

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[Second Reprint]

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

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2023

The Assembly Budget Committee reports favorably and with committee amendments the Assembly Committee Substitute for Bill Nos. 536 and 2841 (2R).

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.

As reported by the committee, the Assembly Committee Substitute for Bill Nos. 536 and 2841 (2R) is identical to Senate Bill No. 1616 (1R).

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) revise the definition of “compensation” remitted by or on behalf of a pharmaceutical manufacturer, developer or labeler, directly or indirectly, to a carrier or to a pharmacy benefits manager under contract with a carrier related to prescription drug benefits to include only a direct or indirect financial benefit that is attributed to, directly or indirectly, the utilization of a health benefits plan or enrollment in a health benefits plan; and

(2) make a technical correction.

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 registration issuance and renewal fees paid by pharmacy services administrative organizations.