmacy's rights and obligations under the contract.

(c) Termination of a pharmacy or pharmacist from a pharmacy benefits manager network does not release the pharmacy benefits manager from the obligation to make any payment due to the pharmacy or pharmacist for pharmacist services properly rendered according to the contract.

This subsection does not apply in cases of fraud, waste, and abuse.

"§ 58-56A-20. Pharmacy benefits manager affiliate disclosure; sharing of data.

A pharmacy benefits manager shall not, in any way that is prohibited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), transfer or share records relative to prescription information containing patient-identifiable and prescriber-identifiable data to a pharmacy benefits manager affiliate.


(a) The Commissioner may make an examination of the affairs of any pharmacy benefits manager pursuant to the services that it provides for an insurer or a health benefit plan that are relevant to determining if the pharmacy benefits manager is in compliance with this Article. When making an examination, the Commissioner may retain attorneys, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The pharmacy benefits manager shall bear the cost of retaining those persons.

(b) Pending, during, and after the examination of any pharmacy benefits manager, the Commissioner shall not make public the information or data acquired, and the information or data acquired during an examination is considered proprietary and confidential and is not a public record under Chapter 132 of the General Statutes.
(c) Violations of this Article are subject to the penalties under G.S. 58-56A-30. After notice and hearing, a pharmacy benefits manager may also be subject to revocation of, or a refusal to renew, a license to operate in this State as a result of violations of this Article.

(a) Whenever the Commissioner has reason to believe that a pharmacy benefits manager has violated any of the provisions of this Article with such frequency as to indicate a general business practice, the Commissioner may, after notice and opportunity for a hearing, proceed under the appropriate subsections of this section.
(b) If, under subsection (a) of this section, the Commissioner finds a violation of this Article, the Commissioner may order the payment of a monetary penalty as provided in subsection (c) of this section or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsections (d) and (e) of this section, or both. Each day during which a violation occurs constitutes a separate violation.
(c) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (b) of this section, the penalty shall not be less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) per day for each prescription drug resulting from the pharmacy benefit manager's failure to comply with G.S. 58-56A-5. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.
(d) Upon petition of the Commissioner to the court pursuant to subsection (b) of this section, the court may order the pharmacy benefits manager who committed a violation specified in subsection (b) of this section under this Article to make restitution in an amount that would make whole any pharmacist harmed by the violation. The petition may be made at any time and also in any appeal of the Commissioner's order.
(e) Upon petition of the Commissioner to the court pursuant to subsection (b) of this section, the court may order the pharmacy benefits manager who committed a violation specified in subsection (b) of this section under this Article to make restitution to the Department for expenses under subsection (f) of this section, incurred in the investigation, hearing, and any appeals associated with the violation in such amount that would reimburse the agency for the expenses. The petition may be made at any time and also in any appeal of the Commissioner's order.
(f) The Commissioner may contract with consultants and other professionals with relevant expertise as necessary and appropriate to conduct investigation, hearing, and appeals activities as provided in this section. Such contracts shall not be subject to G.S. 114-2.3, G.S. 147-17, or Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with rules and procedures adopted under those Articles concerning procurement, contracting, and contract review.
(g) Nothing in this section prevents the Commissioner from negotiating a mutually acceptable agreement with any pharmacy benefits manager as to any civil penalty or restitution.
(h) Unless otherwise specifically provided for, all administrative proceedings under this Article are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's orders under this section shall be governed by G.S. 58-2-75.

The Commissioner shall adopt rules to implement the provisions of this Article.

SECTION 2. G.S. 58-2-40(5) reads as rewritten:
"(5) Report in detail to the Attorney General any violations of the laws relative to pharmacy benefits managers, insurance companies, associations, orders and bureaus or the business of insurance; and the Commissioner may institute civil actions or criminal prosecutions either by the Attorney General or another attorney whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter."

SECTION 3. G.S. 58-56-2 reads as rewritten:

The following definitions apply in this Article:

…

(5) Third party administrator. A person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State, or residents of another state from offices in this State, in connection with life or health insurance or annuities, except any of the following:

…

m. A pharmacy benefits manager licensed under Article 56A of this Chapter.

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SECTION 4. This act becomes effective October 1, 2021, and applies to any contracts entered into, renewed, or amended on or after that date.