

SENATE, No. 727

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Regulates pharmacy benefits managers as organized delivery systems and limits use of prior authorization.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning pharmacy benefits managers and amending
2 P.L.1999, c.409 and supplementing P.L.2015, c.179 (C.17B:27F-
3 1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
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8 1. Section 1 of P.L.1999, c.409 (C.17:48H-1) is amended to
9 read as follows:

10 1. As used in this act:

11 "Affiliate" means a person that directly, or indirectly through one
12 or more intermediaries, controls, or is controlled by, or is under
13 common control with, the organized delivery system.

14 "Capitation" means a fixed per member, per month, payment or
15 percentage of premium payment for which the provider assumes the
16 risk for the cost of contracted services without regard to the type,
17 value or frequency of the services provided.

18 "Carrier" means an insurer authorized to transact the business of
19 health insurance as defined at N.J.S.17B:17-4, a hospital service
20 corporation authorized to transact business in accordance with
21 P.L.1938, c.366 (C.17:48-1 et seq.), a medical service corporation
22 authorized to transact business in accordance with P.L.1940, c.74
23 (C.17:48A-1 et seq.), a health service corporation authorized to
24 transact business in accordance with P.L.1985, c.236 (C.17:48E-1 et
25 seq.) or a health maintenance organization authorized to transact
26 business pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.).

27 "Certified organized delivery system" means an organized
28 delivery system that is compensated on a basis which does not
29 entail the assumption of financial risk by the organized delivery
30 system and that is certified in accordance with this act.

31 "Comprehensive health care services" means the basic benefits
32 provided under a health benefits plan, including medical and
33 surgical services provided by licensed health care providers who
34 may include, but are not limited to, family physicians, internists,
35 cardiologists, psychiatrists, rheumatologists, dermatologists,
36 orthopedists, obstetricians, gynecologists, neurologists,
37 endocrinologists, radiologists, nephrologists, emergency services
38 physicians, ophthalmologists, pediatricians, pathologists, general
39 surgeons, osteopathic physicians, physical therapists and
40 chiropractors. Basic benefits may also include inpatient or
41 outpatient services rendered at a licensed hospital, covered services
42 performed at an ambulatory surgical facility and ambulance
43 services.

44 "Financial risk" means exposure to financial loss that is
45 attributable to the liability of an organized delivery system for the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 payment of claims or other losses arising from covered benefits for
2 treatment or services other than those performed directly by the
3 person or organized delivery system liable for payment, including a
4 loss sharing arrangement. A payment method wherein a provider
5 accepts reimbursement in the form of a capitation payment for
6 which it undertakes to provide health care services on a prepayment
7 basis shall not be considered financial risk.

8 "Health benefits plan" means a [benefits plan which pays or
9 provides hospital and medical expense benefits for covered
10 services, and is delivered or issued for delivery in this State by or
11 through a carrier. Health benefits plan includes, but is not limited
12 to, Medicare supplement coverage and risk contracts to the extent
13 not otherwise prohibited by federal law. For the purposes of this
14 act, health benefits plan shall not include the following plans,
15 policies or contracts: accident only, credit, disability, long-term
16 care, CHAMPUS supplement coverage, coverage arising out of a
17 workers' compensation or similar law, automobile medical payment
18 insurance, personal injury protection insurance issued pursuant to
19 P.L.1972, c.70 (C.39:6A-1 et seq.) or hospital confinement
20 indemnity coverage] hospital and medical expense insurance
21 policy; health service corporation contract; hospital service
22 corporation contract; medical service corporation contract; health
23 maintenance organization subscriber contract; or other plan for
24 medical care delivered or issued for delivery in this State. Health
25 benefits plan shall not include one or more, or any combination of,
26 the following: coverage only for accident, or disability income
27 insurance, or any combination thereof; coverage issued as a
28 supplement to liability insurance; liability insurance, including
29 general liability insurance and automobile liability insurance; stop
30 loss or excess risk insurance; workers' compensation or similar
31 insurance; automobile medical payment insurance; credit-only
32 insurance; coverage for on-site medical clinics; and other similar
33 insurance coverage, as specified in federal regulations, under which
34 benefits for medical care are secondary or incidental to other
35 insurance benefits. Health benefits plans shall not include the
36 following benefits if they are provided under a separate policy,
37 certificate or contract of insurance or are otherwise not an integral
38 part of the plan: limited scope dental or vision benefits; benefits for
39 long-term care, nursing home care, home health care, community-
40 based care, or any combination thereof; and such other similar,
41 limited benefits as are specified in Federal regulations. Health
42 benefits plan shall not include hospital confinement indemnity
43 coverage if the benefits are provided under a separate policy,
44 certificate or contract of insurance, there is no coordination between
45 the provision of the benefits and any exclusion of benefits under
46 any group health benefits plan maintained by the same plan
47 sponsor, and those benefits are paid with respect to an event without
48 regard to whether benefits are provided with respect to such an

1 event under any group health plan maintained by the same plan
2 sponsor. Health benefits plan shall not include the following if it is
3 offered as a separate policy, certificate or contract of insurance:
4 Medicare supplemental health insurance as defined under section
5 1882(g)(1) of the Federal Social Security Act (42 U.S.C.
6 s.1395ss(g)(1)); and coverage supplemental to the coverage
7 provided under chapter 55 of Title 10, United States Code (10
8 U.S.C. s.1071 et seq.); and similar supplemental coverage provided
9 to coverage under a group health plan.

10 "Licensed organized delivery system" means an organized
11 delivery system that is compensated on a basis which entails the
12 assumption of financial risk by the organized delivery system and
13 that is licensed in accordance with this act.

14 "Limited health care services" means a health service or benefit
15 which a carrier has elected to subcontract for as a separate service,
16 which may include, but shall not be limited to, substance **[abuse]**
17 use disorder services, vision care services, mental health services,
18 podiatric care services, chiropractic services, pharmaceutical
19 services or rehabilitation services. Limited health care services
20 shall not include **[pharmaceutical services,]** case management
21 services or employee assistance plan services.

22 "Organized delivery system" or "system" means an organization
23 with defined governance that:

24 a. is organized for the purpose of and has the capability of
25 contracting with a carrier to provide, or arrange to provide, under its
26 own management substantially all or a substantial portion of the
27 comprehensive health care services or benefits under the carrier's
28 benefits plan on behalf of the carrier, which may or may not include
29 the payment of hospital and ancillary benefits; or

30 b. is organized for the purpose of acting on behalf of a carrier
31 to provide, or arrange to provide, limited health care services that
32 the carrier elects to subcontract for as a separate category of
33 benefits and services apart from its delivery of benefits under its
34 comprehensive benefits plan, which limited services are provided
35 on a separate contractual basis and under different terms and
36 conditions than those governing the delivery of benefits and
37 services under the carrier's comprehensive benefits plan.

38 An organized delivery system shall not include an entity
39 otherwise authorized or licensed in this State to provide
40 comprehensive or limited health care services on a prepayment or
41 other basis in connection with a health benefits plan or a carrier.

42 "Provider" means a physician, health care professional, health
43 care facility, or any other person who is licensed or otherwise
44 authorized to provide health care services or other benefits in the
45 state or jurisdiction in which they are furnished.

46 (cf: P.L.1999, c.409, s.1)

1 2. (New section) A pharmacy benefits manager shall not require
2 prior authorization for any prescription drug, unless there is an
3 alternative drug that has a lower cost and is of equal quality and
4 effectiveness to the prescribed drug, which alternative drug shall be
5 provided without prior authorization.

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7 3. This act shall take effect on the 90th day next following
8 enactment.

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STATEMENT

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13 This bill amends the statutes governing organized delivery
14 systems, which are regulated by the Department of Banking and
15 Insurance. By defining “limited health care services” to include
16 pharmaceutical services, instead of excluding them, the bill is
17 intended to allow the department to regulate pharmacy benefit
18 managers that fall under the category of organized delivery systems
19 because they provide limited health care services.

20 The bill also supplements P.L.2015, c.179 (C.17B:27F-1 et seq.)
21 to provide that a pharmacy benefits manager shall not require prior
22 authorization for any prescription drug, unless there is an
23 alternative drug that has a lower cost and is of equal quality and
24 effectiveness to the prescribed drug, which alternative drug shall be
25 provided without prior authorization.