

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

S

5

SENATE BILL 257  
Commerce and Insurance Committee Substitute Adopted 5/20/21  
Third Edition Engrossed 6/1/21  
House Committee Substitute Favorable 8/18/21  
Fifth Edition Engrossed 8/18/21

Short Title: Medication Cost Transparency Act.

(Public)

Sponsors:

Referred to:

March 15, 2021

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) 340B contract pharmacy. – Any pharmacy under contract with a 340B covered  
15 entity to dispense drugs on behalf of the 340B covered entity.  
16 (2) 340B covered entity. – Any entity defined in 42 U.S.C. § 256b(a)(4).  
17 (3) Biosimilar. – A BL type 351(k) biosimilar, as listed in the Purple Book  
18 published by the United States Food and Drug Administration.  
19 (4) Claim. – A request from a pharmacy or pharmacist to be reimbursed for the  
20 cost of filling or refilling a prescription for a drug or for providing a medical  
21 supply or device.  
22 (5) Claims processing service. – The administrative services performed in  
23 connection with the processing and adjudicating of claims relating to  
24 pharmacist services that include either or both of the following activities:  
25 a. Receiving payments for pharmacist services.  
26 b. Making payments to pharmacists or pharmacies for pharmacist  
27 services.  
28 ~~(1)(6) Health benefit plan.~~ – As defined in ~~G.S. 58-50-110(11).~~ ~~This definition~~  
29 ~~specifically excludes the State Health Plan for Teachers and State~~  
30 ~~Employees.~~ ~~G.S. 58-3-167.~~  
31 ~~(1a)(7) Insured.~~ – An individual covered by a health benefit plan.  
32 ~~(2)(8) Insurer.~~ – ~~Any entity that provides or offers a health benefit plan.~~ As defined  
33 under G.S. 58-3-167.



- 1           (9)    Maximum allowable cost list. – A listing of generic or multiple source drugs  
2           used by a pharmacy benefits manager to set the maximum allowable cost on  
3           which reimbursement of a pharmacy is made.
- 4           ~~(3)~~(10) Maximum allowable cost price. – The maximum ~~per unit reimbursement for~~  
5           amount that a pharmacy benefits manager will reimburse a pharmacy for the  
6           cost of generic or multiple source prescription drugs, medical products, or  
7           devices.
- 8           (11) Other prescription drug or device services. – Services provided, directly or  
9           indirectly, by a pharmacy benefits manager that are not claims processing  
10          services, but that may be offered in connection with or separate from claims  
11          processing services, including any of the following:
- 12          a.     Advertising or promoting services.  
13          b.     Disbursing or distributing rebates.  
14          c.     Designing prescription benefit programs.  
15          d.     Developing formularies.  
16          e.     Managing or participating in incentive programs or arrangements for  
17          pharmacist services.  
18          f.     Negotiating or entering into contractual arrangements with  
19          pharmacists, pharmacies, or both.  
20          g.     Negotiating rebates, discounts, or other financial incentives and  
21          arrangements with prescription drug companies.
- 22          (12) Out-of-pocket costs. – With respect to the acquisition of a drug, the amount to  
23          be paid by the insured under the plan or coverage, including any cost-sharing,  
24          copayment, coinsurance, or deductible.
- 25          ~~(3a)~~(13) Pharmacist. – A person licensed to practice pharmacy under Article 4A of  
26          Chapter 90 of the General Statutes.
- 27          (14) Pharmacist services. – Products, goods, or services provided as a part of the  
28          practice of pharmacy.
- 29          ~~(4)~~(15) Pharmacy. – A pharmacy registered with the North Carolina Board of  
30          Pharmacy.
- 31          ~~(5)~~(16) Pharmacy benefits manager. – An entity who contracts with a pharmacy on  
32          behalf of an insurer or third-party administrator to administer or manage  
33          prescription drug ~~benefits.~~benefits to perform any of the following functions:
- 34          a.     Negotiating rebates with manufacturers for drugs paid for or procured  
35          as described in this Article.  
36          b.     Processing claims for prescription drugs or medical supplies or  
37          providing retail network management for pharmacies or pharmacists.  
38          c.     Paying pharmacies or pharmacists for prescription drugs or medical  
39          supplies.
- 40          (17) Pharmacy benefits manager affiliate. – A pharmacy or pharmacist that directly  
41          or indirectly, through one or more intermediaries, owns or controls, is owned  
42          or controlled by, or is under common ownership or control with a pharmacy  
43          benefits manager.
- 44          (18) Pharmacy services administration organization (PSAO). – An organization  
45          that assists community pharmacies and pharmacy benefits managers or  
46          third-party payors in achieving administrative efficiencies, including  
47          contracting and payment efficiencies.
- 48          ~~(6)~~(19) Third-party administrator. – As defined in G.S. 58-56-2.

49    "§ 58-56A-2. Licensure.

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

4       (b) The Commissioner shall develop an application for licensure to operate in this State  
5 as a pharmacy benefits manager and may charge an initial application fee of two thousand dollars  
6 (\$2,000) and an annual renewal fee of one thousand five hundred dollars (\$1,500). The pharmacy  
7 benefits manager application form must collect only the following information:

8           (1) The name, address, and telephone contact number of the pharmacy benefits  
9 manager.

10          (2) The name and address of the pharmacy benefits manager's agent for service  
11 of process in this State.

12          (3) The name and address of each person with management or control over the  
13 pharmacy benefits manager.

14          (4) The name and address of each person with a beneficial ownership interest in  
15 the pharmacy benefits manager.

16          (5) Either (i) a signed statement that, to the best of the applicant's knowledge, no  
17 officer with management or control of the pharmacy benefits manager has  
18 been convicted of a felony or has violated any requirement of State or federal  
19 law applicable to pharmacy benefits management or (ii) a description of any  
20 felony or any violation of any requirement of State or federal law applicable  
21 to pharmacy benefits management committed by any officer with  
22 management or control of the pharmacy benefits manager.

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

26       (d) The Commissioner shall adopt rules establishing the licensing and reporting  
27 requirements of pharmacy benefits managers consistent with the provisions of this Article.

28 **"§ 58-56A-3. Consumer protections.**

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

34       (b) A pharmacy benefits manager shall not, through contract, ~~prohibit~~ prohibit or restrict  
35 a pharmacy from ~~offering~~ doing any of the following:

36           (1) Offering and providing direct and limited delivery services to an insured as an  
37 ancillary service of the ~~pharmacy, as delineated in the contract between the~~  
38 ~~pharmacy benefits manager and the pharmacy.~~

39           (2) Disclosing to any insured any health care information that the pharmacy or  
40 pharmacist determines is appropriate so long as it is also within the  
41 pharmacist's scope of practice.

42           (3) Discussing information regarding the total costs for pharmacist services for a  
43 prescription drug.

44           (4) Selling a more affordable alternative of the prescription drug to the insured if  
45 a more affordable alternative is available.

46           (5) Prohibiting a pharmacy or pharmacist from sharing proprietary or confidential  
47 information.

48           (6) Disclosing information to the Commissioner for the purposes of an  
49 investigation of, an examination of a complaint against, or a compliance  
50 review of a pharmacy benefits manager. The information or data acquired by  
51 the Commissioner under this subdivision is considered proprietary and

1 confidential and shall not be considered a public record under Chapter 32 of  
2 the General Statutes.

3 A pharmacy benefits manager shall not penalize or retaliate against a pharmacy for any  
4 activities described in this subsection.

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

8 (1) The fee will be charged.

9 (2) The fee may not be reimbursed by the health benefit plan, insurer, or pharmacy  
10 benefits manager.

11 (c) A pharmacy benefits manager shall not charge, or attempt to collect from, an insured  
12 a ~~co~~-payment-copayment that exceeds the lesser of the following amounts:

13 (1) The total submitted charges by the network pharmacy.

14 (2) The contracted copayment amount.

15 (3) The amount an individual would pay for a prescription drug if that individual  
16 was not insured and was paying cash for the prescription drug.

17 (c1) To the extent allowable under federal and State law, when calculating an insured's  
18 overall contribution to any out-of-pocket maximum or any cost-sharing requirement under a  
19 health benefit plan, an insurer shall include any amounts paid by the insured or paid on behalf of  
20 the insured by another person.

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

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

25 (f) No pharmacy benefits manager shall cause or knowingly permit the use of any  
26 advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive,  
27 or misleading. No pharmacy benefits manager shall knowingly make any misrepresentation.

28 (g) A pharmacy benefits manager shall not require an insured to use a pharmacy benefits  
29 manager affiliate for the filling of a prescription or the provision of any pharmacy care services.

30 (h) An insured shall not be restricted from utilizing any in-network pharmacy or  
31 pharmacist for any prescription drug covered by the health benefit plan or pharmacy benefits  
32 manager applicable to that insured.

33 (i) A pharmacy benefits manager shall not, through contract, prohibit a pharmacy from  
34 discussing information regarding the total cost for pharmacist services for a prescription drug, or  
35 from selling a more affordable alternative to the insured if a more affordable alternative is  
36 available. A pharmacy benefits manager shall not prohibit a pharmacy or pharmacist from sharing  
37 proprietary or confidential information.

38 **"§ 58-56A-4. Pharmacy and pharmacist protections.**

39 (a) A pharmacy benefits manager may only charge a ~~fee~~-fees or otherwise hold a  
40 pharmacy responsible for a fee relating to the adjudication of a claim if the fee is reported on the  
41 remittance advice of the adjudicated claim or is set out in contract between the pharmacy benefits  
42 manager and the pharmacy. No fee or adjustment for the receipt and processing of a claim, or  
43 otherwise related to the adjudication of a claim, shall be charged without a justification on the  
44 remittance advice.

45 (a1) This section shall ~~not~~ apply with respect to claims under an employee benefit plan  
46 under the Employee Retirement Income Security Act of 1974 or Medicare Part D, 1974, to the  
47 extent allowed under federal law.

48 (b) Nothing in this Article shall abridge the right of a pharmacist to refuse to fill or refill  
49 a prescription if the pharmacist believes it would be harmful to the patient or is not in the patient's  
50 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 allowed to be dispensed under a license to practice pharmacy under Article 4A of Chapter 90 of  
4 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 part of an attempt to limit overpayment recovery efforts  
15 by a pharmacy benefits manager.

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

18       (g) A pharmacy benefits manager shall not engage in the pattern or practice of  
19 reimbursing independent pharmacies or pharmacists in this State consistently less than the  
20 amount of the National Drug Average Acquisition Cost or the amount that the pharmacy benefits  
21 manager reimburses a pharmacy benefits affiliate for providing the same pharmacist services.

22       (h) A pharmacy benefits manager shall not require the use of mail order or a pharmacy  
23 benefits manager affiliate for filling prescriptions.

24 **"§ 58-56A-5. Maximum allowable cost price.**

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

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

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

33       (b) A pharmacy benefits manager shall adjust or remove the maximum allowable cost  
34 price for a prescription drug to remain consistent with changes in the national marketplace for  
35 prescription drugs. A review of the maximum allowable cost prices for removal or modification  
36 shall be completed by the pharmacy benefits manager at least once every seven business days,  
37 and any removal or modification shall occur within seven business days of the review. A  
38 pharmacy benefits manager shall provide a means by which the contracted pharmacies may  
39 promptly review current prices in an electronic, print, or telephonic format within one business  
40 day of the removal or ~~modification~~ modification, except as provided under subsection (b1) of  
41 this section.

42       (b1) A pharmacy benefits manager shall update its maximum allowable cost list for a  
43 prescription drug within five calendar days and provide notice to all contracted pharmacies within  
44 72 business hours of the update if any of the following apply:

45           (1) At least sixty percent (60%) of the pharmaceutical wholesalers doing business  
46 in this State have increased by ten percent (10%) or more the pharmacy  
47 acquisition cost for the drug.

48           (2) There is a change in the methodology on which the maximum allowable cost  
49 list is based.

50           (3) There is a change in the value of a variable involved in the methodology on  
51 which the maximum allowable cost list is based.

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

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

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

11           (2) The ability to submit an administrative appeal regarding the pharmacy  
12 benefits plan or program directly to the pharmacy benefits manager or through  
13 a pharmacy services administrative organization if the pharmacy services  
14 administrative organization has a contract with the pharmacy benefits  
15 manager that allows for the submission of appeals.

16           (3) No less than 10 calendar days after the applicable prescription fill date to file  
17 an administrative appeal.

18           (4) A period of no more than 10 calendar days after receipt of notice of the filing  
19 of the administrative appeal by the pharmacy benefits manager for a decision  
20 to be made on the appeal.

21           (5) A requirement that if an appeal is upheld, then, within 10 calendar days of the  
22 decision, the pharmacy benefits manager shall take all of the following  
23 actions:

24           a. Notify the appellant of the decision.

25           b. Apply the change in the maximum allowable cost effective as of the  
26 date the appeal was resolved and make the change effective for all  
27 similarly situated pharmacies or pharmacists, as defined by the payor  
28 subject to the Maximum Allowable Cost list.

29           c. Permit the appellant to reverse and rebill the claim that was appealed.

30           (6) A requirement that if the appeal is denied, then, within 10 calendar days of the  
31 decision, the pharmacy benefits manager shall notify the appellant of the  
32 decision and provide all of the following information:

33           a. The reason for denial.

34           b. The National Drug Code number for the prescription drug that is the  
35 subject of the appeal.

36           c. The names of the national or regional pharmaceutical wholesalers  
37 operating in the State.

38       (e) Consistent with G.S. 58-56A-4, a pharmacy benefits manager shall not engage in a  
39 pattern or practice of reimbursing independent pharmacies or pharmacists in this State  
40 consistently less than the amount of the National Drug Average Acquisition Cost (NDAAC), the  
41 Wholesale Acquisition Cost (WAC) when the NDAAC is not available, or the amount that the  
42 pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the  
43 same pharmacist services.

44 **"§ 58-56A-6. Biosimilar coverage.**

45       (a) If a health benefit plan or a pharmacy benefits manager authorizes coverage for a  
46 biosimilar of a prescription medication, then it shall authorize coverage for all biosimilars of that  
47 prescription medication and that coverage shall be at the same level.

48       (b) Under no circumstances shall a health benefit plan or a pharmacy benefits manager  
49 require the use or the dispensing of a reference product over a biosimilar.

50 **"§ 58-56A-10. Obtaining medications from an intermediary.**

1       (a) No pharmacy benefits manager or insurer shall require any prescription medication  
2 to be obtained from an entity operating as an intermediary for the purpose of having prescription  
3 medications administered or delivered to a patient by another pharmacy, hospital, clinic, or  
4 provider, unless that entity operating as an intermediary is a pharmacy and all of the following  
5 also apply:

6           (1) There is a mutual agreement between (i) the patient, (ii) the entity operating  
7 as an intermediary, and (iii) the other pharmacy, hospital, clinic, or provider  
8 for which the entity is operating as an intermediary to utilize the process for  
9 the receipt, repackaging, administration, or delivery of the prescription  
10 medication.

11          (2) The distribution of prescription medications from the entity operating as an  
12 intermediary is in the full and actual charge of a pharmacist licensed in this  
13 State.

14          (3) The pharmacy, hospital, clinic, or provider and the entity operating as an  
15 intermediary for that pharmacy, hospital, clinic, or provider have established  
16 an appropriate record-keeping system that provides accountability for proper  
17 receipt, delivery, administration, disposal, and return of all prescriptions.

18          (4) There is evidence that delivery of a prescription medication directly to the  
19 insured patient would result in one or more of the following:

20           a. Danger to public health or safety.

21           b. Danger to the patient without increased involvement by a health care  
22 professional involved in the patient's drug therapy, such as when a  
23 patient is unable to self-administer a medication or when the  
24 administration of a medication requires monitoring immediately  
25 before, during, or after treatment.

26           c. Danger to the integrity or viability of the medication.

27          (5) The pharmacy, hospital, clinic, or provider and the entity operating as an  
28 intermediary for that pharmacy, hospital, clinic, or provider are in compliance  
29 with all relevant rules adopted by the North Carolina Board of Pharmacy.

30       (b) A health benefit plan or pharmacy benefits manager shall reimburse a pharmacy,  
31 hospital, clinic, or provider that utilizes an entity operating as an intermediary in accordance with  
32 this section, for all costs of storage, handling, delivery, and administration, including the use of  
33 staff time, incurred as part of the process, at a prenegotiated rate.

34 **"§ 58-56A-15. Pharmacy benefits manager networks.**

35       (a) No pharmacy benefits manager may change the network of pharmacies available to  
36 an insured without the written consent of either the insurer offering the relevant health benefit  
37 plan or the insured. All insureds enrolled in any one health benefit plan shall have access, in the  
38 same manner, to the same network of pharmacies. Pharmacy benefits managers may not create  
39 separate pharmacy networks, including the designation of preferred pharmacies within a network,  
40 under a specific health benefit plan.

41       (b) A pharmacy benefits manager shall not deny the right to any licensed pharmacist or  
42 pharmacy to participate in a network on the same terms and conditions of other participants in  
43 the network. Benefit differentials are prohibited.

44       (c) As a condition of participation in a pharmacy benefits manager network, the  
45 pharmacy benefits manager shall not require pharmacy accreditation standards or recertification  
46 requirements inconsistent with, more stringent than, or in addition to federal and State  
47 requirements for licensure.

48       (d) A pharmacist or pharmacy that belongs to a pharmacy service administration  
49 organization shall, upon request, receive a copy of the contract the pharmacy service  
50 administration organization entered into with a pharmacy benefits manager on the pharmacy's or  
51 pharmacist's behalf.

1 (e) Termination of a pharmacy or pharmacist from a pharmacy benefits manager network  
2 does not release the pharmacy benefits manager from the obligation to make any payment due to  
3 the pharmacy or pharmacist for pharmacist services properly rendered according to the contract.

4 **"§ 58-56A-20. Pharmacy benefits manager affiliate disclosure; sharing of data.**

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

9 **"§ 58-56A-21. Claims data provided to health benefit plan.**

10 Upon the request of an insurer offering a health benefit plan that contracts with a pharmacy  
11 benefits manager, the pharmacy benefits manager shall provide the insurer with claims data that  
12 reflects the total amount the insurer paid to the pharmacy benefits manager under the health  
13 benefit plan for a specified outpatient prescription drug, including the ingredient cost and the  
14 dispensing fee. The pharmacy benefits manager shall also provide the cost that it paid for the  
15 specified outpatient prescription drug, including the ingredient cost and the dispensing fee.

16 **"§ 58-56A-25. Enforcement.**

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

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

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

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

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

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

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



1       (c1) If, pursuant to subsection (b) of this section, the Commissioner orders the payment of  
2 a monetary penalty for a violation of any provision of this Article other than G.S. 58-56A-5, then,  
3 in determining the amount of the penalty, the Commissioner shall consider the degree and extent  
4 of harm caused by the violation, the amount of money that inured to the benefit of the violator as  
5 a result of the violation, whether the violation was committed willfully, and the prior record of  
6 the violator in complying or failing to comply with laws, rules, or orders applicable to the  
7 violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture  
8 Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall  
9 be in addition to payment of any other penalty for a violation of the criminal laws of this State.

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

15       (e) Upon petition of the Commissioner to the court pursuant to subsection (b) of this  
16 section, the court may order the pharmacy benefits manager who committed a violation specified  
17 in subsection (b) of this section under this Article to make restitution to the Department for  
18 expenses under subsection (f) of this section, incurred in the investigation, hearing, and any  
19 appeals associated with the violation in such amount that would reimburse the agency for the  
20 expenses. The petition may be made at any time and also in any appeal of the Commissioner's  
21 order.

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

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

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

33 **"§ 58-56A-45. Rules.**

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

35 **"§ 58-56A-50. Contracts with 340B covered entities.**

36       (a) A contract entered into between a pharmacy benefits manager and a 340B covered  
37 entity's pharmacy or between a pharmacy benefits manager and a 340B contract pharmacy shall  
38 not do any of the following:

39           (1) Restrict access to a pharmacy network or adjust 340B drug reimbursement  
40 rates based on whether a pharmacy dispenses drugs under the 340B drug  
41 discount program.

42           (2) Assess any additional, or vary the amount of any, fees, chargebacks, or other  
43 adjustments on the basis of a drug being dispensed under the 340B drug  
44 discount program or a pharmacy's status as a 340B covered entity or a 340B  
45 contract pharmacy. This section does not prevent adjustments to correct errors  
46 or overpayments resulting from an adjudicated claim.

47       (b) No pharmacy benefits manager making payments pursuant to a health benefit plan  
48 shall discriminate against a 340B covered entity or a 340B contract pharmacy in a manner that  
49 prevents or interferes with an enrollee's choice to receive a prescription drug from an in-network  
50 340B covered entity or an in-network 340B contract pharmacy.

1 (c) The provisions of G.S. 58-51-37 shall apply to pharmacy benefits managers with  
2 respect to 340B covered entities and 340B contract pharmacies.

3 (d) Any provision of a contract entered into between a pharmacy benefits manager and a  
4 340B covered entity or 340B contract pharmacy that is contrary to this section is unenforceable."

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

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

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

13 **"§ 58-56-2. Definitions.**

14 The following definitions apply in this Article:

15 ...

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

21 ...

22 m. A pharmacy benefits manager licensed under Article 56A of this  
23 Chapter.

24 ...."

25 **SECTION 4.** G.S. 58-51-37 reads as rewritten:

26 **"§ 58-51-37. Pharmacy of choice.**

27 (a) This section shall apply to all health benefit plans providing pharmaceutical services  
28 benefits, including prescription drugs, to any resident of North Carolina. This section shall also  
29 apply to insurance companies and health maintenance organizations that provide or administer  
30 coverages and benefits for prescription drugs. This section shall apply to pharmacy benefits  
31 managers with respect to 340B covered entities and 340B contract pharmacies, as defined in  
32 G.S. 58-56A-1. This section shall not apply to any entity that has its own facility, employs or  
33 contracts with physicians, pharmacists, nurses, and other health care personnel, and that  
34 dispenses prescription drugs from its own pharmacy to its employees and to enrollees of its health  
35 benefit plan; provided, however, this section shall apply to an entity otherwise excluded that  
36 contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and  
37 services. This section shall not apply to any federal program, clinical trial program, hospital or  
38 other health care facility licensed pursuant to Chapter 131E or Chapter 122C of the General  
39 Statutes, when dispensing prescription drugs to its patients.

40 ...."

41 **SECTION 5.** This act becomes effective October 1, 2021, and applies to any  
42 contracts entered into, renewed, or amended on or after that date.