

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 536 and 2841**

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 2023

The Assembly Appropriations Committee reports favorably and with committee amendments the Assembly Committee Substitute for Bill Nos. 536 and 2841 (1R).

As amended, this substitute bill sets new transparency standards for pharmacy benefits manager business practices.

Specifically, the bill concerns the licensing and reporting requirements of carriers, pharmacy benefits managers, and pharmacy services administrative organizations. The bill requires that pharmacy benefits managers apply for a license and pharmacy services administrative organizations register with the Department of Banking and Insurance every three years. The bill requires the Department of Banking and Insurance to establish, by regulation, certain minimum standards for the issuance of licenses to pharmacy benefits managers.

The bill requires carriers to monitor all activities carried out on behalf of the carrier by a pharmacy benefits manager if the carrier contracts with a pharmacy benefits manager. All funds received by the pharmacy benefits manager in relation to providing pharmacy benefits management services must be used or distributed only pursuant to the pharmacy benefits manager's contract with the health benefits plan or carrier or applicable law; including any administrative fee or payment to the pharmacy benefits manager expressly provided for in the contract to compensate the pharmacy benefits manager for its services. Any funds received by the pharmacy benefits manager through spread pricing are also subject to these requirements.

The bill provides that a pharmacy benefits manager interacting with a covered person has the same duty to a covered person as the health benefits plan or carrier for whom it is performing pharmacy benefits management services. The bill also provides that a pharmacy benefits manager has a duty of good faith and fair dealing with all parties, including but not limited to covered persons and pharmacies, with whom it interacts in the performance of pharmacy benefits management services.

The bill prohibits carriers and pharmacy benefits managers from requiring a covered person to make a payment at the point of sale for a covered prescription drug in an amount greater than the lesser of:

- (1) the applicable cost-sharing amount for the prescription drug; or
- (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 plan.

The bill requires pharmacy benefits managers to provide an internal appeal mechanism to resolve any dispute raised by a carrier or pharmacy, regardless of whether the carrier or pharmacy benefits manager has a contract to challenge maximum allowable costs for a specified drug.

The bill requires a carrier, or a pharmacy benefits manager under contract with a carrier, to use a single maximum allowable cost list to establish the maximum amount to be paid by a health benefits plan to a pharmacy provider for a generic drug or a brand-name drug that has at least one generic equivalent available. A carrier, or a pharmacy benefits manager under contract with a carrier, is required to use the same maximum allowable cost list for each pharmacy provider.

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 a pharmacy benefits manager was either remitted directly to the covered person at the point of sale or retained by the carrier to be used to offset the premium for covered persons in future plan years.

The bill mandates that carriers and pharmacy benefits managers establish pharmacy and therapeutics committees that are free from conflicts of interest and use one or more formularies.

The bill provides that, for the purposes of calculating a carrier's anticipated loss ratio, pharmacy benefits manager compensation constitutes an administrative cost rather than a benefit.

The bill requires carriers to have the ability to access all data related to the administration and provision of prescription drug benefits administered by a pharmacy benefits manager under the health benefits plan.

The bill requires pharmacy benefits managers to disclose in writing to a carrier or health benefits plan any activity of the pharmacy benefits manager that directly or indirectly presents any conflict of interest with the pharmacy benefits manager's relationship with the carrier or plan.

The bill also increases the penalties pharmacy benefits managers are subject to for violations, and provide that pharmacy benefits managers may be required to make restitution and pay compensatory damages by the commissioner.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) require the Department of Banking and Insurance (department) to establish, by regulation, certain minimum standards for the issuance of a license to a pharmacy benefits manager;

(2) stipulate that pharmacy benefits managers are to be licensed with the department while pharmacy services administrative organizations are to be registered with the department;

(3) require applicants for licensure or registration to provide, upon the department's request, any contracts and documents between pharmacies, pharmacy benefits managers, and pharmacy services administrative organizations;

(4) stipulate that pharmacy services administrative organizations are not subject to certain requirements applicable to pharmacy benefits managers under the bill;

(5) require pharmacy benefits managers to disclose in writing to a carrier or health benefits plan any activity of the pharmacy benefits manager that directly or indirectly presents any conflict of interest with the pharmacy benefits manager's relationship with the carrier or plan;

(6) revise civil penalties for persons who willfully disclose certain confidential information;

(7) provide that records, contracts, documents, or data submitted to the department by a carrier or a pharmacy benefits manager are to be kept confidential and protected from public disclosure;

(8) increase the penalties pharmacy benefits managers are subject to for violations, and provide that pharmacy benefits managers may be required to make restitution and pay compensatory damages by the commissioner;

(9) require the Drug Affordability Council to examine certain information concerning the prescription drug rebate system;

(10) require 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 or be remitted directly to the covered person at the point of sale or retained by the carrier to be used to offset the premium for covered persons in future plan years; and

(11) extend the effective date of the bill from the first day of the seventh month to the first day of the 18th month following the date of enactment, and provide that the bill applies to contracts and agreements entered into, renewed, modified, or amended on or after the effective date.

FISCAL IMPACT:

The Office of Legislative Services estimates that this bill would result in a modest increase in State revenues from license issuance and renewal fees paid by pharmacy benefits managers and pharmacy services administrative organizations.