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ASSEMBLY COMMITTEE SUBSTITUTE FOR
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STATE OF NEW JERSEY
220th LEGISLATURE

ADOPTED MARCH 14, 2022

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SYNOPSIS

Establishes new transparency standards for pharmacy benefits manager business practices.

CURRENT VERSION OF TEXT

As reported by the Assembly Health Committee on May 26, 2022, with amendments.

(Sponsorship Updated As Of: 5/2/2022)

1 AN ACT concerning pharmacy benefits managers ¹and amending
2 and¹,¹ supplementing P.L.2015, c.179¹, and amending various
3 parts of the statutory law¹.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 1 of P.L.2015, c.179 (C.17B:27F-1) is amended to
9 read as follows:

10 1. As used in **this act** P.L.2015, c.179 (C.17B:27F-1 et seq.):
11 "Anticipated loss ratio" means the ratio of the present value of
12 the future benefits payments, including claim offsets after the point
13 of sale, to the present value of the future premiums of a policy form
14 over the entire period for which rates are computed to provide
15 health insurance coverage.

16 "Average wholesale price" means the average wholesale price of
17 a prescription drug determined by a national drug pricing publisher
18 selected by a carrier. The average wholesale price shall be
19 identified using the national drug code published by the National
20 Drug Code Directory within the United States Food and Drug
21 Administration.

22 "Brand-name drug" means a prescription drug marketed under a
23 proprietary name or registered trademark name, including a
24 biological product.

25 "Carrier" means an insurance company, health service
26 corporation, hospital service corporation, medical service
27 corporation, or health maintenance organization authorized to issue
28 health benefits plans in this State.

29 ¹**"Compensation" means any direct or indirect financial benefit,**
30 **including, but not limited to, rebates, discounts, credits, fees, grants,**
31 **chargebacks or other payments or benefits of any kind.**¹

32 "Contracted pharmacy" means a pharmacy that participates in the
33 network of a pharmacy benefits manager through a contract with:

- 34 a. the pharmacy benefits manager directly;
35 b. a pharmacy services administration organization; or
36 c. a pharmacy group purchasing organization.

37 "Cost-sharing amount" means the amount paid by a covered
38 person as required under the covered person's health benefits plan
39 for a prescription drug at the point of sale.

40 "Covered person" means a person on whose behalf a carrier or
41 other entity, who is the sponsor of the health benefits plan, is
42 obligated to pay benefits pursuant to a health benefits plan.

43 "Department" means the Department of Banking and Insurance.

44 "Drug" means a drug or device as defined in R.S.24:1-1.

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

Matter underlined this is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHE committee amendments adopted May 26, 2022.

1 "Health benefits plan" means a benefits plan which pays hospital
 2 or medical expense benefits for covered services, or prescription
 3 drug benefits for covered services, and is delivered or issued for
 4 delivery in this State by or through a carrier or any other sponsor.
 5 For the purposes of P.L.2015, c.179 (C.17B:27F-1), health benefits
 6 plan shall not include the following plans, policies or contracts:
 7 accident only, credit disability, long-term care, Medicare
 8 supplement coverage; TRICARE supplement coverage, coverage
 9 for Medicare services pursuant to a contract with the United States
 10 government, the State Medicaid program established pursuant to
 11 P.L.1968, c.413 (C.30:4D-1 et seq.), coverage arising out of a
 12 worker's compensation or similar law, the State Health Benefits
 13 Program, the School Employees' Health Benefits Program, or a self-
 14 insured health benefits plan governed by the provisions of the
 15 federal "Employee Retirement Income Security Act of 1974," 29
 16 U.S.C. s.1001 et seq., coverage under a policy of private passenger
 17 automobile insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1
 18 et seq.), or hospital confinement indemnity coverage.

19 ¹["Mail order pharmacy" means a pharmacy, the principle
 20 business of which is to receive a prescription by mail, fax or
 21 electronic submission, and to dispense medication to a covered
 22 person using the United States Postal Service or other common or
 23 contract carrier service and that provides consultation with patients
 24 electronically rather than in person.]¹

25 "Maximum allowable cost" means the maximum amount a health
 26 insurer will pay for a generic drug or brand-name drug that has at
 27 least one generic alternative available.

28 "Network pharmacy" means a licensed retail pharmacy or other
 29 pharmacy provider that contracts with a pharmacy benefits manager
 30 ¹either directly or by and through a contract with a pharmacy
 31 services administrative organization¹.

32 "Pharmacy" means any place in the State, either physical or
 33 electronic, where drugs are dispensed or pharmaceutical care is
 34 provided by a licensed pharmacist, but shall not include a medical
 35 office under the control of a licensed physician.

36 "Pharmacy benefits manager" means a corporation, business, or
 37 other entity, or unit within a corporation, business, or other entity,
 38 that, pursuant to a contract or under an employment relationship
 39 with a carrier, a self-insurance plan or other third-party payer, either
 40 directly or through an intermediary, administers prescription drug
 41 benefits on behalf of a purchaser.

42 "Pharmacy benefits manager compensation" means the
 43 difference between: (1) the ¹["value"] amount¹ of payments made by
 44 a carrier of a health benefits plan to its pharmacy benefits manager;
 45 and (2) the value of payments made by the pharmacy benefits
 46 manager to dispensing pharmacists for the provision of prescription
 47 drugs or pharmacy services with regard to pharmacy benefits
 48 covered by the health benefits plan.

1 "Pharmacy benefits management services" means the provision
2 of any of the following services on behalf of a purchaser: the
3 procurement of prescription drugs at a negotiated rate for
4 dispensation within this State; the processing of prescription drug
5 claims; or the administration of payments related to prescription
6 drug claims.

7 ¹"Pharmacy services administrative organization" means an
8 entity operating within the State that contracts with independent
9 pharmacies to conduct business on their behalf with third-party
10 payers.¹

11 "Prescription" means a prescription as defined in section 5 of
12 P.L.1977, c.240 (C.24:6E-4).

13 "Prescription drug benefits" means the benefits provided for
14 prescription drugs and pharmacy services for covered services
15 under a health benefits plan contract.

16 "Purchaser" means any sponsor of a health benefits plan who
17 enters into an agreement with a pharmacy benefits management
18 company for the provision of pharmacy benefits management
19 services to covered persons.

20 (cf: P.L.2019, c.274, s.2)

21
22 2. (New section) a. A corporation, business, or other entity
23 shall not act as a pharmacy benefits manager ¹or pharmacy services
24 administrative organization¹ in this State without first obtaining a
25 license from the department. An applicant for licensure ¹[as a
26 pharmacy benefits manager]¹ shall provide to the department
27 information that includes, but is not limited to, the following:

28 (1) the name of the applicant;

29 (2) the address and telephone number of the applicant;

30 (3) the name and address of the applicant's agent for service of
31 process in the State;

32 (4) the name and address of each person ¹[beneficially
33 interested] owning 10 percent or greater interest¹ in the applicant;
34 ¹[and] ¹

35 (5) the name and address of each person with management or
36 control over the applicant ¹; and

37 (6) the information required under section 4 of P.L.1999, c.409
38 (C.17:48H-4)¹.

39 b. A license issued pursuant to this section shall be valid for a
40 period of three years and may be renewed at the end of the three-
41 year period. The commissioner shall establish fees for a license
42 issued or renewed pursuant to this section.

43 c. The department may issue a ¹[pharmacy benefits manager]¹
44 license to an applicant only if the department is satisfied that the
45 applicant possesses the necessary organization, expertise, and
46 financial integrity to supply the services sought to be offered.

- 1 d. The department may issue a ¹**["pharmacy benefits manager"]**¹
2 license ¹to a pharmacy benefits manager or pharmacy services
3 administrative organization¹ subject to restrictions or limitations,
4 including the type of services that may be supplied or the activities
5 in which the pharmacy benefits manager ¹or pharmacy services
6 administrative organization¹ may engage.
- 7 e. A license issued pursuant to this section shall not be
8 transferable.
- 9 f. The department may suspend, revoke or place on probation a
10 ¹**["pharmacy benefits manager license"] licensee**¹ if:
11 (1) the pharmacy benefits manager ¹or pharmacy services
12 administrative organization¹ has engaged in fraudulent activity ¹or
13 any activity¹ that constitutes a violation of State or federal law;
14 (2) the department has received consumer complaints that
15 justify an action under this subsection to protect the safety and
16 interests of consumers;
17 (3) the pharmacy benefits manager ¹or pharmacy services
18 administrative organization¹ fails to pay the original issuance or
19 renewal fee for the license; or
20 (4) the pharmacy benefits manager ¹or pharmacy services
21 administrative organization¹ fails to comply with any requirement
22 set forth in P.L. , c. (C.) (pending before the Legislature as
23 this bill).
- 24 g. If a corporation, business, or other entity acts as a pharmacy
25 benefits manager ¹or pharmacy services administrative
26 organization¹ without obtaining a license pursuant to this section,
27 the corporation, business, or other entity shall be subject to ¹**["**
28 (1) a warning notice;
29 (2) an opportunity to cure the violation within 14 days following
30 the issuance of the notice;
31 (3) a hearing before the commissioner within 70 days following
32 the issuance of the notice; and
33 (4) if the violation has not been cured pursuant to subsection a.
34 of this section, a penalty of not less than \$5,000 or more than
35 \$10,000**"] the provisions of section 7 of P.L.2019, c.274**
36 **(C.17B:27F-10)**¹.
- 37 h. ¹**(1)**¹ Notwithstanding the provisions of subsection a. of this
38 section, a pharmacy benefits manager ¹**["certified or licensed"] or**
39 pharmacy services administrative organization that applied for, or
40 received, certification or licensure¹ as an organized delivery system
41 prior to the effective date of P.L. , c. (C.) (pending before
42 the Legislature as this bill), in accordance with P.L.1999, c.409
43 (C.17:48H-1 et seq.), may continue to operate during the pendency
44 of its application submitted pursuant to this section, but no more
45 than ¹**["18"] 24**¹ months after the effective date of this act.

1 ¹(2) A corporation, business, or other entity that acts as a
2 pharmacy benefits manager or pharmacy services administrative
3 organization, and applies for, receives, and maintains a license as an
4 organized delivery system, in accordance with P.L.1999, c.409
5 (C.17:48H-1 et seq.), shall not be required to maintain that license
6 as an organized delivery system upon the issuance of a license
7 pursuant to P.L. , c. (C.) (pending before the Legislature as
8 this bill), and during any subsequent applications for renewal of the
9 license as a pharmacy benefits manager or pharmacy services
10 administrative organization pursuant to the requirements of P.L. ,
11 c. (C.) (pending before the Legislature as this bill).

12 i. A licensee shall be subject to the following except to the
13 extent inconsistent with this act or where the commissioner
14 determines that any provisions are inappropriate as applied to a
15 pharmacy benefits manager or pharmacy services administrative
16 organization:

17 (1) the unfair trade practices provisions of N.J.S.17B:30-1 et
18 seq.;

19 (2) the provisions of P.L.1970, c. 22 (C.17:27A-1 et seq.);

20 (3) the "Life and Health Insurers Rehabilitation and Liquidation
21 Act," P.L.1992, c.65 (C.17B:32-31 et seq.);

22 (4) investment limitations pursuant to N.J.S.17B:20-1 et seq.;
23 and

24 (5) the "Health Care Quality Act," P.L.1997, c.192 (C.26:2S-1
25 et al.).¹

26
27 3. (New section) a. A carrier shall:

28 (1) monitor all activities carried out on behalf of the carrier by a
29 pharmacy benefits manager if the carrier contracts with a pharmacy
30 benefits manager and is related to a carrier's prescription drug
31 benefits; and

32 (2) ensure that all requirements of this section are met.

33 b. A carrier that contracts with a pharmacy benefits manager to
34 perform any activities related to the carrier's prescription drug
35 benefits shall ensure that, under the contract, the pharmacy benefits
36 manager acts as the carrier's agent ¹[and owes a fiduciary duty to
37 the carrier in the pharmacy benefits manager's activities related to
38 the carrier's prescription drug benefits] in good faith and fair
39 dealing in the performance of all of its contractual duties. All funds
40 received by the pharmacy benefits manager in relation to providing
41 pharmacy benefits management services shall be used or distributed
42 only pursuant to the pharmacy benefits manager's contract with the
43 health benefits plan or carrier or applicable law; including any
44 administrative fee or payment to the pharmacy benefits manager
45 expressly provided for in the contract to compensate the pharmacy
46 benefits manager for its services. Any funds received by the
47 pharmacy benefits manager through spread pricing shall be subject
48 to this subsection¹.

1 c. ¹~~【~~A carrier shall not enter into a contract or agreement, or
2 allow a pharmacy benefits manager or any entity acting on the
3 carrier's behalf to enter into a contract or agreement, that prohibits a
4 pharmacy from:

5 (1) providing a covered person with the option of paying the
6 pharmacy provider's cash price for the purchase of a prescription
7 drug and not filing a claim with the covered person's carrier if the
8 cash price is less than the covered person's cost-sharing amount; or

9 (2) providing information to a State or federal agency, law
10 enforcement agency, or the department when such information is
11 required by law ~~】~~ (1) A pharmacy benefits manager interacting with
12 a covered person shall have the same duty to a covered person as
13 the health benefits plan or carrier for whom it is performing
14 pharmacy benefits management services.

15 (2) A pharmacy benefits manager shall have a duty of good faith
16 and fair dealing with all parties, including but not limited to
17 covered persons and pharmacies, with whom it interacts in the
18 performance of pharmacy benefits management services¹.

19 d. A carrier or pharmacy benefits manager shall not require a
20 covered person to make a payment at the point of sale for a covered
21 prescription drug in an amount greater than ¹~~the lesser of~~¹:

22 (1) the applicable cost-sharing amount for the prescription drug;
23 ¹~~【or】~~¹

24 (2) ¹~~the amount a covered person would pay for the prescription~~
25 ~~medication if the covered person purchased the prescription~~
26 ~~medication without using a health benefits plan; or~~

27 (3)¹ the total amount the pharmacy will be reimbursed for the
28 prescription drug from the pharmacy benefits manager or carrier,
29 including the cost-sharing amount paid by a covered person ¹~~【~~,
30 whichever is less ~~】~~¹.

31 e. A carrier shall provide a reasonably adequate retail
32 pharmacy network for the provision of prescription drugs for its
33 covered persons. ¹~~【~~A mail order pharmacy shall not be included in
34 determining the adequacy of a retail pharmacy network ~~】~~¹.

35 ¹~~f. For the purposes of this section, “health benefits plan” shall~~
36 ~~include the State Health Benefits Plan, the School Employees’~~
37 ~~Health Benefits Plan, the State Medicaid program established~~
38 ~~pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or a self-insured~~
39 ~~health benefits plan governed by the provisions of the federal~~
40 ~~“Employee Retirement Income Security Act of 1974,” 29 U.S.C.,~~
41 ~~ss.1001 et seq.~~¹

42
43 4. Section 2 of P.L.2015, c.179 (C.17B:27F-2) is amended to
44 read as follows:

45 2. Upon execution or renewal of each contract, or at such a
46 time when there is any material change in the term of the contract, a
47 pharmacy benefits manager shall, with respect to contracts between

1 a pharmacy benefits manager and a pharmacy services
2 administrative organization, or between a pharmacy benefits
3 manager and a contracted pharmacy:

4 a. (1) include in the contract the sources utilized to determine
5 multiple source generic drug pricing, brand drug pricing, and the
6 wholesaler in the State of New Jersey where pharmacies may
7 acquire the product, including, but not limited to, the brand
8 effective rate, generic effective rate, dispensing fee effective rate,
9 maximum allowable cost or any other pricing formula for pharmacy
10 reimbursement;

11 (2) update that pricing information every seven calendar days;
12 and

13 (3) establish a reasonable process by which contracted
14 pharmacies have a method to access relevant maximum allowable
15 cost pricing lists, brand effective rate, generic effective rate, and
16 dispensing fee effective rate, or any other pricing formulas for
17 pharmacy reimbursement **]; and**.

18 b. Additionally, a pharmacy benefits manager shall:

19 (1) **[(Maintain] maintain** a procedure to eliminate drugs from the
20 list of drugs subject to multiple source generic drug pricing and
21 brand drug pricing, or modify maximum allowable cost rates, brand
22 effective rate, generic effective rate, dispensing fee effective rate or
23 any other applicable pricing formula in a timely fashion and make
24 that procedure easily accessible to the pharmacy services
25 administrative organizations or the pharmacies that they are
26 contractually obligated with to provide that information according
27 to the requirements of this section; and

28 (2) provide ¹[a reasonable administrative appeal procedure,
29 including a right to appeal in accordance with section 4 of P.L.2015,
30 c.179 (C.17B:27F-4), to allow pharmacies with which] an internal
31 appeal mechanism to resolve any dispute raised by a carrier or
32 pharmacy, regardless of whether¹ the carrier or pharmacy benefits
33 manager has a contract to challenge maximum allowable costs for a
34 specified drug. ¹Any dispute regarding the determination of an
35 internal appeal conducted pursuant to this subsection may be
36 referred to arbitration. The Commissioner of Banking and
37 Insurance shall contract with a nationally recognized, independent
38 organization that specializes in arbitration to conduct the arbitration
39 proceedings.¹

40 (cf: P.L.2019, c.274, s.3)

41
42 5. Section 3 of P.L.2015, c.179 (C.17B:27F-3) is amended to
43 read as follows:

44 3. a. **[In order to place a particular prescription drug on a**
45 **multiple source generic list, the pharmacy benefits manager shall, at**
46 **a minimum, ensure that:] A carrier, or a pharmacy benefits manager**
47 **under contract with a carrier, shall use a single maximum allowable**

1 cost list to establish the maximum amount to be paid by a health
2 benefits plan to a pharmacy provider for a generic drug or a brand-
3 name drug that has at least one generic equivalent available. A
4 carrier, or a pharmacy benefits manager under contract with a
5 carrier, shall use the same maximum allowable cost list for each
6 pharmacy provider.

7 b. A maximum allowable cost may be set for a prescription
8 drug, or a prescription drug may be allowed to continue on a
9 maximum allowable cost list, only if:

10 (1) The drug is listed as therapeutically and pharmaceutically
11 equivalent or "A," "B," "NR," or "NA" rated in the Food and Drug
12 Administration's most recent version of the Approved Drug
13 Products with Therapeutic Equivalence Evaluations, commonly
14 known as the "Orange Book;" and

15 (2) The drug is available for purchase without limitations by all
16 pharmacies in the State from national or regional wholesalers and is
17 not obsolete or temporarily unavailable.

18 **【b.】** c. A pharmacy benefits manager shall not penalize a
19 pharmacist or pharmacy on audit if the pharmacist or pharmacy
20 performs a generic substitution pursuant to the "Prescription Drug
21 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-1 et
22 seq.).

23 d. A carrier, or a pharmacy benefits manager under contract
24 with a carrier, shall use the average wholesale price to establish the
25 maximum payment for a brand-name drug for which a generic
26 equivalent is not available or a prescription drug not included on a
27 maximum allowable cost list. In order to use the average wholesale
28 price of a brand-name drug or prescription drug not included on a
29 maximum allowable cost list, a carrier, or a pharmacy benefits
30 manager under contract with a carrier, shall use only one national
31 drug pricing source during a calendar year, unless the original drug
32 pricing source is no longer available. A carrier, or a pharmacy
33 benefits manager under contract with a carrier, shall use the same
34 national drug pricing source for each pharmacy provider and
35 identify on its publicly accessible website the name of the national
36 drug pricing source used to determine the average wholesale price
37 of a prescription drug not included on the maximum allowable cost
38 list.

39 e. The amount paid by a carrier or a carrier's pharmacy benefits
40 manager to a pharmacy provider under contract with the carrier or
41 the carrier's pharmacy benefits manager for dispensing a
42 prescription drug shall be the ingredient cost plus the dispensing fee
43 less any cost-sharing amount paid by a covered person.

44 The ingredient cost shall not exceed the maximum allowable cost
45 or average wholesale price, as applicable, and shall be disclosed by
46 a carrier's pharmacy benefits manager to the carrier.

1 Only the pharmacy provider that dispensed the prescription drug
2 shall retain the payment described in this subsection.

3 (cf: P.L.2015, c. 179, s.3)

4
5 6. (New section) a. Compensation remitted by or on behalf of
6 a pharmaceutical manufacturer, developer or labeler, directly or
7 indirectly, to a carrier or to a pharmacy benefits manager under
8 contract with a carrier related to prescription drug benefits shall
9 be¹]:

10 (1)]¹remitted directly to the covered person at the point of sale
11 to reduce the out-of-pocket cost to the covered person associated
12 with a particular prescription drug¹]; or

13 (2) remitted to, and retained by, the carrier. Compensation
14 remitted to the carrier shall be applied by the carrier in its plan
15 design and in future plan years to offset the premium for covered
16 persons]¹.

17 b. Beginning on March 1 next following the effective date of
18 P.L. , c. (C.) (pending before the Legislature as this bill),
19 and annually thereafter, a carrier shall file with the department a
20 report explaining how the carrier has complied with the provisions
21 of this section. The report shall be written in a manner and form
22 determined by the department.

23 ¹c. Nothing in this section shall preclude a carrier or pharmacy
24 benefits manager under contract with a carrier from implementing a
25 program designed to lower a covered person's out-of-pocket cost or
26 decreasing a covered person's out-of-pocket cost by an amount
27 greater than that required under subsection a. of this section.

28 d. As used in this section, "compensation" means any direct or
29 indirect financial benefit, including, but not limited to, rebates,
30 discounts, credits, fees, grants, chargebacks or other payments or
31 benefits of any kind.¹

32
33 7. (New section) a. A carrier, or a pharmacy benefits manager
34 under contract with a carrier, shall establish a pharmacy and
35 therapeutics committee responsible for managing the formulary
36 system.

37 b. A carrier, or a pharmacy benefits manager under contract
38 with a carrier, shall not allow a person with a conflict of interest to
39 be a member of its pharmacy and therapeutics committee. ¹][A
40 person shall not serve as a member of a pharmacy and therapeutics
41 committee if the person:

42 (1) is employed, or was employed within the preceding year, by
43 a pharmaceutical manufacturer, developer, labeler, wholesaler, or
44 distributor; or

45 (2) receives compensation, or received compensation within the
46 preceding year, from a pharmaceutical manufacturer, developer,
47 labeler, wholesaler, or distributor.] A carrier, or a pharmacy

1 benefits manager under contract with a carrier, shall require that its
2 pharmacy and therapeutics committee meet the requirements for
3 conflict of interest as set by the Centers for Medicare and Medicaid
4 Services or meets the accreditation standards of the National
5 Committee for Quality Assurance or another independent
6 accrediting organization.¹

7
8 8. (New section) a. A carrier ¹or health benefits plan,
9 including the State Health Benefits Program, the School
10 Employees' Health Benefits Program, the State Medicaid program,
11 or a self-insured health benefits plan governed by the provisions of
12 the federal :Employee Retirement Income Security Act of 1974," 29
13 U.S.C. s.1001 et seq.,¹ shall ¹**["maintain and"]**¹ have the ability to
14 access all data related to the administration and provision of
15 prescription drug benefits administered by a pharmacy benefits
16 manager under the health benefits plan ¹**["of the carrier"]**¹, including,
17 but not limited to:

18 (1) the names, addresses, member identification numbers,
19 protected health information and other personal information of
20 covered persons; and

21 (2) any contracts, documentation, and records, including
22 transaction and pricing data and post point-of-sale information,
23 related to the dispensing of prescription drugs to covered persons
24 under the health benefits plan.

25 b. A sale or transaction involving the transfer of any records,
26 information or data described in subsection a. of this section must
27 comply with the federal Health Insurance Portability and
28 Accountability Act of 1996, Pub. L. No. 104-191, and the federal
29 Health Information Technology for Economic and Clinical Health
30 Act, Pub. L. No. 111-5, and any regulations adopted pursuant to
31 those laws.

32 c. A carrier ¹or health benefits plan, including the State Health
33 Benefits Plan, the School Employees' Health Benefits Plan, the
34 State Medicaid program, or a self-insured health benefits plan¹ may
35 audit all transaction records related to the dispensing of prescription
36 drugs to covered persons under a health benefits plan. A carrier ¹or
37 health benefits plan, including the State Health Benefits Plan, the
38 School Employees' Health Benefits Plan, the State Medicaid
39 program, or a self-insured health benefits plan¹ may conduct audits
40 at a location of its choosing and with an auditor of its choosing.

41 d. A carrier shall maintain all records, information and data
42 described in subsection a. of this section and all audit records
43 described in subsection c. of this section for a period of no less than
44 five years.

45 e. ¹(1)¹ Upon request, a carrier ¹or pharmacy benefits
46 manager¹ shall provide to the department any records, contracts,
47 documents or data held by the carrier or the carrier's pharmacy

benefits manager for inspection, examination or audit purposes.

¹Any records, documents, or data provided to the department pursuant to this subsection shall not be considered a government record under P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law concerning access to government records.

(2) A person who is authorized to access information submitted by a pharmacy benefits manager to the division who knowingly discloses such information to any person or entity who is not authorized to access the information shall be guilty of a crime of the fourth degree and shall be subject to a civil penalty in an amount not to exceed \$10,000.

A civil penalty imposed under this subsection shall be collected by the director pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).¹

9. (New section) a. If a carrier uses a pharmacy benefits manager to administer or manage the prescription drug benefits of covered persons, any pharmacy benefits manager compensation, for purposes of calculating a carrier's anticipated loss ratio or any loss ratio calculated as part of any applicable medical loss ratio filing or rate filing, shall:

(1) constitute an administrative cost incurred by the carrier in connection with a health benefits plan; and

(2) not constitute a benefit provided under a health benefits plan. A carrier shall claim only the amounts paid by the pharmacy benefits manager to a pharmacy or pharmacist as an incurred claim.

b. Any rate filing submitted by a carrier with respect to a health benefits plan that provides coverage for prescription drugs or pharmacy services, that is administered or managed by a pharmacy benefits manager, shall include:

(1) a memorandum prepared by a qualified actuary describing the calculation of the pharmacy benefits manager compensation; and

(2) any records and supporting information as the department reasonably determines is necessary to confirm the calculation of the pharmacy benefits manager compensation.

c. Upon request, a carrier shall provide any records to the department that relate to the calculation of the pharmacy benefits manager ¹and pharmacy services administrative organization¹ compensation.

d. A pharmacy benefits manager ¹and pharmacy services administrative organization¹ shall provide any necessary documentation requested by a carrier that relates to pharmacy benefits manager compensation in order to comply with the requirements of this section.

¹10. Section 1 of P.L.2019, c.257 (C.17B:27F-6) is amended to read as follows:

1 1. a. A pharmacy benefits manager, in connection with any
2 contract or arrangement with a private health insurer, prescription
3 benefit plan, or the State Health Benefits Program or School
4 Employees' Health Benefits Program, shall not require a covered
5 person to make a payment at the point of sale for any amount for a
6 deductible, coinsurance payment, or a copayment for a prescription
7 drug benefit in an amount that exceeds the amount **the covered**
8 **person would pay for the prescription drug if the covered person**
9 **purchased the prescription drug without using a health benefits**
10 **plan** permitted pursuant to subsection d. of section 3 of P.L. ,
11 c. (C.) (pending before the Legislature as this bill).

12 b. A pharmacy benefits manager shall not prohibit a network
13 pharmacy from **disclosing**, and shall not apply a penalty or any
14 other type of disincentive to a network pharmacy **that discloses,**
15 for:

16 (1) disclosing to a covered person lower cost prescription drug
17 options, including those that are available to the covered person if
18 the covered person purchases the prescription drug without using
19 health insurance coverage;

20 (2) providing a covered person with the option of paying the
21 pharmacy provider's cash price for the purchase of a prescription
22 drug and not filing a claim with the covered person's health benefits
23 plan if the cash price is less than the covered person's cost-sharing
24 amount; or

25 (3) providing information to a State or federal agency, law
26 enforcement agency, or the department when such information is
27 required by law.

28 c. Any provision of a contract that conflicts with the provisions
29 of subsection b. of this section shall be void and unenforceable.

30 d. A violation of this section shall be an unlawful practice and
31 a violation of P.L.1960, c.39 (C.56:8-1 et seq.), and shall also be
32 subject to any enforcement action that the Commissioner of
33 Banking and Insurance is authorized to take pursuant to section 5 of
34 P.L.2015, c.179 (C.17B:27F-5).¹

35 (cf: P.L.2019, c.257, s.1)

36

37 ¹**[10.] 11.**¹ Section 6 of P.L.2019, c.274 (C.17B:27F-9) is
38 amended to read as follows:

39 6. The licensing requirements of P.L.2015, c.179 (C.17B:27F-1
40 et seq.) shall apply to all pharmacy benefits managers operating in
41 the State of New Jersey , except for any]. Requirements imposed
42 on carriers by the provisions of P.L.2015, c.179 (C.17B:27F-1 et
43 seq.) shall not apply to an agreement by a pharmacy benefits
44 manager to administer prescription drug benefits on behalf of the
45 State Health Benefits Plan, the School Employees Health Benefits
46 Plan, the State Medicaid program established pursuant to P.L.1968,
47 c.413 (C.30:4D-1 et seq.), or a self-insured health benefits plan

1 governed by the provisions of the federal “Employee Retirement
2 Income Security Act of 1974,” 29 U.S.C., ss.1001 et seq.
3 (cf: P.L.2019, c.274, s.6)
4

5 ¹**[11.] 12.**¹ This act shall take effect on the first day of the
6 seventh month next following the date of enactment, but the
7 Commissioner of the Banking and Insurance may take such
8 anticipatory administrative action in advance thereof as shall be
9 necessary for the implementation of the act.