



# HOUSE BILL 534: NC Pharmacy Benefits Manager Licensure Act.

2019-2020 General Assembly

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<b>Committee:</b>	House Insurance. If favorable, re-refer to Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	April 30, 2019
<b>Introduced by:</b>	Reps. Sasser, Murphy, Lewis, Bell	<b>Prepared by:</b>	Jason Moran-Bates Committee Staff
<b>Analysis of:</b>	PCS to First Edition H534-CSBCf-17		

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**OVERVIEW:** *The Proposed Committee Substitute to House Bill 534 would require pharmacy benefits managers (PBMs) to be licensed. It would also add to the consumer protections in G.S. 58-56A-3, restrict PBMs from prohibiting pharmacies from taking certain actions, establish rules for claim overpayments and PBM networks. Finally, it would increase the Commissioner's ability to take enforcement action against PBMs.*

[As introduced, this bill was identical to S632, as introduced by Sens. Britt, Hise, Tillman, which is currently in Senate Rules and Operations of the Senate.]

**CURRENT LAW:** Article 56A of Chapter 58 governs pharmacy benefits managers (PBMs). Under current law, PBMs cannot prohibit pharmacies from discussing lower-cost drugs with patients, offering delivery to patients, or collecting a co-payment that exceeds the total charges for the drug. PBMs may only charge fees if they are disclosed in advance or are on a claim form. PBMs cannot place drugs on the maximum allowable cost price list unless they have an A, B, NR, or NA rating. The Insurance Commissioner is empowered to enforce Article 56A

**BILL ANALYSIS:** Section 1 would recodify G.S. 58-56A-10 as G.S. 58-56A-40.

Section 2 would make several changes, including the addition of new sections, to Article 56A.

- 58-56A-1, an existing section, would add new definitions for "claim," "claims processing service," "maximum allowable cost list," "other prescription drug or device services," "pharmacy services," and "pharmacy benefits manager affiliate."
- 58-56A-2, a new section, would prohibit PBMs from operating without a license. The application for licensure would require a PBM to disclose its contact information and information on its beneficial owners.
- 58-56A-3, an existing section, would be amended to extend its current consumer protection provisions. Under the new language, PBMs could not prohibit pharmacies from:
  - Disclosing health care information that is within a pharmacist's scope of practice.
  - Discussing information about the total cost of pharmacist services for a drug.
  - Selling a more affordable drug to an insured.
  - Disclosing information to the Commissioner during the course of an investigation.

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# House PCS 534

Page 2

The new provisions of this section would also prevent PBMs from requiring pharmacies to collect co-payments that exceed the lesser of (1) the total charges submitted by the pharmacy, (2) the contracted co-payment amount, or (3) the cash price of the drug.

Finally, the new language would prohibit PBMs from using deceptive advertising, requiring pharmacies to use PBM affiliates, and restricting insureds from using any in-network pharmacy.

- 58-56A-4, an existing section, would be amended to prevent PBMs from charging fees that were not apparent at the time of claim processing, not on the remittance advice of an adjudicated claim, or charged after the claim is adjudicated at the point of sale. It would also prohibit PBMs from using low reimbursements to undercut pharmacies in favor of PBM affiliates, requiring use of mail to fill prescriptions, or retaliating against pharmacies for exercising their rights under Article 56A. Finally, it would allow pharmacies to dispense any legal drug within the appropriate scope of practice, charge a shipping and handling fee for mailed prescriptions, and decline to provide services on behalf of a PBM.
- 58-56A-5, an existing section, would be amended to prohibit PBMs from reimbursing independent pharmacies at a rate consistently less than the amount of the National Drug Average Acquisition Cost and including dispensing fees in the maximum allowable cost price. It would also require PBMs to establish a process where pharmacies can appeal the reimbursement for a drug subject to maximum allowable cost pricing.
- 58-56A-15, a new section, would prevent claims from being retroactively denied or reduced, unless any of the following criteria are met:
  - The original claim was fraudulent.
  - The claim had already been paid.
  - The pharmacy did not render the services for which it was paid.
  - The pharmacy agreed to the retroactive denial or reduction.
- 58-56A-20, a new section, would create new rules for PBM networks.
  - PBMs could require different accreditation standards for different pharmacies, so long as they do not discriminate against independent pharmacies, and the standards are not more stringent than federal and State requirements.
  - All network pharmacies must be able to participate on the same terms, without benefit differentials.
  - Pay-for-performance networks must use a nationally-recognized entity used to aid performance measures.
  - Payments due a pharmacy must be paid even if the pharmacy is terminated from the network.
- 58-56A-25, a new section, would require PBMs to disclose to a health benefit plan the difference between the amount paid to a pharmacy and the amount charged to the health benefit plan. It would also restrict the sharing of confidential health information.
- 58-56A-30, a new section, would require PBMs to report information regarding rebates to the Commissioner.
- 58-56A-35, a new section, would allow the Commissioner to examine the books and records of a PBM and refer violations of this Article to the Attorney General.

# House PCS 534

*Page 3*

- 58-56A-40, an existing section, would be amended to allow the Commissioner to consider the extent of harm caused by a violation, the amount of money the PBM received as a result of a violation, the willfulness of a violation, and the PBM's prior record in determining the amount of a civil penalty.

**EFFECTIVE DATE:** The bill would be effective January 1, 2020, and apply to any contracts entered into on or after that date.