**South Carolina General Assembly**

126th Session, 2025-2026

**S. 342**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Rankin, Peeler, Goldfinch, Davis, Gambrell and Blackmon

Document Path: LC-0074PH25.docx

Introduced in the Senate on February 13, 2025

Currently residing in the Senate Committee on **Banking and Insurance**

Summary: Pharmacy services

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/13/2025 Senate Introduced and read first time ([Senate Journal‑page 5](h:\sj\20250213.docx))

2/13/2025 Senate Referred to Committee on **Banking and Insurance** ([Senate Journal‑page 5](h:\sj\20250213.docx))

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**VERSIONS OF THIS BILL**

[02/13/2025](https://www.scstatehouse.gov/sess126_2025-2026/prever/342_20250213.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 38‑71‑2200, RELATING TO DEFINITIONS, SO AS TO DEFINE “LOW‑VOLUME PHARMACY”; BY ADDING SECTION 38‑71‑2270 SO AS TO RESTRICT PHARMACY BENEFITS MANAGERS FROM REIMBURSEMENT UNDER CERTAIN CONDITIONS; BY AMENDING SECTION 38‑71‑2230, RELATING TO PHARMACY BENEFITS MANAGER PROHIBITIONS, SO AS TO PROHIBIT ADDITIONAL ACTIONS AND TO REMOVE THE PROHIBITION ON CLAIMS RECONCILIATION ACTIVITIES; BY AMENDING SECTION 38‑71‑2260, RELATING TO CONSTRUCTION AND APPLICATION, SO AS TO REMOVE ANTISTEERING PROVISIONS; BY AMENDING SECTION 38‑71‑2350, RELATING TO APPLICATION AND EXCEPTIONS, SO AS TO REMOVE A REFERENCE TO MEDICAID; BY ADDING SECTION 38‑71‑2280 SO AS TO PERMIT THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ASSUME DIRECT RESPONSIBILITY FOR ALL SOUTH CAROLINA MEDICAID PHARMACY SERVICES; BY ADDING SECTION 38‑71‑2290 SO AS TO EMPOWER THE ATTORNEY GENERAL TO BRING AN ACTION IN THE NAME OF THE STATE AGAINST SOMEONE ENGAGING IN UNLAWFUL ACTS PURSUANT TO THIS ACT; AND BY REPEALING SECTION 38‑71‑2240 RELATING TO PLACEMENT OF DRUGS ON THE MAXIMUM ALLOWABLE COST LIST.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 38‑71‑2200 of the S.C. Code is amended by adding:

(14) “Low‑volume pharmacy” means a pharmacy that dispenses fewer than sixty‑five thousand prescriptions during the state’s fiscal year.

SECTION 2. Article 21, Chapter 71, Title 38 of the S.C. Code is amended by adding:

Section 38‑71‑2270. (A) A PBM must not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than one hundred four percent of the National Average Drug Acquisition Cost (NADAC) for the prescription drug or pharmacy service at the time the drug is administered or dispensed, plus a professional dispensing fee of no less than the current South Carolina Medicaid professional dispensing fee.

(B) If the NADAC is not available at the time the drug is administered or dispensed, the PBM must not reimburse a pharmacy or pharmacist in an amount less than the Wholesale Acquisition Cost (WAC) of the drug as defined in 42 U.S.C. Section 1395w‑3a(c)(6)(B), plus a professional dispensing fee of no less than the current South Carolina Medicaid professional dispensing fee.

(C) The professional dispensing fee described in this section is subject to annual review and adjustment by the South Carolina Department of Insurance, provided that any adjustment must not result in a dispensing fee less than the average cost to dispense a prescription drug in an ambulatory pharmacy setting in South Carolina.

(D) A PBM may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the amount the PBM reimburses itself or an affiliate for the same prescription drug or pharmacy service. For the purposes of this section, an “affiliate” means any pharmacy, pharmacist, or pharmacy technician that shares common ownership with the PBM or is otherwise associated with the PBM.

(E) Low‑volume pharmacies are entitled to an enhanced professional dispensing fee. The fee shall be no less than the dispensing fee established for low‑volume pharmacies by South Carolina Medicaid’s fee for service pharmacy benefit program.

(F) When a pharmacy dispenses a specialized delivery drug, it is entitled to a dispensing fee equal to twice the professional dispensing fee provided in this section.

(G) A pharmacy or pharmacist that has been reimbursed below the minimum amount that is required by this section may file a complaint with the Department of Insurance using a standard form that the Department must post online. Upon receipt of a complete complaint form, the Department must provide the information in the form to the PBM and permit it ten business days to respond. The Department must make a determination regarding the complaint within thirty days of receiving a response from the PBM. If the complaint is upheld, the Department must notify the pharmacy or pharmacist and the PBM, which must:

(1) pay the pharmacy or pharmacist within thirty days twice the amount of the insufficiency of the original payment;

(2) make the change effective for each similarly situated pharmacy and reimburse each pharmacy the amount of underpayment.

(H) The Department of Insurance may promulgate regulations necessary to implement the provisions of this act, including the establishment of a certification process for low‑volume pharmacies.

(I) The provisions of this section do not apply to the coverage provided to employees, retirees, and their eligible dependents pursuant to Section 1‑11‑710 by the South Carolina Public Employee Benefit Authority or through its contracted pharmacy benefits manager.

SECTION 3. Section 38‑71‑2230 of the S.C. Code is amended to read:

Section 38‑71‑2230. (A) A pharmacy benefits manager or representative of a pharmacy benefits manager shall not:

(1) cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading;

(2) charge a pharmacist or pharmacy a fee related to the adjudication of a claim unless the fee is:

(a) agreed to by a Pharmacy Services Administrative Organization acting on behalf of a pharmacy that it represents; or

(b) identified and agreed to in contract and identified and reported on the remittance advice;

(3) engage in an anticompetitive pattern of reimbursing independent or unaffiliated pharmacies or pharmacists in this State consistently less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services or prescription drug unless the difference in reimbursement is justified according to uniform, defined standards that apply to each network providerincrease a covered individual’s cost‑sharing percentage or ration at or after the point of sale by raising the deductible, copayment, or coinsurance, or by requiring any other out‑of‑pocket payment as a means of recouping the dispensing cost of a pharmacist or pharmacy;

(4) collect or require a pharmacy or pharmacist to collect from an insured a copayment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(a) the contracted copayment amount;

(b) the amount an individual would pay for a prescription drug if that individual was paying cash; or

(c) the contracted amount for the drug.

(5) require the use of mail order for filling prescriptions unless required to do so by the health benefit plan or the health benefit plan design;

(6) Reserved;

(7) penalize or retaliate against a pharmacist or pharmacy for exercising rights provided pursuant to the provisions of this chapter;

(8) prohibit a pharmacist or pharmacy from offering and providing direct and limited delivery services including incidental mailing services, to an insured as an ancillary service of the pharmacy; or

(9) any combination thereof.

(B) No pharmacy benefits manager shall, directly or indirectly, impose retroactive fees, reductions, or recoupments of the amount paid to a pharmacist or pharmacy for any claim for prescription drugs other than the Medicare Part D Program as set forth in 42 U.S.C. 1395w‑102 and 42 C.F.R. 423 or as provided in this subsection.

(C) Notwithstanding subsection (B), a pharmacy benefits manager may make or permit a reduction or recoupment of payment for pharmacist or pharmacy services for:

(1) claims submitted fraudulently;

(2) claims where the pharmacist or pharmacy was previously paid for the same pharmacy goods or services;

(3) claims not properly rendered or billed by the pharmacy or pharmacist; or

(4) otherwise in accordance with state pharmacy audit laws.

(D) This section does not preclude a pharmacy benefits manager from engaging in claims reconciliation activities relating to brand effective rates and generic effective rates if:

(1) such activities are agreed to by a Pharmacy Services Administrative Organization acting on behalf of a pharmacy it represents and identified in the contract; or

(2) if a pharmacy is not represented by a Pharmacy Services Administrative Organization, such activities are permitted if:

(a) they are agreed to by a pharmacy and identified in a contract;

(b) they do not result in a retroactive reduction or recoupment of payment to a pharmacist or pharmacy for a previously adjudicated covered claim, unless the pharmacy or pharmacist has clearly consented to retroactive reductions as part of participation in the program and the reductions are explained in an annual reconciliation statement; and

(c) a pharmacy is allowed to choose not to participate in programs that include the activities. A pharmacy benefits manager offering different terms and conditions including, but not limited to, differing reimbursement rates, for participation versus nonparticipation in the activities shall not constitute a violation of Section 38‑71‑2230(A)(7).

(E)(D) This subsection may not be construed to limit overpayment recovery efforts as set forth in Section 38‑59‑250.

A pharmacy may not be subject to a charge‑back or recoupment for a clerical or recordkeeping error in a required document or record, including a typographical or computer error, unless the error resulted in overpayment to the pharmacy.

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

(G)(F) A pharmacy benefits manager must not directly or indirectly engage in patient steering to a pharmacy that is a pharmacy benefits manager affiliate without first making a written disclosure to the patient informing such patient of the pharmacy benefits manager’s relationship with the pharmacy and providing the patient with access to information about unaffiliated, in‑network pharmacies that are located near the patient. A pharmacy benefits manager must not prohibit a patient from choosing to use an alternative in‑network pharmacy.

(H)(G) Nothing in this article abridges the right of a pharmacist to refuse to fill or refill a prescription as referenced in Section 40‑43‑86(E)(6) of the South Carolina Pharmacy Practice Act.

(H) A pharmacy benefits manager must not engage in claims reconciliation activities relating to brand effective rates and generic effective rates.

SECTION 4. Section 38‑71‑2260 of the S.C. Code is amended to read:

Section 38‑71‑2260. (A) Nothing in this act is intended or may be construed to be in conflict with existing relevant federal law.

(B) Other than the antisteering provisions contained in Section 38‑71‑2230(G), this article does not apply to the South Carolina Department of Health and Human Services in the performance of its duties in administering Medicaid under Titles XIX and XXI of the Social Security Act or to the Medicaid‑managed care organizations under contract with the South Carolina Department of Health and Human Services.

(C)(B) Notwithstanding the exemption under subsection (B), contractsContracts between the South Carolina Department of Health and Human Services and Medicaid‑managed care organizations must include provisions for biannual audits of Medicaid‑managed care organizations’ pharmacy pricing mechanisms and include limitations on any pharmacy benefits manager contract arrangements that bill the Medicaid program for more than the total price paid to pharmacies for actual claims.

SECTION 5. Section 38‑71‑2350 of the S.C. Code is amended to read:

Section 38‑71‑2350. (A) Nothing in this act is intended or may be construed to be in conflict with existing relevant federal law.

(B) This article does not apply to the South Carolina Department of Health and Human Services in the performance of its duties in administering Medicaid under Titles XIX and XXI of the Social Security Act or to the Medicaid‑managed care organizations under contract with the South Carolina Department of Health and Human Services.

SECTION 6. Article 21, Chapter 71, Title 38 of the S.C. Code is amended by adding:

Section 38‑71‑2280. The South Carolina Department of Health and Human Services is authorized to remove pharmacy services from Medicaid‑managed care organization contracts and assume direct responsibility for all South Carolina Medicaid pharmacy services. The Department of Health and Human Services may utilize national best practices and techniques to assist with member medication adherence and to control costs including, but not limited to, implementation of a preferred drug list, utilization of medication therapy management, and other clinically effective cost‑efficient options allowed by state and federal law.

If the Department of Health and Human Services does not exercise the authority provided in this section, it may administer the Medicaid pharmacy benefit program through the use of no more than two Medicaid‑managed care organization pharmacy benefit managers, that must be reimbursed a transaction fee only and must not retain any portion of spread pricing or state supplemental rebates.

SECTION 7. Article 21, Chapter 71, Title 38 of the S.C. Code is amended by adding:

Section 38‑71‑2290. (A) Whenever the Attorney General has reasonable cause to believe that any person is using, has used, or is about to use any method, act or practice declared by this article to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary restraining order, temporary injunction or permanent injunction the use of such method, act, or practice. Unless the Attorney General determines in writing that the purposes of this article will be substantially impaired by delay in instituting legal proceedings, he shall, at least three days before instituting any legal proceedings as provided in this section, give notice to the person against whom proceedings are contemplated and give such person an opportunity to present reasons to the Attorney General why such proceedings should not be instituted. The action may be brought in the court of common pleas in the county in which such person resides, has his principal place of business or conducts or transacts business. The courts are authorized to issue orders and injunctions to restrain and prevent violations of this article, and such orders and injunctions shall be issued without bond. Whenever any permanent injunction is issued by such court in connection with any action which has become final, reasonable costs shall be awarded to the State.

(B) The court may make such additional orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any monies or property, real or personal, which may have been acquired by means of any practice declared to be unlawful in this article, including the revocation of a license or certificate authorizing that person to engage in business in this State, provided the order declaring the practice to have been unlawful has become final.

SECTION 8. Section 38‑71‑2240 of the S.C. Code is repealed.

SECTION 9. This act takes effect on January 1, 2026, and applies to all contracts entered into, renewed, or amended on or after this date.

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