

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 246

Short Title: Revise Pharmacy Benefits Manager Provisions. (Public)

Sponsors: Representatives Sasser, Bell, Blackwell, and Humphrey (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Health, if favorable, Insurance, if favorable, Rules, Calendar, and Operations of
the House

March 2, 2023

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE USE OF SPREAD PRICING, FEES, AND REBATES BY
PHARMACY BENEFITS MANAGERS, TO ESTABLISH UNIFORM STANDARDS FOR
ACCREDITATION, TO CLARIFY A HEALTH BENEFIT PLAN BENEFICIARY'S
RIGHT TO A PHARMACY OF CHOICE, TO CLARIFY THE APPLICATION OF THE
PHARMACY BENEFITS MANAGER COPAYMENT ACCUMULATOR PROVISION,
AND TO STRENGTHEN THE PROTECTIONS PROVIDED TO PHARMACIES
DURING AUDITS.

The General Assembly of North Carolina enacts:

**PART I. LIMIT THE USE OF SPREAD PRICING, FEES, AND REBATES BY
PHARMACY BENEFITS MANAGERS AND ESTABLISH UNIFORM STANDARDS
FOR ACCREDITING SPECIALTY PHARMACIES**

SECTION 1.1. G.S. 58-56A-1 reads as rewritten:

"§ 58-56A-1. Definitions.

The following definitions apply in this Article:

...

(9a) National average drug acquisition cost. – The approximate invoice price
pharmacies pay for prescription medications in the United States, as calculated
by the federal Centers for Medicare and Medicaid Services and published
monthly on its website. If the national average drug acquisition cost is not
available at the time a drug is administered or dispensed, the national drug
acquisition cost is the wholesale acquisition cost of the drug, as defined in
Subchapter XIX, Chapter 7 of Title 42 of the United States Code.

...

(16a) Specialty drug. – Either of the following:

- a. A medication that is subject to restricted distribution by the United States Food and Drug Administration.
- b. A medication used to treat complex or chronic conditions that requires special handling, provider coordination, or patient education.

(16b) Specialty pharmacy accreditation. – Affirmation that a pharmacist or
pharmacy is capable of meeting the requirements applicable to specialty drugs
provided by any of the following independent bodies:

- a. The Utilization Review Accreditation Commission.



* H 2 4 6 - V - 1 *

b. Accreditation Commission for Health Care, Inc.

c. The Joint Commission.

...."

SECTION 1.2. G.S. 58-56A-4 reads as rewritten:

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

(a) ~~A pharmacy benefits manager may only charge fees 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. A pharmacy benefits manager shall not charge a pharmacist or pharmacy a fee related to the adjudication of a claim.~~

(a1) A pharmacy benefits manager shall not do any of the following:

(1) Reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the national average drug acquisition cost for the prescription drug or pharmacy service at the time the drug is administered or dispensed, plus a professional dispensing fee. For purposes of this subsection, a professional dispensing fee means an amount equal to or higher than the fee-for-service professional drug dispensing fee calculated using the reimbursement methodology described in the North Carolina Medicaid State Plan.

(2) Reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the amount the pharmacy benefits manager reimburses itself or an affiliate for the same prescription drug or pharmacy.

(3) Base pharmacy reimbursement on patient outcomes, scores, or metrics.

(4) Impose a point-of-sale or retroactive fee on a pharmacist, pharmacy, or insured.

(5) Derive any revenue from a pharmacist, pharmacy, or insured in connection with performing pharmacy benefits management services.

(6) Receive deductibles or copayments.

...

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

(c1) A pharmacy or pharmacist shall not be prohibited by a pharmacy benefits manager from dispensing any specialty drug allowed to be dispensed under a license to practice pharmacy under Article 4A of Chapter 90 of the General Statutes if the pharmacist or pharmacy obtains specialty pharmacy accreditation.

...

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

...

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

...

1 (g) The provisions of Article 4C of Chapter 90 of the General Statutes apply to an audit
2 of a pharmacy or pharmacist conducted by a pharmacy benefits manager, insurer, or third-party
3 administrator and are enforceable by the Commissioner pursuant to G.S. 58-56A-25."

4 **SECTION 1.3.** Article 56A of Chapter 58 of the General Statutes is amended by
5 adding a new section to read:

6 **"§ 58-56A-6. Protection against spread pricing.**

7 A pharmacy benefits manager shall not charge an insurer offering a health benefit plan a price
8 for prescription drugs that differs from the amount the pharmacy benefits manager directly or
9 indirectly pays the pharmacy or pharmacist for providing pharmacist services."

10 **SECTION 1.4.** G.S. 58-56A-15 reads as rewritten:

11 **"§ 58-56A-15. Pharmacy benefits manager networks.**

12 (a) A pharmacy benefits manager shall ~~not~~ not (i) deny the right to any properly licensed
13 pharmacist or pharmacy to participate in a retail pharmacy network on the same terms and
14 conditions of other similarly situated participants in the network, (ii) deny the right to
15 any properly licensed pharmacist or pharmacy with specialty drug accreditation to participate in
16 a retail pharmacy network that dispenses specialty drugs on the same terms and conditions of
17 other similarly situated participants in the network, or (iii) require multiple specialty pharmacy
18 accreditations as a prerequisite for participation in a retail pharmacy network that dispenses
19 specialty drugs.

20 ...

21 (b1) A pharmacy benefits manager shall not charge a pharmacist or pharmacy a fee related
22 to participation in a retail pharmacy network.

23 "

24 **SECTION 1.5.** Article 56A of Chapter 58 of the General Statutes is amended by
25 adding a new section to read:

26 **"§ 58-56A-22. Reporting.**

27 (a) Effective April 1, 2025, and quarterly thereafter, every licensed pharmacy benefits
28 manager shall file a report with the Commissioner that contains the following information:

29 (1) The aggregate wholesale acquisition costs from manufacturers or wholesale
30 distributors for each therapeutic category of drugs for each health benefit plan
31 offered in this State contracting with the pharmacy benefits manager, net of
32 rebates and other fees and payments, direct or indirect, from all sources.

33 (2) The aggregate rebates that the pharmacy benefits manager received from all
34 manufacturers for each health benefit plan offered in this State contracting
35 with the pharmacy benefits manager. The aggregate amount of rebates must
36 include any utilization discounts the pharmacy benefits manager receives from
37 a manufacturer or wholesale distributor.

38 (3) The aggregate amount of all fees and rebates that the pharmacy benefits
39 manager received.

40 (4) All rebates received by the pharmacy benefits manager from all manufacturers
41 that were not passed on to the pharmacy benefits manager's clients.

42 (b) For purposes of this section, a rebate does not include a bona fide service or
43 administrative fee.

44 (c) The information contained in the report required by subsection (a) of this section shall
45 be confidential by law and privileged, shall not be considered a public record under either
46 G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall
47 not be subject to discovery or admissible in evidence in any private civil action. The
48 Commissioner is authorized to use this information in the furtherance of any regulatory or legal
49 action brought as a part of the Commissioner's official duties.

50 (d) Effective August 1, 2025, and annually thereafter, the Commissioner shall prepare a
51 report based on the information received under subsection (a) of this section. The report shall

1 aggregate data and shall not contain information that would cause financial, competitive, or
 2 proprietary harm to any individual pharmacy benefits manager. The Commissioner shall post the
 3 report required by this subsection on the Department's website."
 4

5 **PART II. CLARIFY HEALTH BENEFIT PLAN BENEFICIARY'S RIGHT TO A**
 6 **PHARMACY OF CHOICE AND CLARIFY APPLICATION OF PHARMACY**
 7 **BENEFITS MANAGER COPAYMENT ACCUMULATOR PROVISION**

8 **SECTION 2.1.** G.S. 58-51-37 reads as rewritten:

9 **"§ 58-51-37. Pharmacy of choice.**

10 (a) This section shall apply to all health benefit plans providing pharmaceutical services
 11 benefits, including prescription drugs, to any resident of North Carolina. This section shall also
 12 apply to insurance companies and health maintenance organizations that provide or administer
 13 coverages and benefits for prescription drugs. This section shall apply to pharmacy benefits
 14 managers with respect to 340B covered entities and 340B contract pharmacies, as defined in
 15 G.S. 58-56A-1. ~~This section shall not apply to any entity that has its own facility, employs or~~
 16 ~~contracts with physicians, pharmacists, nurses, and other health care personnel, and that~~
 17 ~~dispenses prescription drugs from its own pharmacy to its employees and to enrollees of its health~~
 18 ~~benefit plan; provided, however, this section shall apply to an entity otherwise excluded that~~
 19 ~~contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and~~
 20 ~~services. This section shall not apply to any federal program, program or clinical trial program,~~
 21 ~~hospital or other health care facility licensed pursuant to Chapter 131E or Chapter 122C of the~~
 22 ~~General Statutes, when dispensing prescription drugs to its patients.~~program.

23 ...

24 (c) The terms of a health benefit plan shall ~~not~~not do any of the following:

25 ...

26 (7) Impose upon a beneficiary any copayment, amount of reimbursement, number
 27 of days of a drug supply for which reimbursement will be allowed, or any
 28 other payment or condition relating to purchasing pharmacy services,
 29 including prescription drugs, from any pharmacy that is more costly or more
 30 restrictive than that which would be imposed upon the beneficiary if such
 31 services were purchased from a mail-order pharmacy or any other pharmacy
 32 that is willing to provide the same services or products for the same cost and
 33 copayment as any mail order service.

34"

35 **SECTION 2.2.** G.S. 58-56A-3 reads as rewritten:

36 **"§ 58-56A-3. Consumer protections.**

37 ...

38 (a1) A pharmacy benefits manager shall not prohibit an insured's selection of a pharmacy
 39 or pharmacist with respect to any pharmacy or pharmacist that has agreed to participate in the
 40 health benefit plan according to the terms offered by the insurer.

41 ...

42 (c1) When calculating an insured's contribution to any out-of-pocket maximum,
 43 deductible, copayment, coinsurance, or other applicable cost-sharing requirement, the insurer or
 44 pharmacy benefits manager shall include any amounts paid by the insured, or on the insured's
 45 behalf, for a prescription that is either:

- 46 (1) Without an AB-rated generic equivalent.
- 47 (2) With an AB-rated generic equivalent if the insured has obtained authorization
 48 for the drug through any of the following:
 - 49 a. Prior authorization from the insurer or pharmacy benefits manager.
 - 50 b. A step therapy protocol.

c. The exception or appeal process of the insurer or pharmacy benefits manager.

This subsection shall not apply to an insured covered by a high deductible health plan, as that term is defined in section 223 of the Internal Revenue Code, if its application would render the insured ineligible for a health savings account under section 223 unless (i) the insured has satisfied the minimum deductible under section 223 or (ii) the prescription qualifies as preventative care under section 223.

...."

SECTION 2.3. G.S. 58-56A-50(c) is repealed.

PART III. STRENGTHEN PHARMACY AUDIT PROTECTIONS

SECTION 3.1. G.S. 90-85.50 reads as rewritten:

"§ 90-85.50. Declaration of pharmacy rights during audit.

(a) The following definitions apply in this Article:

(1) "Pharmacy" means a Pharmacy. – A person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21A.

(2) "Responsible party" means the Responsible party. – The entity responsible for payment of claims for health care services other than (i) the individual to whom the health care services were rendered or (ii) that individual's guardian or legal representative.

(b) Notwithstanding any other provision of law, whenever a managed care company, insurance company, third-party payer, or any entity that represents a responsible party conducts an audit of the records of a pharmacy, the pharmacy has a right to all of the following:

...

(8) If an audit is conducted for a reason other than described in subdivision (6) of this subsection, the audit is limited to 100 selected prescriptions-25 total prescriptions, including refills.

(9) If an audit reveals the necessity for a review of additional claims, ~~to have then~~ the pharmacy may request the audit be conducted on site-site and is entitled to written notice of the basis of the claims, including a specific description of any suspected fraud or abuse, at least 14 days prior to any additional audit.

...."

SECTION 3.2. G.S. 90-85.52 reads as rewritten:

"§ 90-85.52. Pharmacy audit recoupments.

...

(a1) Prior to any recoupment, the entity conducting the audit shall provide the pharmacy with a summary describing the total recoupment amount and the date on which the recoupment will be assessed. This summary shall be accompanied by payment summaries or electronic remittance advices documenting any disputed funds, charges, or other penalties.

...."

PART IV. EFFECTIVE DATE

SECTION 4.1. This act becomes effective October 1, 2023, and applies to contracts issued, renewed, or amended on or after that date.