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ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 536 and 2841

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 Appropriations Committee on June 22, 2023, 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 thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHE committee amendments adopted May 26, 2022.

²Assembly AAP committee amendments adopted June 22, 2023.

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 shall
23 not act as a pharmacy benefits manager ²without first obtaining a
24 license from the department² ¹or ²as a² pharmacy services
25 administrative organization¹ ²in this State without first obtaining a
26 license² without first obtaining registration² from the department. An
27 applicant for licensure ²or registration² ¹as a pharmacy benefits
28 manager¹ shall provide to the department information that includes,
29 but is not limited to, the following:

30 (1) the name of the applicant;

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

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

34 (4) the name and address of each person ¹beneficially interested
35 owning 10 percent or greater interest¹ in the applicant; ¹and¹

36 (5) the name and address of each person with management or
37 control over the applicant ¹; ²and²

38 (6) ²for pharmacy benefits managers,² the information required
39 under section 4 of P.L.1999, c.409 (C.17:48H-4)¹ ²;

40 (7) for pharmacy benefits managers, all contracts and documents
41 between pharmacies, pharmacy benefits managers, and pharmacy
42 services administrative organizations; and

43 (8) for pharmacy services administrative organizations, upon the
44 department's request, any contracts and documents between
45 pharmacies, pharmacy benefits managers, and pharmacy services
46 administrative organizations².

b. A license ²or registration² issued pursuant to this section shall be valid for a period of three years and may be renewed at the end of the three-year period. The commissioner shall establish fees for a license ²or registration² issued or renewed pursuant to this section.

c. The department may issue a ¹["pharmacy benefits manager"]¹ ²pharmacy benefits manager² license to an applicant only if the department is satisfied that the applicant possesses the necessary organization, expertise, and financial integrity to supply the services sought to be offered. ²The department shall establish, by regulation, minimum standards for the issuance of a license to a pharmacy benefits manager. The minimum standards established pursuant to this subsection shall contain both prerequisites for the issuance of a license to a pharmacy benefits manager and requirements for maintenance of a license by a pharmacy benefits manager and shall address, without limitation:

(1) conflicts of interest between pharmacy benefits managers and health benefits plans;

(2) deceptive practices in connection with the performance of pharmacy benefit management services;

(3) anti-competitive practices in connection with the performance of pharmacy benefits management services;

(4) unfair claims practices in connection with the performance of pharmacy benefits management services;

(5) pricing models used by pharmacy benefit managers both for their services and for the payment of services to the pharmacy benefits manager;

(6) standards and practices used in the creation of pharmacy networks and contracting with network pharmacies and other providers, including promotion and use of independent and community pharmacies and patient access and minimizing excessive concentration and vertical integration of markets; and

(7) protection of consumers.²

d. The department may issue a ¹["pharmacy benefits manager"]¹ license ¹to a pharmacy benefits manager ²["or pharmacy services administrative organization"]¹² subject to restrictions or limitations, including the type of services that may be supplied or the activities in which the pharmacy benefits manager ²["¹or pharmacy services administrative organization"]¹² may engage.

e. A license ²or registration² issued pursuant to this section shall not be transferable.

f. The department may suspend, revoke or place on probation a ¹["pharmacy benefits manager license"] licensee¹ ²or registered entity² if:

(1) the pharmacy benefits manager ¹or pharmacy services administrative organization¹ has engaged in fraudulent activity ¹or any activity¹ that constitutes a violation of State or federal law;

(2) the department has received consumer complaints that justify an action under this subsection to protect the safety and interests of consumers;

(3) the pharmacy benefits manager ¹or pharmacy services administrative organization¹ fails to pay the original issuance or renewal fee for the license ²or registration²; or

(4) the pharmacy benefits manager ¹or pharmacy services administrative organization¹ fails to comply with any requirement set forth in P.L. , c. (C.) (pending before the Legislature as this bill).

g. If a corporation, business, or other entity acts as a pharmacy benefits manager ¹or pharmacy services administrative organization¹ without obtaining a license ²or registration² pursuant to this section, the corporation, business, or other entity shall be subject to ¹⌈:

(1) a warning notice;

(2) an opportunity to cure the violation within 14 days following the issuance of the notice;

(3) a hearing before the commissioner within 70 days following the issuance of the notice; and

(4) if the violation has not been cured pursuant to subsection a. of this section, a penalty of not less than \$5,000 or more than \$10,000⌋the provisions of section 7 of P.L.2019, c.274 (C.17B:27F-10)¹.

h. ¹(1)¹ Notwithstanding the provisions of subsection a. of this section, a pharmacy benefits manager ¹⌈certified or licensed⌋²or pharmacy services administrative organization⌋² that applied for, or received, certification or licensure¹ as an organized delivery system prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), in accordance with P.L.1999, c.409 (C.17:48H-1 et seq.), may continue to operate during the pendency of its application submitted pursuant to this section, but no more than ¹⌈18⌋²⁴ months after the effective date of this act.

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

i. A licensee shall be subject to the following except to the extent inconsistent with this act or where the commissioner determines that any provisions are inappropriate as applied to a pharmacy benefits manager ²⌈or pharmacy services administrative organization⌋²:

1 (1) the unfair trade practices provisions of N.J.S.17B:30-1 et seq.;
2 (2) the provisions of P.L.1970, c. 22 (C.17:27A-1 et seq.);
3 (3) the "Life and Health Insurers Rehabilitation and Liquidation
4 Act," P.L.1992, c.65 (C.17B:32-31 et seq.);
5 (4) investment limitations pursuant to N.J.S.17B:20-1 et seq.; and
6 (5) the "Health Care Quality Act," P.L.1997, c.192 (C.26:2S-1 et
7 al.).¹
8

9 3. (New section) a. A carrier shall:

10 (1) monitor all activities carried out on behalf of the carrier by a
11 pharmacy benefits manager if the carrier contracts with a pharmacy
12 benefits manager and is related to a carrier's prescription drug benefits;
13 and

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

15 b. A carrier that contracts with a pharmacy benefits manager to
16 perform any activities related to the carrier's prescription drug benefits
17 shall ensure that, under the contract, the pharmacy benefits manager
18 acts as the carrier's agent ¹and owes a fiduciary duty to the carrier in
19 the pharmacy benefits manager's activities related to the carrier's
20 prescription drug benefits in good faith and fair dealing in the
21 performance of all of its contractual duties. All funds received by the
22 pharmacy benefits manager in relation to providing pharmacy benefits
23 management services shall be used or distributed only pursuant to the
24 pharmacy benefits manager's contract with the health benefits plan or
25 carrier or applicable law; including any administrative fee or payment
26 to the pharmacy benefits manager expressly provided for in the
27 contract to compensate the pharmacy benefits manager for its services.
28 Any funds received by the pharmacy benefits manager through spread
29 pricing shall be subject to this subsection¹.

30 c. ¹A carrier shall not enter into a contract or agreement, or
31 allow a pharmacy benefits manager or any entity acting on the carrier's
32 behalf to enter into a contract or agreement, that prohibits a pharmacy
33 from:

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

38 (2) providing information to a State or federal agency, law
39 enforcement agency, or the department when such information is
40 required by law **】** (1) A pharmacy benefits manager interacting with a
41 covered person shall have the same duty to a covered person as the
42 health benefits plan or carrier for whom it is performing pharmacy
43 benefits management services.

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

d. A carrier or pharmacy benefits manager shall not require a covered person to make a payment at the point of sale for a covered prescription drug in an amount greater than ¹the lesser of¹:

(1) the applicable cost-sharing amount for the prescription drug;
¹[or]^{1 2}or²

(2) the amount a covered person would pay for the prescription medication if the covered person purchased the prescription medication without using a health benefits plan²; or

(3)¹ the total amount the pharmacy will be reimbursed for the prescription drug from the pharmacy benefits manager or carrier, including the cost-sharing amount paid by a covered person ¹[, whichever is less]^{1. 2}.

e. A carrier shall provide a reasonably adequate retail pharmacy network for the provision of prescription drugs for its covered persons ¹[A mail order pharmacy shall not be included in determining the adequacy of a retail pharmacy network]¹.

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

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

2. Upon execution or renewal of each contract, or at such a time when there is any material change in the term of the contract, a pharmacy benefits manager shall, with respect to contracts between a pharmacy benefits manager and a pharmacy services administrative organization, or between a pharmacy benefits manager and a contracted pharmacy:

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

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

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

b. Additionally, a pharmacy benefits manager shall:

1 (1) **【Maintain】** maintain a procedure to eliminate drugs from the
2 list of drugs subject to multiple source generic drug pricing and
3 brand drug pricing, or modify maximum allowable cost rates, brand
4 effective rate, generic effective rate, dispensing fee effective rate or
5 any other applicable pricing formula in a timely fashion and make
6 that procedure easily accessible to the pharmacy services
7 administrative organizations or the pharmacies that they are
8 contractually obligated with to provide that information according
9 to the requirements of this section; and

10 (2) provide ¹【a reasonable administrative appeal procedure,
11 including a right to appeal in accordance with section 4 of PL.2015,
12 c.179 (C.17B:27F-4), to allow pharmacies with which】 an internal
13 appeal mechanism to resolve any dispute raised by a carrier or
14 pharmacy, regardless of whether¹ the carrier or pharmacy benefits
15 manager has a contract to challenge maximum allowable costs for a
16 specified drug. ¹Any dispute regarding the determination of an
17 internal appeal conducted pursuant to this subsection may be
18 referred to arbitration. The Commissioner of Banking and
19 Insurance shall contract with a nationally recognized, independent
20 organization that specializes in arbitration to conduct the arbitration
21 proceedings.¹

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

23
24 5. Section 3 of P.L.2015, c.179 (C.17B:27F-3) is amended to
25 read as follows:

26 3. a. **【In order to place a particular prescription drug on a**
27 **multiple source generic list, the pharmacy benefits manager shall, at**
28 **a minimum, ensure that:】** A carrier, or a pharmacy benefits manager
29 under contract with a carrier, shall use a single maximum allowable
30 cost list to establish the maximum amount to be paid by a health
31 benefits plan to a pharmacy provider for a generic drug or a brand-
32 name drug that has at least one generic equivalent available. A
33 carrier, or a pharmacy benefits manager under contract with a
34 carrier, shall use the same maximum allowable cost list for each
35 pharmacy provider.

36 b. A maximum allowable cost may be set for a prescription
37 drug, or a prescription drug may be allowed to continue on a
38 maximum allowable cost list, only if:

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

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

1 **[b.]** c. A pharmacy benefits manager shall not penalize a
2 pharmacist or pharmacy on audit if the pharmacist or pharmacy
3 performs a generic substitution pursuant to the "Prescription Drug
4 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-1 et
5 seq.).

6 d. A carrier, or a pharmacy benefits manager under contract
7 with a carrier, shall use the average wholesale price to establish the
8 maximum payment for a brand-name drug for which a generic
9 equivalent is not available or a prescription drug not included on a
10 maximum allowable cost list. In order to use the average wholesale
11 price of a brand-name drug or prescription drug not included on a
12 maximum allowable cost list, a carrier, or a pharmacy benefits
13 manager under contract with a carrier, shall use only one national
14 drug pricing source during a calendar year, unless the original drug
15 pricing source is no longer available. A carrier, or a pharmacy
16 benefits manager under contract with a carrier, shall use the same
17 national drug pricing source for each pharmacy provider and
18 identify on its publicly accessible website the name of the national
19 drug pricing source used to determine the average wholesale price
20 of a prescription drug not included on the maximum allowable cost
21 list.

22 e. The amount paid by a carrier or a carrier's pharmacy benefits
23 manager to a pharmacy provider under contract with the carrier or
24 the carrier's pharmacy benefits manager for dispensing a
25 prescription drug shall be the ingredient cost plus the dispensing fee
26 less any cost-sharing amount paid by a covered person.

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

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

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

33
34 6. (New section) a. Compensation remitted by or on behalf of a
35 pharmaceutical manufacturer, developer or labeler, directly or
36 indirectly, to a carrier or to a pharmacy benefits manager under
37 contract with a carrier related to prescription drug benefits shall be¹【:

38 (1) ¹【²:

39 (1) ²remitted directly to the covered person at the point of sale to
40 reduce the out-of-pocket cost to the covered person associated with a
41 particular prescription drug¹【; or

42 (2) remitted to, and retained by, the carrier. Compensation remitted
43 to the carrier shall be applied by the carrier in its plan design and in
44 future plan years to offset the premium for covered persons¹ ²; or

45 (2) remitted to, and retained by, the carrier. Compensation
46 remitted to the carrier shall be applied by the carrier in its plan design
47 and in future plan years to offset the premium for covered persons².

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

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

12 d. As used in this section, "compensation" means any direct or
13 indirect financial benefit, including, but not limited to, rebates,
14 discounts, credits, fees, grants, chargebacks or other payments or
15 benefits of any kind.¹
16

17 7. (New section) a. A carrier, or a pharmacy benefits manager
18 under contract with a carrier, shall establish a pharmacy and
19 therapeutics committee responsible for managing the formulary
20 system.

21 b. A carrier, or a pharmacy benefits manager under contract
22 with a carrier, shall not allow a person with a conflict of interest to
23 be a member of its pharmacy and therapeutics committee. ¹**[A**
24 **person shall not serve as a member of a pharmacy and therapeutics**
25 **committee if the person:**

26 (1) is employed, or was employed within the preceding year, by
27 a pharmaceutical manufacturer, developer, labeler, wholesaler, or
28 distributor; or

29 (2) receives compensation, or received compensation within the
30 preceding year, from a pharmaceutical manufacturer, developer,
31 labeler, wholesaler, or distributor. **]** A carrier, or a pharmacy
32 benefits manager under contract with a carrier, shall require that its
33 pharmacy and therapeutics committee meet the requirements for
34 conflict of interest as set by the Centers for Medicare and Medicaid
35 Services or meets the accreditation standards of the National
36 Committee for Quality Assurance or another independent
37 accrediting organization.¹
38

39 8. (New section) a. A carrier ¹or health benefits plan, including
40 the State Health Benefits Program, the School Employees' Health
41 Benefits Program, the State Medicaid program, or a self-insured health
42 benefits plan governed by the provisions of the federal ²**[:Employee]**
43 "Employee² Retirement Income Security Act of 1974," 29 U.S.C.
44 s.1001 et seq.,¹ shall ¹**[maintain and]**¹ have the ability to access all
45 data related to the administration and provision of prescription drug
46 benefits administered by a pharmacy benefits manager under the
47 health benefits plan ¹**[of the carrier]**¹, including, but not limited to:

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

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

8 b. A sale or transaction involving the transfer of any records,
9 information or data described in subsection a. of this section must
10 comply with the federal Health Insurance Portability and
11 Accountability Act of 1996, Pub. L. No. 104-191, and the federal
12 Health Information Technology for Economic and Clinical Health Act,
13 Pub. L. No. 111-5, and any regulations adopted pursuant to those laws.

14 c. A carrier ¹or health benefits plan, including the State Health
15 Benefits ²[Plan] Program², the School Employees' Health Benefits
16 ²[Plan] Program², the State Medicaid program, or a self-insured
17 health benefits plan¹ may audit all transaction records related to the
18 dispensing of prescription drugs to covered persons under a health
19 benefits plan. A carrier ¹or health benefits plan, including the State
20 Health Benefits ²[Plan] Program², the School Employees' Health
21 Benefits ²[Plan] Program², the State Medicaid program, or a self-
22 insured health benefits plan¹ may conduct audits at a location of its
23 choosing and with an auditor of its choosing.

24 d. A carrier shall maintain all records, information and data
25 described in subsection a. of this section and all audit records
26 described in subsection c. of this section for a period of no less than
27 five years.

28 e. ¹(1)¹ Upon request, a carrier ¹or pharmacy benefits manager¹
29 shall provide to the department any records, contracts, documents or
30 data held by the carrier or the carrier's pharmacy benefits manager for
31 inspection, examination or audit purposes. ²The department shall keep
32 confidential all information submitted pursuant to this section and
33 shall protect it from public disclosure.² ¹Any records, documents, or
34 data provided to the department pursuant to this subsection shall not be
35 considered a government record under P.L.1963, c.73 (C.47:1A-1 et
36 seq.) or the common law concerning access to government records.

37 (2) A person who is authorized to access information submitted by
38 a pharmacy benefits manager to the ²[division] department² who
39 ²[knowingly] willfully² discloses such information to any person or
40 entity who is not authorized to access the information shall be ²[guilty
41 of a crime of the fourth degree and shall be]² subject to a civil penalty
42 in an amount not to exceed ²[\$10,000] \$500².

43 A civil penalty imposed under this subsection shall be collected by
44 the ²[director] commissioner² pursuant to the "Penalty Enforcement
45 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).¹

1 ²f. A pharmacy benefits manager shall disclose in writing to a
2 carrier or health benefits plan any activity, policy, practice, contract or
3 arrangement of the pharmacy benefits manager that directly or
4 indirectly presents any conflict of interest with the pharmacy benefits
5 manager's relationship with or obligation to the carrier or plan.²

6
7 9. (New section) a. If a carrier uses a pharmacy benefits
8 manager to administer or manage the prescription drug benefits of
9 covered persons, any pharmacy benefits manager compensation, for
10 purposes of calculating a carrier's anticipated loss ratio or any loss
11 ratio calculated as part of any applicable medical loss ratio filing or
12 rate filing, shall:

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

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

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

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

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

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

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

37
38 ¹10. Section 1 of P.L.2019, c.257 (C.17B:27F-6) is amended to
39 read as follows:

40 1. a. A pharmacy benefits manager, in connection with any
41 contract or arrangement with a private health insurer, prescription
42 benefit plan, or the State Health Benefits Program or School
43 Employees' Health Benefits Program, shall not require a covered
44 person to make a payment at the point of sale for any amount for a
45 deductible, coinsurance payment, or a copayment for a prescription
46 drug benefit in an amount that exceeds the amount [the covered
47 person would pay for the prescription drug if the covered person

1 purchased the prescription drug without using a health benefits
2 plan] permitted pursuant to subsection d. of section 3 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill).

4 b. A pharmacy benefits manager shall not prohibit a network
5 pharmacy from [disclosing], and shall not apply a penalty or any
6 other type of disincentive to a network pharmacy [that discloses,]
7 for:

8 (1) disclosing to a covered person lower cost prescription drug
9 options, including those that are available to the covered person if
10 the covered person purchases the prescription drug without using
11 health insurance coverage;

12 (2) providing a covered person with the option of paying the
13 pharmacy provider's cash price for the purchase of a prescription
14 drug and not filing a claim with the covered person's health benefits
15 plan if the cash price is less than the covered person's cost-sharing
16 amount; or

17 (3) providing information to a State or federal agency, law
18 enforcement agency, or the department when such information is
19 required by law.

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

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

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

28
29 ¹[10.] 11.¹ Section 6 of P.L.2019, c.274 (C.17B:27F-9) is
30 amended to read as follows:

31 6. The licensing requirements of P.L.2015, c.179 (C.17B:27F-1 et
32 seq.) shall apply to all pharmacy benefits managers operating in the
33 State of New Jersey [, except for any]. Requirements imposed on
34 carriers by the provisions of P.L.2015, c.179 (C.17B:27F-1 et seq.)
35 shall not apply to an agreement by a pharmacy benefits manager to
36 administer prescription drug benefits on behalf of the State Health
37 Benefits ²[Plan] Program², the School Employees Health Benefits
38 ²[Plan] Program², the State Medicaid program established pursuant to
39 P.L.1968, c.413 (C.30:4D-1 et seq.), or a self-insured health benefits
40 plan governed by the provisions of the federal "Employee Retirement
41 Income Security Act of 1974," 29 U.S.C., ss.1001 et seq.

42 (cf: P.L.2019, c.274, s.6)

43
44 ²12. Section 7 of P.L.2019, c.274 (C.17B:27F-10) is amended to
45 read as follows:

1 7. a. A pharmacy benefits manager that violates any provision
2 of P.L.2015, c.179 (C.17B:27F-1 et seq.) shall be subject to a
3 penalty in an amount not exceeding the greater of:

4 [a. a warning notice;

5 b. an opportunity to cure the violation within 14 days following
6 the issuance of the notice;

7 c. a hearing before the commissioner within 70 days following
8 the issuance of the notice; and

9 d. if the violation has not been cured pursuant to subsection b.
10 of this section,]

11 (1) a penalty of [not less than] \$5,000 [or more than] for a first
12 violation and a penalty of \$10,000 for each subsequent violation; or

13 (2) the aggregate gross receipts attributable to all violations.

14 b. In addition to any other penalties permitted by law, the
15 Commissioner of Banking and Insurance may require a pharmacy
16 benefits manager that violates the provisions of P.L.2015, c.179
17 (C.17B:27F-1 et seq.) to make restitution and pay compensatory
18 damages, in an amount to be determined by the commissioner, to
19 any person injured by the violation.²

20 (cf: P.L.2019, c.274, s.7)

21
22 ²13. (New section) The Drug Affordability Council, established
23 pursuant to P.L. , c. (C.) (pending before the Legislature as
24 Senate Bill No. 1615 or Assembly Bill No. 2840 of 2022-2023), shall,
25 in the first report issued by the council, examine the existing
26 prescription drug rebate system and evaluate measures and reforms
27 that could reduce the cost of prescription drugs, including, but not
28 limited to, the elimination of rebates and the establishment of rebate
29 transparency provisions.²

30
31 ¹[11.] ²[12.¹] 14.² This act shall take effect on the first day of the
32 ²[seventh] 18th² month next following the date of enactment, ²and
33 shall apply to contracts and agreements entered into, renewed,
34 modified, or amended on or after the effective date,² but the
35 Commissioner of ²[the]² Banking and Insurance may take such
36 anticipatory administrative action in advance thereof as shall be
37 necessary for the implementation of the act.