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ASSEMBLY, No. 5212

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 23, 2023

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SYNOPSIS

Authorizes use of healthcare platforms providing discounted prices for payment of prescription and non-prescription drugs or devices and for telehealth and telemedicine services.

CURRENT VERSION OF TEXT

As reported by the Assembly Financial Institutions and Insurance Committee on December 11, 2023, with amendments.

(Sponsorship Updated As Of: 12/21/2023)

AN ACT concerning payment for certain health-related costs, amending and supplementing various parts of the statutory law.

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

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

1. a. A pharmacy benefits manager, in connection with any contract or arrangement with a private health insurer, prescription benefit plan, or the State Health Benefits Program or School Employees' Health Benefits Program, shall not require a covered person to make a payment at the point of sale for any amount for a deductible, coinsurance payment, or a copayment for a prescription drug benefit in an amount that exceeds the amount the covered person would pay for the prescription drug if the covered person purchased the prescription drug without using a health benefits plan.

b. (1) A pharmacy benefits manager shall not prohibit a network pharmacy from disclosing, and shall not apply a penalty or any other type of disincentive to a network pharmacy that discloses, to a covered person lower cost prescription drug options, including those that are available to the covered person if the covered person purchases the prescription drug without using health insurance coverage.

(2) A pharmacy benefits manager shall not prohibit or apply any penalty or disincentive to a network pharmacy if a discounted price generated by a healthcare platform, as defined pursuant to section 2 of P.L.2003, c.280 (C.45:14-41), is applied to the payment of a covered person with an account or membership to the healthcare platform for a prescription drug, even if the covered person maintains health insurance coverage.

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

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

(cf: P.L.2019, c.57, s.1)

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

1. a. A pharmacy benefits manager, in connection with any contract or arrangement with a private health insurer, prescription

EXPLANATION – Matter enclosed in bold-faced brackets [thus] 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:
[1]Assembly AFI committee amendments adopted December 11, 2023.

benefit plan, or the State Health Benefits Program or School Employees' Health Benefits Program, shall not require a covered person to make a payment at the point of sale for any amount for a deductible, coinsurance payment, or a copayment for a prescription drug benefit in an amount that exceeds the amount permitted pursuant to subsection d. of section 3 of P.L.2023, c.107 (C.17B:27F-3.1).

b. A pharmacy benefits manager shall not prohibit a network pharmacy from, and shall not apply a penalty or any other type of disincentive to a network pharmacy for:

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

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

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

(4) applying a discounted price generated by a healthcare platform, as defined pursuant to section 2 of P.L.2003, c.280 (C.45:14-41), to the payment of a covered person with an account or membership to the healthcare platform for a prescription drug, even if the covered person maintains health insurance coverage.

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

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

(cf: P.L.2023, c.107, s.10)

2. Section 2 of P.L.2003, c.280 (C.45:14-41) is amended to read as follows:

2. As used in this act:

"Administer" means the direct application of a drug to the body of a patient or research subject by subcutaneous, intramuscular or intradermal injection, inhalation or ingestion by a pharmacist engaged in collaborative practice or in accordance with regulations jointly promulgated by the board and the State Board of Medical Examiners.

"Automated medication device" means a discrete unit that performs specific drug dispensing operations.

"Automated medication system" means any process that performs operations or activities, other than compounding or

administration, relative to the storage, packaging, dispensing and distribution of medications and which collects, controls and maintains all transaction information.

"Board of Pharmacy" or "board" means the New Jersey State Board of Pharmacy.

"Certification" means a certification awarded by a recognized non-government specialty organization to signify that a pharmacist has met predetermined qualifications and to signify to the public that the pharmacist is competent to practice in the designated specialty.

"Collaborative drug therapy management" means a written protocol directed on a voluntary basis by a patient's physician, with the patient's consent, that is between a patient's physician who is treating the patient for a specific disease and a pharmacist for cooperative management of a patient's drug, biological and device-related health care needs, which shall be conducted in accordance with regulations jointly promulgated by the board and the State Board of Medical Examiners and shall only include the collecting, analyzing and monitoring of patient data; ordering or performing of laboratory tests based on the standing orders of a physician as set forth in the written protocol; ordering of clinical tests based on the standing orders of a physician as set forth in the written protocol, provided those laboratory tests are granted waived status in accordance with the provisions of the "New Jersey Clinical Laboratory Improvement Act," P.L.1975, c.166 (C.45:9-42.26 et seq.) and are for the treatment of a disease state identified jointly by the board and the State Board of Medical Examiners as subject to collaborative drug therapy management; modifying, continuing or discontinuing drug or device therapy; and therapeutic drug monitoring with appropriate modification to dose, dosage regimen, dosage forms or route of administration. The interpretation of clinical or laboratory tests under a written protocol may only be performed by a pharmacist in direct consultation with a physician.

"Compounding" means the preparation, mixing, assembling, packaging or labeling of a drug or device as the result of a practitioner's prescription or initiative based on the relationship of the practitioner or patient with the pharmacist in the course of professional practice or for the purpose of, or incident to, research, teaching or chemical analysis and not for sale or dispensing. Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns. Nothing in this act is meant to limit a prescriber's ability under pre-existing law to order a compounded medication for use in the prescriber's practice, as permitted by State and federal law.

"Confidential information" means information that is identifiable as to the patient involved that a pharmacist accesses, transmits or

maintains in a patient's record or which is communicated to or by the patient as part of patient counseling.

"Credentialing" means the process by which an approved academic institution awards a certificate to signify that the credentialed pharmacist has completed the required courses, examinations or both, that indicate advanced knowledge of a particular area of pharmacy.

"Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for consideration.

"Device" means an instrument, apparatus, implement, machine, contrivance, implant or other similar or related article, including any component part or accessory, which is required under federal law to bear the label "RX Only."

"Dispense" or "dispensing" means the procedure entailing the interpretation of a practitioner's prescription order for a drug, biological or device, and pursuant to that order the proper selection, measuring, compounding, labeling and packaging in a proper container for subsequent administration to, or use by, a patient.

"Dosage form" means the physical formulation or medium in which the product is intended, manufactured and made available for use, including, but not limited to: tablets, capsules, oral solutions, aerosols, inhalers, gels, lotions, creams, ointments, transdermals and suppositories, and the particular form of the above which utilizes a specific technology or mechanism to control, enhance or direct the release, targeting, systemic absorption or other delivery of a dosage regimen in the body.

"Drug or medication" means articles recognized as drugs in any official compendium, or supplement thereto, designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; articles intended to affect the structure or any function of the body of humans or other animals, except that a food, dietary ingredient or dietary supplement, as those terms are defined in 21 U.S.C.s.321, is not a drug solely because the label or the labeling contains such a claim; and articles intended for use as a component of and articles specified in this definition of "drug or medication."

"Drug utilization review" includes, but is not limited to, the following activities:

(1) Evaluation of prescription drug orders and patient records for known allergies, rational therapy-contraindications, appropriate dose and route of administration and appropriate directions for use;

(2) Evaluation of prescription drug orders and patient records for duplication of therapy;

(3) Evaluation of prescription drug orders and patient records for interactions between drug-drug, drug-food, drug-disease and adverse drug reactions; and

(4) Evaluation of prescription drug orders and patient records for proper utilization, including over- or under-utilization, and optimum therapeutic outcomes.

"Extern" means any person who is in the fifth or sixth year of college or the third or fourth professional year, at an accredited school or college of pharmacy approved by the board, who is assigned to a training site for the purpose of acquiring accredited practical experience under the supervision of the school or college at which the person is enrolled.

"Electronic means" means any electronic or digital transmission format, including facsimile or computer generated messaging.

<u>“Healthcare platform” means an Internet-based service through which a consumer, who may or may not have separate health insurance coverage, may set-up an account or become a member to obtain discounts on prescription or non-prescription drugs or devices and through which other services, including telemedicine, may be provided.</u>

"Immediate supervision" means a level of control which assures that the pharmacist is physically present at the pharmacy practice site and has the responsibility for accuracy and safety with respect to the actions of pharmacy technicians, interns and externs.

"Intern" means any person who has graduated from an accredited school or college of pharmacy approved by the board, or if a foreign pharmacy graduate, any person who has met all of the requirements of the board, and who is being trained by an approved preceptor for the purpose of acquiring accredited practical experience and who has first registered for that purpose with the board.

"Labeling" means the process of preparing and affixing a label to any drug container, exclusive however, of the labeling by a manufacturer, packer or distributor of a non-prescription drug or commercially packaged legend drug or device.

"Licensure" means the process by which the board grants permission to an individual to engage in the practice of pharmacy upon finding that the applicant has attained the degree of competency necessary to ensure that the public health, safety and welfare will be protected.

"Medication error" means a preventable event that may cause or lead to inappropriate use of a medication or patient harm while the medication is in the control of the practitioner, patient or consumer.

"Medication order" means a prescription for a specific patient in an institutional setting.

"Modifying" means to change a specific drug, the dosage, or route of delivery of a drug currently being administered for an existing diagnosis pursuant to a collaborative drug therapy management.

"Non-prescription drug or device" means a drug or device which may be obtained without a prescription and which is labeled for consumer use in accordance with the requirements of the laws and rules of this State and the federal government.

"Permit" means the authorization granted by the board to a site to engage in the practice of pharmacy.

"Person" means an individual, corporation, partnership, association or any other legal entity including government.

"Pharmaceutical care" means the provision by a pharmacist of drug therapy review and other related patient care services intended to achieve positive outcomes related to the treatment, cure or prevention of a disease; control, elimination or reduction of a patient's symptoms; or arresting or slowing of a disease process as defined by the rules and regulations of the board.

"Pharmacist" means an individual currently licensed by this State to engage in the practice of pharmacy.

"Pharmacist-in-charge" means a pharmacist who accepts responsibility for the operation of a pharmacy practice site in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs.

"Pharmacist in collaborative practice" means a pharmacist engaged in the collaborative drug therapy management of a patient's drug, biological and device-related health care needs pursuant to a written protocol, in collaboration with a licensed physician and in accordance with the regulations jointly promulgated by the board and the State Board of Medical Examiners.

"Pharmacy practice site" means any place in this State where drugs are dispensed or pharmaceutical care is provided by a licensed pharmacist, but shall not include a medical office under the control of a licensed physician.

"Pharmacy technician" means an individual working in a pharmacy practice site who, under the immediate supervision of a pharmacist, assists in pharmacy activities as permitted by section 41 of this act and the rules and regulations of the board that do not require the professional judgment of a pharmacist.

"Practice of pharmacy" means a health care service by a pharmacist that includes: compounding, dispensing and labeling of drugs, biologicals, radio pharmaceuticals or devices; overseeing automated medication systems; interpreting and evaluating prescriptions; administering and distributing drugs, biologicals and devices; maintaining prescription drug records; advising and consulting on the therapeutic values, content, hazards and uses of drugs, biologicals and devices; managing and monitoring drug therapy; collecting, analyzing and monitoring patient data; performing drug utilization reviews; storing prescription drugs and devices; supervising technicians, interns and externs; and such other acts, services, operations or transactions necessary, or incidental to, providing pharmaceutical care and education. In accordance with

written guidelines or protocols established with a licensed physician, the "practice of pharmacy" also includes collaborative drug therapy management including modifying, continuing or discontinuing drug or device therapy; ordering or performing of laboratory tests under collaborative drug therapy management; and ordering clinical tests, excluding laboratory tests, unless those tests are part of collaborative drug therapy management.

"Practitioner" means an individual currently licensed, registered or otherwise authorized by the jurisdiction in which the individual practices to administer or prescribe drugs in the course of professional practice.

"Preceptor" means an individual who is a pharmacist, meets the qualifications under the rules and regulations of the board, and participates in the instructional training of pharmacy interns and externs.

"Prescription" means a lawful order of a practitioner for a drug, a device or diagnostic agent for a specific patient.

"Prescription drug" or "legend drug" means a drug which, under federal law, is required to be labeled prior to being delivered to the pharmacist, with either of the following statements: "Rx Only" or "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian" or is required by any applicable federal or state law, rule or regulation to be dispensed pursuant to a prescription drug order or is restricted to use by a practitioner only.

"Registration" means the process of making a list or being enrolled in an existing list.

"Therapeutic interchange" means the substitution and dispensing of a drug chemically dissimilar from the prescription drug originally prescribed.

(cf: P.L.2003, c.280, s.2)

3. Section 26 of P.L.2003, c.280 (C.45:14-65) is amended to read as follows:

26. In addition to the provisions of section 8 of P.L.1978, c.73 (C.45:1-21), the board may refuse an application for examination or may suspend or revoke the certificate of a licensed pharmacist upon proof satisfactory to the board that such licensed pharmacist is guilty of grossly unprofessional conduct and the following acts are hereby declared to constitute grossly unprofessional conduct for the purpose of this act:

a. Paying rebates or entering into an agreement for payment of rebates to any physician, dentist or other person for the recommending of the services of any person.

b. The providing or causing to be provided to a physician, dentist, veterinarian or other person authorized to prescribe, prescription blanks or forms bearing the pharmacist's or pharmacy's name, address or other means of identification.

c. The claiming of professional superiority in the compounding or filling of prescriptions or in any manner implying professional superiority which may reduce public confidence in the ability, character or integrity of other pharmacists.

d. Fostering the interest of one group of patients at the expense of another which compromises the quality or extent of professional services or facilities made available.

e. The distribution of premiums or rebates of any kind whatsoever in connection with the sale of drugs and medications provided, however, that trading stamps and similar devices shall not be considered to be rebates for the purposes of this act and provided further that discounts, premiums and rebates may be provided in connection with the sale of drugs and medications to any person who is 60 years of age or older and that discounts may be provided to any person who is a member of or is an account holder with a healthcare platform.

f. Advertising of prescription drug prices in a manner inconsistent with rules and regulations promulgated by the Director of the Division of Consumer Affairs, except that no advertising of any drug or substance shall be authorized unless the Commissioner of Health and Senior Services shall have determined that the advertising is not harmful to public health, safety and welfare.

g. Engaging in activities beyond the scope of a collaborative drug therapy management agreement.

Before a certificate shall be refused, suspended or revoked, the accused person shall be furnished with a copy of the complaint and given a hearing before the board. Any person whose certificate is so suspended or revoked shall be deemed an unlicensed person during the period of such suspension or revocation, and as those shall be subject to the penalties prescribed in this act, but that person may, at the discretion of the board, have his certificate reinstated at any time without an examination, upon application to the board. Any person to whom a certificate shall be denied by the board or whose certificate shall be suspended or revoked by the board shall have the right to review that action by appeal to the Appellate Division of the Superior Court in lieu of prerogative writ.
(cf: P.L.2003, c.280, s.26)

4. (New section) A patient with a membership or account with a healthcare platform may apply the membership or account as part of the payment for a prescription or non-prescription drug or device.

5. (New section) A patient with a membership or an account with a healthcare platform, as defined pursuant to section 2 of P.L.2003, c.280 (C.45:14-41), may apply the membership or account towards payment of services provided as a result of telehealth or telemedicine. A patient who uses or intends to use a

membership or an account with a healthcare platform to pay for telehealth or telemedicine services shall notify a provider of any identification number, if given, in connection with the membership or account with a healthcare platform to ensure the preservation of a proper patient-provider relationship pursuant to section 3 of P.L.2017, c.117 (C.45:1-63).

6. This act shall take effect immediately.