

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 536 and 2841

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 24, 2022

The Assembly Health Committee reports favorably and with committee amendments Assembly Committee Substitute for Assembly Bill Nos. 536 and 2841.

As amended by the committee, this substitute bill sets new transparency standards for pharmacy benefits manager (PBM) business practices. Specifically, the bill concerns the licensing and reporting requirements of a carrier or a PBM. The bill requires that PBMs apply for a license with the Department of Banking and Insurance every three years and requires carriers to ensure that a PBM under contract with the carrier owes a fiduciary duty to the carrier. Carriers are to maintain detailed records of transactions and submit annual documentation showing that any compensation remitted by a manufacturer, developer, or labeler to a carrier or PBM was either remitted directly to the covered person at the point of sale to reduce out of pocket expenses or used to offset premium costs for future plan years. Additionally, the bill mandates that carriers and PBMs establish pharmacy and therapeutics committees that are free from conflicts of interest and use one or more formularies. For the purposes of calculating a carrier's anticipated loss ratio, PBM compensation constitutes an administrative cost rather than a benefit.

COMMITTEE AMENDMENTS:

The committee proposes to amend the bill to:

(1) update the definition of "pharmacy benefits manager compensation;"

(1) include licensure requirements for pharmacy service administrative organizations (PSAOs) and amend the conditions for licensure to include:

(a) the disclosure of the name of each person owning 10 percent or greater interest in the applicant; and

(b) the disclosure of any information required for licensure as an organized delivery system;

(2) allow PBMs and PSAOs licensed under this bill to cease maintaining organized delivery system license, if the PBM or PSAO applied for, received, and maintained a license as an organized delivery system;

(3) lists the insurance laws that apply to licensed PBMs;

(4) requires the department to suspend or revoke a license under this bill if a PBM or PSAO engages in any activity that constitutes a violation of State or federal law;

(5) include requirements providing that:

(a) PBMs have a duty of good faith and fair dealing in the performance of all of its contractual duties;

(b) PBMs owe the same duty to a covered person as a health benefits plan or carrier; and

(b) a carrier of PBM must not require a covered person to pay more at the point of sale than the amount they would pay without using a health benefit plan;

(6) move the “gag clause” language from section 3 of the bill to section 10;

(7) remove the provision that mail order pharmacies must not be included in determining the adequacy of a retail pharmacy network;

(8) the duties placed on PBMs under section 3 apply even if the PBM is under contract with the State Health Benefits Plan, the School Employees Health Benefits Plan, the State Medicaid program, or the federal “Employee Retirement Income Security Act of 1974”;

(9) replace requirement that a PBM maintain a “reasonable administrative procedure” with an internal appeal mechanism and independent arbitration;

(10) requires compensation remitted by or on behalf of a pharmaceutical manufacturer, developer or labeler, directly or indirectly, to a carrier or to a PBM under contract with a carrier related to prescription drug benefits be remitted directly to the covered person only;

(11) include the definition of “compensation” under section 6;

(12) replace pharmacy and therapeutics committee conflict of interest standards with those set by the Center for Medicare and Medicaid Services, the Nation Committee for Quality Assurance, or another independent accrediting organization;

(13) require that the provisions of section 8 apply to the State Health Benefits Program, the School Employees’ Health Benefits Program, Medicaid, and self-insured health benefits plans;

(14) require that a person who knowing discloses PBM information to an unauthorized person be guilty of a crime of the fourth degree and be subject to a civil penalty in an amount not to exceed \$10,000; and

(15) that any records, documents, or data provided in section 8 not be considered a government record.