

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

FILED SENATE
Mar 11, 2021
S.B. 257
PRINCIPAL CLERK

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SENATE BILL DRS15118-MRF-72A

Short Title: Medication Cost Transparency Act. (Public)

Sponsors: Senators Perry, Britt, and Johnson (Primary Sponsors).

Referred to:

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

6 The General Assembly of North Carolina enacts:

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

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

10 "Article 56A.

11 "Pharmacy Benefits Management.

12 **"§ 58-56A-1. Definitions.**

13 The following definitions apply in this Article:

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

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

20 a. Receiving payments for pharmacist services.

21 b. Making payments to pharmacists or pharmacies for pharmacist
22 services.

23 ~~(1)(3)~~ Health benefit plan. – As defined in ~~G.S. 58-50-110(11)~~. This definition
24 specifically excludes the State Health Plan for Teachers and State
25 Employees. ~~G.S. 58-3-167.~~

26 ~~(1a)(4)~~ Insured. – An individual covered by a health benefit plan.

27 ~~(2)(5)~~ Insurer. – Any entity that provides or offers a health benefit plan.

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

31 ~~(3)(7)~~ Maximum allowable cost price. – The maximum ~~per unit reimbursement for~~
32 amount that a pharmacy benefits manager will reimburse a pharmacy for the
33 cost of generic or multiple source prescription drugs, medical products, or
34 devices.



- 1 (8) Out-of-pocket costs. – With respect to the acquisition of a drug, the amount to
2 be paid by the insured under the plan or coverage, including any cost-sharing,
3 copayment, coinsurance, or deductible.
- 4 (9) Pharmacy services administration organization (PSAO). – An entity operating
5 within the State that contracts with independent pharmacies to conduct
6 business on their behalf with third-party payers. PSAOs provide
7 administrative services to pharmacies and negotiate and enter into contracts
8 with third-party payers or pharmacy benefits managers on behalf of
9 pharmacies. A person or entity is a PSAO under this Article if it performs one
10 or more of the following administrative services to pharmacies:
- 11 a. Assistance with claims.
12 b. Assistance with audits.
13 c. Centralized payment.
14 d. Certification in specialized care programs.
15 e. Compliance support.
16 f. Setting flat fees for generic drugs.
17 g. Assistance with store layout.
18 h. Inventory management.
19 i. Marketing support.
20 j. Management and analysis of payment and drug dispensing data.
21 k. Provision of services for retail cash cards.
- 22 ~~(3a)~~(10) Pharmacist. – A person licensed to practice pharmacy under Article 4A of
23 Chapter 90 of the General Statutes.
- 24 (11) Pharmacist services. – Products, goods, or services provided as a part of the
25 practice of pharmacy.
- 26 ~~(4)~~(12) Pharmacy. – A pharmacy registered with the North Carolina Board of
27 Pharmacy.
- 28 ~~(5)~~(13) Pharmacy benefits manager. – An entity who contracts with a pharmacy on
29 behalf of an insurer or third-party administrator to administer or manage
30 prescription drug ~~benefits.~~ benefits to perform any of the following functions:
- 31 a. Negotiating rebates with manufacturers for drugs paid for or procured
32 as described in this Article.
33 b. Processing claims for prescription drugs or medical supplies or
34 providing retail network management for pharmacies or pharmacists.
35 c. Paying pharmacies or pharmacists for prescription drugs or medical
36 supplies.
- 37 (14) Pharmacy benefits manager affiliate. – A pharmacy or pharmacist that directly
38 or indirectly, through one or more intermediaries, owns or controls, is owned
39 or controlled by, or is under common ownership or control with a pharmacy
40 benefits manager.
- 41 ~~(6)~~(15) Third-party administrator. – As defined in G.S. 58-56-2.

42 "**§ 58-56A-2. Licensure.**

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

46 (b) The Commissioner shall develop an application for licensure to operate in this State
47 as a pharmacy benefits manager and may charge an initial application fee of two thousand dollars
48 (\$2,000) and an annual renewal fee of one thousand five hundred dollars (\$1,500). The pharmacy
49 benefits manager application form must collect only the following information:

- 50 (1) The name, address, and telephone contact number of the pharmacy benefits
51 manager.

- 1 (2) The name and address of the pharmacy benefits manager's agent for service
2 of process in this State.
- 3 (3) The name and address of each person with management or control over the
4 pharmacy benefits manager.
- 5 (4) The name and address of each person with a beneficial ownership interest in
6 the pharmacy benefits manager.
- 7 (5) Either (i) a signed statement that, to the best of the applicant's knowledge, no
8 officer with management or control of the pharmacy benefits manager has
9 been convicted of a felony or has violated any requirement of State or federal
10 law applicable to pharmacy benefits management or (ii) a description of any
11 felony or any violation of any requirement of State or federal law applicable
12 to pharmacy benefits management committed by any officer with
13 management or control of the pharmacy benefits manager.

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

17 **"§ 58-56A-3. Consumer protections.**

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

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

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

- 29 (1) The fee will be charged.
- 30 (2) The fee may not be reimbursed by the health benefit plan, insurer, or pharmacy
31 benefits manager.
- 32 (3) The charge is specifically agreed to by the health benefit plan or pharmacy
33 benefits manager.

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

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

38 ~~(e) The Department shall report to the Attorney General any violations of this section or~~
39 ~~G.S. 58-56A-4 in accordance with G.S. 58-2-40(5).~~

40 **"§ 58-56A-4. Pharmacy and pharmacist protections.**

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

49 (b) Nothing in this Article shall abridge the right of a pharmacist to refuse to fill or refill
50 a prescription if the pharmacist believes it would be harmful to the patient or is not in the patient's
51 best interest, or if there is a question to the validity of the prescription.

1 (c) A pharmacy or pharmacist shall not be prohibited or in any way restricted by a
2 pharmacy benefits manager from dispensing any prescription drug, including specialty drugs
3 dispensed by a credentialed and accredited pharmacy, allowed to be dispensed under a license to
4 practice pharmacy under Article 4A of Chapter 90 of the General Statutes.

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

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

10 (1) The original claim was submitted fraudulently.

11 (2) The original claim payment was incorrect because the pharmacy or pharmacist
12 had already been paid for the pharmacist services.

13 (3) The pharmacist services were not rendered by the pharmacy or pharmacist.

14 (4) The adjustments were agreed to by the pharmacy or pharmacist.

15 (5) The adjustments were part of an attempt to limit overpayment recovery efforts
16 by a pharmacy benefits manager.

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

19 **"§ 58-56A-5. Maximum allowable cost price.**

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

23 (1) The drug is listed as "A" or "B" rated in the most recent version of the United
24 States Food and Drug Administration's Approved Drug Products with
25 Therapeutic Equivalence Evaluations, also known as the Orange Book.

26 (2) The drug has a "NR" or "NA" rating, or a similar rating, by a nationally
27 recognized reference.

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

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

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

44 (1) A dedicated telephone number and email address or website for the purpose
45 of submitting administrative appeals.

46 (2) The ability to submit an administrative appeal regarding the pharmacy
47 benefits plan or program directly to the pharmacy benefits manager or through
48 a pharmacy service administrative organization if the pharmacy service
49 administrative organization has a contract with the pharmacy benefits
50 manager that allows for the submission of appeals.

- 1 (3) No less than 10 calendar days after the applicable prescription fill date to file
2 an administrative appeal.
- 3 (4) A period of no more than 10 calendar days after receipt of notice of the filing
4 of the administrative appeal by the pharmacy benefits manager for a decision
5 to be made on the appeal.
- 6 (5) A requirement that if an appeal is upheld, then, within 10 calendar days of the
7 decision, the pharmacy benefits manager shall take all of the following
8 actions:
- 9 a. Notify the appellant of the decision.
- 10 b. Apply the change in the maximum allowable cost effective as of the
11 date the appeal was resolved and make the change effective for all
12 similarly situated pharmacies or pharmacists, as defined by the payor
13 subject to the Maximum Allowable Cost list.
- 14 c. Permit the appellant to reverse and rebill the claim that was appealed.
- 15 (6) A requirement that if the appeal is denied, then, within 10 calendar days of the
16 decision, the pharmacy benefits manager shall notify the appellant of the
17 decision and provide all of the following information:
- 18 a. The reason for denial.
- 19 b. The National Drug Code number for the prescription drug that is the
20 subject of the appeal.
- 21 c. The names of the national or regional pharmaceutical wholesalers
22 operating in the State.

23 **"§ 58-56A-15. Pharmacy benefits manager networks.**

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

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

32 (c) Termination of a pharmacy or pharmacist from a pharmacy benefits manager network
33 does not release the pharmacy benefits manager from the obligation to make any payment due to
34 the pharmacy or pharmacist for pharmacist services properly rendered according to the contract.
35 This subsection does not apply in cases of fraud, waste, and abuse.

36 **"§ 58-56A-20. Pharmacy benefits manager affiliate disclosure; sharing of data.**

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

41 **"§ 58-56A-25. Enforcement.**

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

48 (b) Pending, during, and after the examination of any pharmacy benefits manager, the
49 Commissioner shall not make public the information or data acquired, and the information or
50 data acquired during an examination is considered proprietary and confidential and is not a public
51 record under Chapter 132 of the General Statutes.

1 (c) Violations of this Article are subject to the penalties under G.S. 58-56A-30. After
2 notice and hearing, a pharmacy benefits manager may also be subject to revocation of, or a refusal
3 to renew, a license to operate in this State as a result of violations of this Article.

4 "**§ 58-56A-30. Civil Penalties for violations; administrative procedure.**

5 (a) Whenever the Commissioner has reason to believe that a pharmacy benefits manager
6 has violated any of the provisions of this Article with such frequency as to indicate a general
7 business practice, the Commissioner may, after notice and opportunity for a hearing, proceed
8 under the appropriate subsections of this section.

9 (b) If, under subsection (a) of this section, the Commissioner finds a violation of this
10 Article, the Commissioner may order the payment of a monetary penalty ~~as provided in~~
11 ~~subsection (c) of this section~~ or petition the Superior Court of Wake County for an order directing
12 payment of restitution as provided in subsections (d) and (e) of this section, or both. Each day
13 during which a violation occurs constitutes a separate violation.

14 (c) If the Commissioner orders the payment of a monetary penalty pursuant to subsection
15 (b) of this section, the penalty shall not be less than one hundred dollars (\$100.00) nor more than
16 one thousand dollars (\$1,000) per day for each prescription drug resulting from the pharmacy
17 benefit manager's failure to comply with G.S. 58-56A-5. In determining the amount of the
18 penalty, the Commissioner shall consider the degree and extent of harm caused by the violation,
19 the amount of money that inured to the benefit of the violator as a result of the violation, whether
20 the violation was committed willfully, and the prior record of the violator in complying or failing
21 to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty
22 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
23 Payment of the civil penalty under this section shall be in addition to payment of any other
24 penalty for a violation of the criminal laws of this State.

25 (d) Upon petition of the Commissioner to the court pursuant to subsection (b) of this
26 section, the court may order the pharmacy benefits manager who committed a violation ~~specified~~
27 ~~in subsection (b) of this section under this Article~~ to make restitution in an amount that would
28 make whole any pharmacist harmed by the violation. The petition may be made at any time and
29 also in any appeal of the Commissioner's order.

30 (e) Upon petition of the Commissioner to the court pursuant to subsection (b) of this
31 section, the court may order the pharmacy benefits manager who committed a violation ~~specified~~
32 ~~in subsection (b) of this section under this Article~~ to make restitution to the Department for
33 expenses under subsection (f) of this section, incurred in the investigation, hearing, and any
34 appeals associated with the violation in such amount that would reimburse the agency for the
35 expenses. The petition may be made at any time and also in any appeal of the Commissioner's
36 order.

37 (f) The Commissioner may contract with consultants and other professionals with
38 relevant expertise as necessary and appropriate to conduct investigation, hearing, and appeals
39 activities as provided in this section. ~~Such~~ ~~These~~ contracts shall not be subject to G.S. 114-2.3,
40 G.S. 147-17, or Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with rules
41 and procedures adopted under those Articles concerning procurement, contracting, and contract
42 review.

43 (g) Nothing in this section prevents the Commissioner from negotiating a mutually
44 acceptable agreement with any pharmacy benefits manager as to any civil penalty or restitution.

45 (h) Unless otherwise specifically provided for, all administrative proceedings under this
46 Article are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's
47 orders under this section shall be governed by G.S. 58-2-75.

48 "**§ 58-56A-45. Rules.**

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

50 **SECTION 2.** G.S. 58-2-40(5) reads as rewritten:

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

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

8 "**§ 58-56-2. Definitions.**

9 The following definitions apply in this Article:

10 ...
11 (5) Third party administrator. A person who directly or indirectly solicits or
12 effects coverage of, underwrites, collects charges or premiums from, or
13 adjusts or settles claims on residents of this State, or residents of another state
14 from offices in this State, in connection with life or health insurance or
15 annuities, except any of the following:

16 ...
17 m. A pharmacy benefits manager licensed under Article 56A of this
18 Chapter.

19 "

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