SENATE BILL 257:
Medication Cost Transparency Act.

2021-2022 General Assembly

Committee:	House Health. If favorable, re-refer to Rules, Calendar, and Operations of the House	**Date:**	August 13, 2021
Introduced by:	Sens. Perry, Britt, Johnson	**Prepared by:**	Jason Moran-Bates* Committee Staff
Analysis of:	PCS to Third Edition S257-CSBC-38		

OVERVIEW: The PCS to Senate Bill 257 would require pharmacy benefits managers (PBMs) to be licensed. It would add to the consumer protections in G.S. 58-56A-3, restrict PBMs from prohibiting pharmacies from taking certain actions, and establish rules for claim overpayments and PBM networks. PBMs and health benefit plans would be required to provide coverage for biosimilars and credit all amounts paid on behalf of insureds toward cost-sharing requirements. The bill would also increase the Commissioner's ability to take enforcement action against PBMs.

The differences between the Third Edition and the PCS are underlined below.

BILL ANALYSIS:

Section 1.(a) would recodify G.S. 58-56A-10 as G.S. 58-56A-30.

Section 1.(b) would make several changes, including the addition of new sections, to Article 56A.

- **G.S. 58-56A-1. Definitions**, an existing section, would add new definitions for "340B contract pharmacy," "340B covered entity," "biosimilar," "claim," "claims processing service," "maximum allowable cost list," "other prescription drug or device," "out-of-pocket costs," "pharmacist services," "pharmacy benefits manager affiliate," "pharmacy services administration organization." The existing definition of "health benefit plan" would be referenced to a different statute, but the State Health Plan would remain excluded from the definition.
- **G.S. 58-56A-2. Licensure**, a new section, would prohibit PBMs from operating without a license. The initial application fee would be $2,000, and annual renewal fees would be $1,500. Applicants would have to provide corporate and financial documents to the Department of Insurance as part of the application process.
- **G.S. 58-56A-3. Consumer protections**, an existing section, would be amended to extend its current consumer protection provisions. Under the new language, PBMs could not prohibit pharmacies from (i) charging a shipping and handling fee for mailed prescriptions, as long as the insured is notified about the fee, (ii) delivering appropriate health care information to insureds, (iii) discussing cost information and selling more affordable alternatives, and (iv) disclosing information to the Commissioner of Insurance. PBMs would not be able to collect a copay that was more than the total charges submitted to the PBM by the pharmacy or the uninsured, cash-pay price of the drug. Amounts credited toward copays or out-of-pocket maximums must include any amounts paid on behalf of an insured, to the greatest extent allowable under federal law.

- **G.S. 58-56A-4 Pharmacy and pharmacist protections**, an existing section, would be extensively amended. It would:
    - Prohibit PBMs from charging fees not on the remittance form or agreed to in advance by then pharmacy.
    - Allow pharmacists to refuse to fill prescriptions if they believed the prescription was not in the patient's best interest, or if there were a question about the validity of the prescription.
    - PBMs would be prohibited from preventing pharmacies from dispensing any drug, including specialty drugs, from retaliating against pharmacies, and from engaging in a pattern of reimbursing independent pharmacies less that the National Drug Average Acquisition Cost.
    - Retroactive denials or reductions of paid claims would be prohibited in most circumstances.
    - PBMs would retain the right to recover overpayments.
- **G.S. 58-56A-5. Maximum allowable cost price**, an existing section, would be amended to prohibit PBMs from including dispensing fees in the maximum allowable cost price. PBMs would be required to establish a procedure for pharmacies to appeal PBMs' reimbursement decisions and to update their maximum allowable cost list in certain circumstances.
- **G.S. 58-56A-6. Biosimilar coverage**, a new section, would require health benefit plans and PBMs that authorize coverage for a drug to also authorize coverage for any biosimilar product. The health benefit plans and PBMs would be prohibited from requiring a reference drug to be dispensed in place of a biosimilar.
- **G.S. 58-56A-10. Obtaining medications from an intermediary**, a new section, would prohibit PBMs from requiring drugs to be obtained through an intermediary in most circumstances.
- **G.S. 58-56A-15. Pharmacy benefits manager networks**, a new section, would create new rules for PBM networks.
    - PBMs would be prohibited from changing the in-network list of pharmacies without the written consent of the insurer or the insured.
    - All network pharmacies must be able to participate on the same terms, without benefit differentials.
    - In-network participation could not be conditioned on pharmacy certification standards more stringent than those allowed under State or federal law.
    - Pharmacies that are members of pharmacy service administration organizations that enter into contracts with PBMs would be entitled to receive a copy of the contract provisions applicable to the pharmacy.
    - Payments due a pharmacy must be paid even if the pharmacy is terminated from the network.
- **G.S. 58-56A-20. Pharmacy benefits manager affiliate disclosure; sharing of data**, a new section, would prevent PBMs from sharing information in a manner that violated HIPAA.
- **G.S. 58-56A-21. Claims data provided to health benefit plans**, a new section, would require PBMs to provide claims and payment data to insurers.

- **G.S. 58-56A-25. Enforcement**, a new section, would allow the Commissioner to examine the affairs of any PBM. The Commissioner could retain the professionals necessary to conduct the exam, and PBMs would bear the cost of the examinations. None of the information disclosed during the examination would be a public record under Chapter 132. Violations of Article 56A would be subject to penalties, including revocation of licensure.
- **G.S. 58-56A-30. Civil Penalties for violations; administrative procedure**, an existing section, would be amended to allow the Commissioner to petition a court to compel a PBM to pay restitution to (i) pharmacies harmed by the PBM's violation of Article 56A or (ii) the Department of Insurance.
- **G.S. 58-56A-45. Rules**, a new section, would give the Commission the power to adopt rules necessary to implement the provisions of Article 56A.
- **G.S. 58-56A-50. Contracts with 340B covered entities**, a new section, would prohibit contracts between PBMs and 340B entities and their contracted pharmacies from conditioning reimbursement, fees, chargebacks, or other adjustments on the entities' participation in the 340B drug discount program. PBMs would not be allowed to discriminate against 304B entities or their contracted pharmacies in any way that interferes with the right of individuals to use in-network pharmacies of their choice. The pharmacy of choice provisions of G.S. 58-51-37 would apply to PBMs with respect to 340B entities.

Sections 2 and 3 of the bill would make conforming changes to G.S. 58-2-40 (the powers of the Commissioner of Insurance) and G.S. 58-56-2 (third party administrator definitions), respectively.

EFFECTIVE DATE: The bill would be effective October 1, 2021, and apply to contracts entered into, renewed, or amended on or after that date.

BACKGROUND: The 340B drug discount program requires drug manufacturers to enter into a pricing agreement for certain drugs with the federal Department of Health and Human Resources in exchange for Medicaid and Medicare Part B covering those drugs. The agreements establish front end discounts on outpatient drugs purchased by healthcare providers listed in the federal statute.

**Amy Darden and Kristen Harris of the Legislative Analysis Division substantially contributed to this summary.*