SENATE BILL 257:
Medication Cost Transparency Act.

2021-2022 General Assembly

Committee:	Senate Commerce and Insurance. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	May 19, 2021
Introduced by:	Sens. Perry, Britt, Johnson	**Prepared by:**	Jason Moran-Bates
Analysis of:	First Edition		Staff Attorney

OVERVIEW: 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. It would also increase the Commissioner's ability to take enforcement action against PBMs.

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 "claim," "claims processing service," "maximum allowable cost list," "out-of-pocket costs," "pharmacy services administration organization," "pharmacist services," and "pharmacy benefits manager affiliate." 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. This section would also establish procedures for the Department to deny license applications.
- **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 charging a shipping and handling fee for mailed prescriptions, as long as the insured is notified about the fee.
- **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, and from retaliating against pharmacies.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- 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 also be required to establish a procedure for pharmacies to appeal PBMs' reimbursement decisions.
- **G.S. 58-56A-15. Pharmacy benefits manager networks**, a new section, would create new rules for PBM networks.
  - All network pharmacies must be able to participate on the same terms, without benefit differentials.
  - 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-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.

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.

**Amy Darden, Staff Attorney, substantially contributed to this summary.*