

§2  
C.17B:27F-1.1  
§§3,6,7,9  
C.17B:27F-3.1  
to 17B:27F-3.4  
§8  
C.17B:27F-9.1  
§13  
T & E and  
Note to  
C.45:14-82.11  
§14  
Note to all  
sections

P.L. 2023, CHAPTER 107, *approved July 10, 2023*  
Assembly Committee Substitute (*Third Reprint*) for  
Assembly, Nos. 536 and 2841

1 AN ACT concerning pharmacy benefits managers <sup>1</sup>**[**and amending  
2 and**]**,<sup>1</sup> supplementing P.L.2015, c.179<sup>1</sup>, and amending various  
3 parts of the statutory law<sup>1</sup>.  
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

**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:

<sup>1</sup>Assembly AHE committee amendments adopted May 26, 2022.

<sup>2</sup>Assembly AAP committee amendments adopted June 22, 2023.

<sup>3</sup>Assembly ABU committee amendments adopted June 27, 2023.

1 corporation, or health maintenance organization authorized to issue  
2 health benefits plans in this State.

3 <sup>1</sup>["Compensation" means any direct or indirect financial benefit,  
4 including, but not limited to, rebates, discounts, credits, fees, grants,  
5 chargebacks or other payments or benefits of any kind.]<sup>1</sup>

6 "Contracted pharmacy" means a pharmacy that participates in the  
7 network of a pharmacy benefits manager through a contract with:

- 8 a. the pharmacy benefits manager directly;  
9 b. a pharmacy services administration organization; or  
10 c. a pharmacy group purchasing organization.

11 "Cost-sharing amount" means the amount paid by a covered  
12 person as required under the covered person's health benefits plan  
13 for a prescription drug at the point of sale.

14 "Covered person" means a person on whose behalf a carrier or  
15 other entity, who is the sponsor of the health benefits plan, is  
16 obligated to pay benefits pursuant to a health benefits plan.

17 "Department" means the Department of Banking and Insurance.

18 "Drug" means a drug or device as defined in R.S.24:1-1.

19 "Health benefits plan" means a benefits plan which pays hospital  
20 or medical expense benefits for covered services, or prescription  
21 drug benefits for covered services, and is delivered or issued for  
22 delivery in this State by or through a carrier or any other sponsor.  
23 For the purposes of P.L.2015, c.179 (C.17B:27F-1), health benefits  
24 plan shall not include the following plans, policies or contracts:  
25 accident only, credit disability, long-term care, Medicare  
26 supplement coverage; TRICARE supplement coverage, coverage  
27 for Medicare services pursuant to a contract with the United States  
28 government, the State Medicaid program established pursuant to  
29 P.L.1968, c.413 (C.30:4D-1 et seq.), coverage arising out of a  
30 worker's compensation or similar law, the State Health Benefits  
31 Program, the School Employees' Health Benefits Program, or a self-  
32 insured health benefits plan governed by the provisions of the  
33 federal "Employee Retirement Income Security Act of 1974," 29  
34 U.S.C. s.1001 et seq., coverage under a policy of private passenger  
35 automobile insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1  
36 et seq.), or hospital confinement indemnity coverage.

37 <sup>1</sup>["Mail order pharmacy" means a pharmacy, the principle  
38 business of which is to receive a prescription by mail, fax or  
39 electronic submission, and to dispense medication to a covered  
40 person using the United States Postal Service or other common or  
41 contract carrier service and that provides consultation with patients  
42 electronically rather than in person.]<sup>1</sup>

43 "Maximum allowable cost" means the maximum amount a health  
44 insurer will pay for a generic drug or brand-name drug that has at  
45 least one generic alternative available.

46 "Network pharmacy" means a licensed retail pharmacy or other  
47 pharmacy provider that contracts with a pharmacy benefits manager

1 <sup>1</sup>either directly or by and through a contract with a pharmacy  
2 services administrative organization<sup>1</sup>.

3 "Pharmacy" means any place in the State, either physical or  
4 electronic, where drugs are dispensed or pharmaceutical care is  
5 provided by a licensed pharmacist, but shall not include a medical  
6 office under the control of a licensed physician.

7 "Pharmacy benefits manager" means a corporation, business, or  
8 other entity, or unit within a corporation, business, or other entity,  
9 that, pursuant to a contract or under an employment relationship  
10 with a carrier, a self-insurance plan or other third-party payer, either  
11 directly or through an intermediary, administers prescription drug  
12 benefits on behalf of a purchaser.

13 "Pharmacy benefits manager compensation" means the  
14 difference between: (1) the <sup>1</sup>[value] amount<sup>1</sup> of payments made by  
15 a carrier of a health benefits plan to its pharmacy benefits manager;  
16 and (2) the value of payments made by the pharmacy benefits  
17 manager to dispensing pharmacists for the provision of prescription  
18 drugs or pharmacy services with regard to pharmacy benefits  
19 covered by the health benefits plan.

20 "Pharmacy benefits management services" means the provision  
21 of any of the following services on behalf of a purchaser: the  
22 procurement of prescription drugs at a negotiated rate for  
23 dispensation within this State; the processing of prescription drug  
24 claims; or the administration of payments related to prescription  
25 drug claims.

26 <sup>1</sup>"Pharmacy services administrative organization" means an  
27 entity operating within the State that contracts with independent  
28 pharmacies to conduct business on their behalf with third-party  
29 payers.<sup>1</sup>

30 "Prescription" means a prescription as defined in section 5 of  
31 P.L.1977, c.240 (C.24:6E-4).

32 "Prescription drug benefits" means the benefits provided for  
33 prescription drugs and pharmacy services for covered services  
34 under a health benefits plan contract.

35 "Purchaser" means any sponsor of a health benefits plan who  
36 enters into an agreement with a pharmacy benefits management  
37 company for the provision of pharmacy benefits management  
38 services to covered persons.

39 (cf: P.L.2019, c.274, s.2)

40

41 2. (New section) a. A corporation, business, or other entity  
42 shall not act as a pharmacy benefits manager <sup>2</sup>without first  
43 obtaining a license from the department<sup>2</sup> <sup>1</sup>or <sup>2</sup>as a<sup>2</sup> pharmacy  
44 services administrative organization<sup>1</sup> <sup>2</sup>[in this State without first  
45 obtaining a license] without first obtaining registration<sup>2</sup> from the  
46 department. An applicant for licensure <sup>2</sup>or registration<sup>2</sup> <sup>1</sup>[as a

1 pharmacy benefits manager<sup>1</sup> shall provide to the department  
2 information that includes, but is not limited to, the following:

- 3 (1) the name of the applicant;  
4 (2) the address and telephone number of the applicant;  
5 (3) the name and address of the applicant's agent for service of  
6 process in the State;

7 (4) the name and address of each person <sup>1</sup>beneficially  
8 interested<sup>1</sup> owning 10 percent or greater interest<sup>1</sup> in the applicant;  
9 <sup>1</sup>and<sup>1</sup>

10 (5) the name and address of each person with management or  
11 control over the applicant <sup>1</sup>; <sup>2</sup>and<sup>2</sup>

12 (6) <sup>2</sup>for pharmacy benefits managers,<sup>2</sup> the information required  
13 under section 4 of P.L.1999, c.409 (C.17:48H-4)<sup>1 2</sup>;

14 (7) for pharmacy benefits managers, all contracts and documents  
15 between pharmacies, pharmacy benefits managers, and pharmacy  
16 services administrative organizations; and

17 (8) for pharmacy services administrative organizations, upon the  
18 department's request, any contracts and documents between  
19 pharmacies, pharmacy benefits managers, and pharmacy services  
20 administrative organizations<sup>2</sup>.

21 b. A license <sup>2</sup>or registration<sup>2</sup> issued pursuant to this section  
22 shall be valid for a period of three years and may be renewed at the  
23 end of the three-year period. The commissioner shall establish fees  
24 for a license <sup>2</sup>or registration<sup>2</sup> issued or renewed pursuant to this  
25 section.

26 c. The department may issue a <sup>1</sup>pharmacy benefits manager<sup>1</sup>  
27 <sup>2</sup>pharmacy benefits manager<sup>2</sup> license to an applicant only if the  
28 department is satisfied that the applicant possesses the necessary  
29 organization, expertise, and financial integrity to supply the  
30 services sought to be offered. <sup>2</sup>The department shall establish, by  
31 regulation, minimum standards for the issuance of a license to a  
32 pharmacy benefits manager. The minimum standards established  
33 pursuant to this subsection shall contain both prerequisites for the  
34 issuance of a license to a pharmacy benefits manager and  
35 requirements for maintenance of a license by a pharmacy benefits  
36 manager and shall address, without limitation:

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

39 (2) deceptive practices in connection with the performance of  
40 pharmacy <sup>3</sup>benefit<sup>3</sup> benefits<sup>3</sup> management services;

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

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

45 (5) pricing models used by pharmacy <sup>3</sup>benefit<sup>3</sup> benefits<sup>3</sup>  
46 managers both for their services and for the payment of services to  
47 the pharmacy benefits manager;

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

6 (7) protection of consumers.<sup>2</sup>

7 d. The department may issue a <sup>1</sup>**pharmacy benefits manager**<sup>1</sup>  
8 license <sup>1</sup>to a pharmacy benefits manager <sup>2</sup>**or pharmacy services**  
9 administrative organization<sup>1</sup><sup>2</sup> subject to restrictions or limitations,  
10 including the type of services that may be supplied or the activities  
11 in which the pharmacy benefits manager <sup>2</sup>**or pharmacy services**  
12 administrative organization<sup>1</sup><sup>2</sup> may engage.

13 e. A license <sup>2</sup>or registration<sup>2</sup> issued pursuant to this section  
14 shall not be transferable.

15 f. The department may suspend, revoke or place on probation a  
16 <sup>1</sup>**pharmacy benefits manager license** licensee<sup>1</sup> <sup>2</sup>or registered  
17 entity<sup>2</sup> if:

18 (1) the pharmacy benefits manager <sup>1</sup>or pharmacy services  
19 administrative organization<sup>1</sup> has engaged in fraudulent activity <sup>1</sup>or  
20 any activity<sup>1</sup> that constitutes a violation of State or federal law;

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

24 (3) the pharmacy benefits manager <sup>1</sup>or pharmacy services  
25 administrative organization<sup>1</sup> fails to pay the original issuance or  
26 renewal fee for the license <sup>2</sup>or registration<sup>2</sup>; or

27 (4) the pharmacy benefits manager <sup>1</sup>or pharmacy services  
28 administrative organization<sup>1</sup> fails to comply with any requirement  
29 set forth in P.L. , c. (C. ) (pending before the Legislature as  
30 this bill).

31 g. If a corporation, business, or other entity acts as a pharmacy  
32 benefits manager <sup>1</sup>or pharmacy services administrative  
33 organization<sup>1</sup> without obtaining a license <sup>2</sup>or registration<sup>2</sup> pursuant  
34 to this section, the corporation, business, or other entity shall be  
35 subject to <sup>1</sup>**:**

36 (1) a warning notice;

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

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

41 (4) if the violation has not been cured pursuant to subsection a.  
42 of this section, a penalty of not less than \$5,000 or more than  
43 \$10,000 **the provisions of section 7 of P.L.2019, c.274**  
44 **(C.17B:27F-10)**<sup>1</sup>.

45 h. <sup>1</sup>(1)<sup>1</sup> Notwithstanding the provisions of subsection a. of this  
46 section, a pharmacy benefits manager <sup>1</sup>**certified or licensed** <sup>2</sup>**or**

1 pharmacy services administrative organization]<sup>2</sup> that applied for, or  
2 received, certification or licensure<sup>1</sup> as an organized delivery system  
3 prior to the effective date of P.L. , c. (C. ) (pending before  
4 the Legislature as this bill), in accordance with P.L.1999, c.409  
5 (C.17:48H-1 et seq.), may continue to operate during the pendency  
6 of its application submitted pursuant to this section, but no more  
7 than <sup>1</sup>[18] ~~24~~<sup>1</sup> months after the effective date of this act.

8 <sup>1</sup>(2) A corporation, business, or other entity that acts as a  
9 pharmacy benefits manager <sup>2</sup>[or pharmacy services administrative  
10 organization]<sup>2</sup>, and applies for, receives, and maintains a license as  
11 an organized delivery system, in accordance with P.L.1999, c.409  
12 (C.17:48H-1 et seq.), shall not be required to maintain that license  
13 as an organized delivery system upon the issuance of a license  
14 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
15 this bill), and during any subsequent applications for renewal of the  
16 license as a pharmacy benefits manager <sup>2</sup>[or pharmacy services  
17 administrative organization]<sup>2</sup> pursuant to the requirements of  
18 P.L. , c. (C. ) (pending before the Legislature as this bill).

19 i. A licensee shall be subject to the following except to the  
20 extent inconsistent with this act or where the commissioner  
21 determines that any provisions are inappropriate as applied to a  
22 pharmacy benefits manager <sup>2</sup>[or pharmacy services administrative  
23 organization]<sup>2</sup>:

24 (1) the unfair trade practices provisions of N.J.S.17B:30-1 et  
25 seq.;

26 (2) the provisions of P.L.1970, c. 22 (C.17:27A-1 et seq.);

27 (3) the "Life and Health Insurers Rehabilitation and Liquidation  
28 Act," P.L.1992, c.65 (C.17B:32-31 et seq.);

29 (4) investment limitations pursuant to N.J.S.17B:20-1 et seq.;  
30 and

31 (5) the "Health Care Quality Act," P.L.1997, c.192 (C.26:2S-1  
32 et al.).<sup>1</sup>

33

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

35 (1) monitor all activities carried out on behalf of the carrier by a  
36 pharmacy benefits manager if the carrier contracts with a pharmacy  
37 benefits manager and is related to a carrier's prescription drug benefits;  
38 and

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

40 b. A carrier that contracts with a pharmacy benefits manager to  
41 perform any activities related to the carrier's prescription drug benefits  
42 shall ensure that, under the contract, the pharmacy benefits manager  
43 acts as the carrier's agent <sup>1</sup>[and owes a fiduciary duty to the carrier in  
44 the pharmacy benefits manager's activities related to the carrier's  
45 prescription drug benefits] in good faith and fair dealing in the  
46 performance of all of its contractual duties. All funds received by the  
47 pharmacy benefits manager in relation to providing pharmacy benefits

1 management services shall be used or distributed only pursuant to the  
2 pharmacy benefits manager's contract with the health benefits plan or  
3 carrier or applicable law; including any administrative fee or payment  
4 to the pharmacy benefits manager expressly provided for in the  
5 contract to compensate the pharmacy benefits manager for its services.  
6 Any funds received by the pharmacy benefits manager through spread  
7 pricing shall be subject to this subsection<sup>1</sup>.

8 c. <sup>1</sup>~~【~~A carrier shall not enter into a contract or agreement, or  
9 allow a pharmacy benefits manager or any entity acting on the carrier's  
10 behalf to enter into a contract or agreement, that prohibits a pharmacy  
11 from:

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

16 (2) providing information to a State or federal agency, law  
17 enforcement agency, or the department when such information is  
18 required by law ~~】~~ (1) A pharmacy benefits manager interacting with a  
19 covered person shall have the same duty to a covered person as the  
20 health benefits plan or carrier for whom it is performing pharmacy  
21 benefits management services.

22 (2) A pharmacy benefits manager shall have a duty of good faith  
23 and fair dealing with all parties, including but not limited to covered  
24 persons and pharmacies, with whom it interacts in the performance of  
25 pharmacy benefits management services<sup>1</sup>.

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

29 (1) the applicable cost-sharing amount for the prescription drug;  
30 <sup>1</sup>~~【~~<sup>2</sup>or<sup>2</sup>

31 (2) <sup>1</sup>the amount a covered person would pay for the prescription  
32 medication if the covered person purchased the prescription  
33 medication without using a health benefits plan<sup>2</sup> ~~】~~; or

34 (3) <sup>1</sup>the total amount the pharmacy will be reimbursed for the  
35 prescription drug from the pharmacy benefits manager or carrier,  
36 including the cost-sharing amount paid by a covered person <sup>1</sup>~~【~~,  
37 whichever is less<sup>1</sup>.<sup>2</sup> ~~】~~.

38 e. A carrier shall provide a reasonably adequate retail pharmacy  
39 network for the provision of prescription drugs for its covered persons  
40 <sup>1</sup>~~【~~A mail order pharmacy shall not be included in determining the  
41 adequacy of a retail pharmacy network ~~】~~<sup>1</sup>.

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

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

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

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

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

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

23 b. Additionally, a pharmacy benefits manager shall:

24 (1) **【Maintain】** maintain a procedure to eliminate drugs from the  
25 list of drugs subject to multiple source generic drug pricing and  
26 brand drug pricing, or modify maximum allowable cost rates, brand  
27 effective rate, generic effective rate, dispensing fee effective rate or  
28 any other applicable pricing formula in a timely fashion and make  
29 that procedure easily accessible to the pharmacy services  
30 administrative organizations or the pharmacies that they are  
31 contractually obligated with to provide that information according  
32 to the requirements of this section; and

33 (2) provide <sup>1</sup>【a reasonable administrative appeal procedure,  
34 including a right to appeal in accordance with section 4 of PL.2015,  
35 c.179 (C.17B:27F-4), to allow pharmacies with which】 an internal  
36 appeal mechanism to resolve any dispute raised by a carrier or  
37 pharmacy, regardless of whether<sup>1</sup> the carrier or pharmacy benefits  
38 manager has a contract to challenge maximum allowable costs for a  
39 specified drug. <sup>1</sup>Any dispute regarding the determination of an  
40 internal appeal conducted pursuant to this subsection may be  
41 referred to arbitration. The Commissioner of Banking and  
42 Insurance shall contract with a nationally recognized, independent  
43 organization that specializes in arbitration to conduct the arbitration  
44 proceedings.<sup>1</sup>

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

46  
47 5. Section 3 of P.L.2015, c.179 (C.17B:27F-3) is amended to  
48 read as follows:



1       3. a. **【**In order to place a particular prescription drug on a  
2 multiple source generic list, the pharmacy benefits manager shall, at  
3 a minimum, ensure that:**】** A carrier, or a pharmacy benefits manager  
4 under contract with a carrier, shall use a single maximum allowable  
5 cost list to establish the maximum amount to be paid by a health  
6 benefits plan to a pharmacy provider for a generic drug or a brand-  
7 name drug that has at least one generic equivalent available. A  
8 carrier, or a pharmacy benefits manager under contract with a  
9 carrier, shall use the same maximum allowable cost list for each  
10 pharmacy provider.

11       b. A maximum allowable cost may be set for a prescription  
12 drug, or a prescription drug may be allowed to continue on a  
13 maximum allowable cost list, only if:

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

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

22       **【b.】** c. A pharmacy benefits manager shall not penalize a  
23 pharmacist or pharmacy on audit if the pharmacist or pharmacy  
24 performs a generic substitution pursuant to the "Prescription Drug  
25 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-1 et  
26 seq.).

27       d. A carrier, or a pharmacy benefits manager under contract  
28 with a carrier, shall use the average wholesale price to establish the  
29 maximum payment for a brand-name drug for which a generic  
30 equivalent is not available or a prescription drug not included on a  
31 maximum allowable cost list. In order to use the average wholesale  
32 price of a brand-name drug or prescription drug not included on a  
33 maximum allowable cost list, a carrier, or a pharmacy benefits  
34 manager under contract with a carrier, shall use only one national  
35 drug pricing source during a calendar year, unless the original drug  
36 pricing source is no longer available. A carrier, or a pharmacy  
37 benefits manager under contract with a carrier, shall use the same  
38 national drug pricing source for each pharmacy provider and  
39 identify on its publicly accessible website the name of the national  
40 drug pricing source used to determine the average wholesale price  
41 of a prescription drug not included on the maximum allowable cost  
42 list.

43       e. The amount paid by a carrier or a carrier's pharmacy benefits  
44 manager to a pharmacy provider under contract with the carrier or  
45 the carrier's pharmacy benefits manager for dispensing a  
46 prescription drug shall be the ingredient cost plus the dispensing fee  
47 less any cost-sharing amount paid by a covered person.

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

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

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

7  
8       6. (New section) a. Compensation remitted by or on behalf of  
9 a pharmaceutical manufacturer, developer or labeler, directly or  
10 indirectly, to a carrier or to a pharmacy benefits manager under  
11 contract with a carrier related to prescription drug benefits shall  
12 be<sup>1</sup> [ ]:

13       (1) ]<sup>1 2</sup>:

14       (1) <sup>2</sup>remitted directly to the covered person at the point of sale  
15 to reduce the out-of-pocket cost to the covered person associated  
16 with a particular prescription drug<sup>1</sup> [ ] ; or

17       (2) remitted to, and retained by, the carrier. Compensation  
18 remitted to the carrier shall be applied by the carrier in its plan  
19 design and in future plan years to offset the premium for covered  
20 persons ]<sup>1 2</sup>; or

21       (2) remitted to, and retained by, the carrier. Compensation  
22 remitted to the carrier shall be applied by the carrier in its plan  
23 design and in future plan years to offset the premium for covered  
24 persons<sup>2</sup>.

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

31       <sup>1</sup>c. Nothing in this section shall preclude a carrier or pharmacy  
32 benefits manager under contract with a carrier from implementing a  
33 program designed to lower a covered person's out-of-pocket cost or  
34 decreasing a covered person's out-of-pocket cost by an amount  
35 greater than that required under subsection a. of this section.

36       d. As used in this section, "compensation" means any direct or  
37 indirect financial benefit, including, but not limited to, rebates,  
38 discounts, credits, fees, grants, chargebacks or other payments or  
39 benefits of any kind<sup>3</sup>, that is attributed to, directly or indirectly, the  
40 utilization of a health benefits plan or enrollment in a health  
41 benefits plan, regardless of how the benefits are otherwise  
42 characterized by a pharmacy benefits manager and relevant third  
43 parties<sup>3 1</sup> .

44  
45       7. (New section) a. A carrier, or a pharmacy benefits manager  
46 under contract with a carrier, shall establish a pharmacy and

1 therapeutics committee responsible for managing the formulary  
2 system.

3 b. A carrier, or a pharmacy benefits manager under contract  
4 with a carrier, shall not allow a person with a conflict of interest to  
5 be a member of its pharmacy and therapeutics committee. <sup>1</sup> [A  
6 person shall not serve as a member of a pharmacy and therapeutics  
7 committee if the person:

8 (1) is employed, or was employed within the preceding year, by  
9 a pharmaceutical manufacturer, developer, labeler, wholesaler, or  
10 distributor; or

11 (2) receives compensation, or received compensation within the  
12 preceding year, from a pharmaceutical manufacturer, developer,  
13 labeler, wholesaler, or distributor.] A carrier, or a pharmacy  
14 benefits manager under contract with a carrier, shall require that its  
15 pharmacy and therapeutics committee meet the requirements for  
16 conflict of interest as set by the Centers for Medicare and Medicaid  
17 Services or meets the accreditation standards of the National  
18 Committee for Quality Assurance or another independent  
19 accrediting organization.<sup>1</sup>

20

21 8. (New section) a. A carrier <sup>1</sup>or health benefits plan, including  
22 the State Health Benefits Program, the School Employees' Health  
23 Benefits Program, the State Medicaid program, or a self-insured health  
24 benefits plan governed by the provisions of the federal <sup>2</sup> [Employee]  
25 “Employee<sup>2</sup> Retirement Income Security Act of 1974,” 29 U.S.C.  
26 s.1001 et seq.,<sup>1</sup> shall <sup>1</sup> [maintain and]<sup>1</sup> have the ability to access all  
27 data related to the administration and provision of prescription drug  
28 benefits administered by a pharmacy benefits manager under the  
29 health benefits plan <sup>1</sup> [of the carrier]<sup>1</sup>, including, but not limited to:

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

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

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

43 c. A carrier <sup>1</sup>or health benefits plan, including the State Health  
44 Benefits <sup>2</sup> [Plan] Program<sup>2</sup>, the School Employees' Health Benefits  
45 <sup>2</sup> [Plan] Program<sup>2</sup>, the State Medicaid program, or a self-insured  
46 health benefits plan<sup>1</sup> may audit all transaction records related to the  
47 dispensing of prescription drugs to covered persons under a health

1 benefits plan. A carrier <sup>1</sup>or health benefits plan, including the State  
2 Health Benefits <sup>2</sup>[Plan] Program<sup>2</sup>, the School Employees' Health  
3 Benefits <sup>2</sup>[Plan] Program<sup>2</sup>, the State Medicaid program, or a self-  
4 insured health benefits plan<sup>1</sup> may conduct audits at a location of its  
5 choosing and with an auditor of its choosing.

6 d. A carrier shall maintain all records, information and data  
7 described in subsection a. of this section and all audit records  
8 described in subsection c. of this section for a period of no less than  
9 five years.

10 e. <sup>1</sup>(1)<sup>1</sup> Upon request, a carrier <sup>1</sup>or pharmacy benefits manager<sup>1</sup>  
11 shall provide to the department any records, contracts, documents or  
12 data held by the carrier or the carrier's pharmacy benefits manager for  
13 inspection, examination or audit purposes. <sup>2</sup>The department shall keep  
14 confidential all information submitted pursuant to this section and  
15 shall protect it from public disclosure.<sup>2</sup> <sup>1</sup>Any records, documents, or  
16 data provided to the department pursuant to this subsection shall not be  
17 considered a government record under P.L.1963, c.73 (C.47:1A-1 et  
18 seq.) or the common law concerning access to government records.

19 (2) A person who is authorized to access information submitted by  
20 a pharmacy benefits manager to the <sup>2</sup>[division] department<sup>2</sup> who  
21 <sup>2</sup>[knowingly] willfully<sup>2</sup> discloses such information to any person or  
22 entity who is not authorized to access the information shall be <sup>2</sup>[guilty  
23 of a crime of the fourth degree and shall be]<sup>2</sup> subject to a civil penalty  
24 in an amount not to exceed <sup>2</sup>[\$10,000] \$500<sup>2</sup>.

25 A civil penalty imposed under this subsection shall be collected by  
26 the <sup>2</sup>[director] commissioner<sup>2</sup> pursuant to the "Penalty Enforcement  
27 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).<sup>1</sup>

28 <sup>2</sup>f. A pharmacy benefits manager shall disclose in writing to a  
29 carrier or health benefits plan any activity, policy, practice, contract or  
30 arrangement of the pharmacy benefits manager that directly or  
31 indirectly presents any conflict of interest with the pharmacy benefits  
32 manager's relationship with or obligation to the carrier or plan.<sup>2</sup>

33  
34 9. (New section) a. If a carrier uses a pharmacy benefits  
35 manager to administer or manage the prescription drug benefits of  
36 covered persons, any pharmacy benefits manager compensation, for  
37 purposes of calculating a carrier's anticipated loss ratio or any loss  
38 ratio calculated as part of any applicable medical loss ratio filing or  
39 rate filing, shall:

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

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

45 b. Any rate filing submitted by a carrier with respect to a health  
46 benefits plan that provides coverage for prescription drugs or

1 pharmacy services, that is administered or managed by a pharmacy  
2 benefits manager, shall include:

3 (1) a memorandum prepared by a qualified actuary describing  
4 the calculation of the pharmacy benefits manager compensation;  
5 and

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

9 c. Upon request, a carrier shall provide any records to the  
10 department that relate to the calculation of the pharmacy benefits  
11 manager and pharmacy services administrative organization<sup>1</sup>  
12 compensation.

13 d. A pharmacy benefits manager and pharmacy services  
14 administrative organization<sup>1</sup> shall provide any necessary  
15 documentation requested by a carrier that relates to pharmacy  
16 benefits manager compensation in order to comply with the  
17 requirements of this section.

18

19 <sup>1</sup>10. Section 1 of P.L.2019, c.257 (C.17B:27F-6) is amended to  
20 read as follows:

21 1. a. A pharmacy benefits manager, in connection with any  
22 contract or arrangement with a private health insurer, prescription  
23 benefit plan, or the State Health Benefits Program or School  
24 Employees' Health Benefits Program, shall not require a covered  
25 person to make a payment at the point of sale for any amount for a  
26 deductible, coinsurance payment, or a copayment for a prescription  
27 drug benefit in an amount that exceeds the amount **the covered**  
28 **person would pay for the prescription drug if the covered person**  
29 **purchased the prescription drug without using a health benefits**  
30 **plan** permitted pursuant to subsection d. of section 3 of P.L. ,  
31 c. (C. ) (pending before the Legislature as this bill).

32 b. A pharmacy benefits manager shall not prohibit a network  
33 pharmacy from **disclosing**, and shall not apply a penalty or any  
34 other type of disincentive to a network pharmacy **that discloses,**  
35 for:

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

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

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

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

3 d. A violation of this section shall be an unlawful practice and  
4 a violation of P.L.1960, c.39 (C.56:8-1 et seq.), and shall also be  
5 subject to any enforcement action that the Commissioner of  
6 Banking and Insurance is authorized to take pursuant to section 5 of  
7 P.L.2015, c.179 (C.17B:27F-5).<sup>1</sup>  
8 (cf: P.L.2019, c.257, s.1)  
9

10 <sup>1</sup>~~10.~~ 11.<sup>1</sup> Section 6 of P.L.2019, c.274 (C.17B:27F-9) is  
11 amended to read as follows:

12 6. The licensing requirements of P.L.2015, c.179 (C.17B:27F-1 et  
13 seq.) shall apply to all pharmacy benefits managers operating in the  
14 State of New Jersey ~~], except for any].~~ Requirements imposed on  
15 carriers by the provisions of P.L.2015, c.179 (C.17B:27F-1 et seq.)  
16 shall not apply to an agreement by a pharmacy benefits manager to  
17 administer prescription drug benefits on behalf of the State Health  
18 Benefits <sup>2</sup>~~Plan~~ Program<sup>2</sup>, the School Employees Health Benefits  
19 <sup>2</sup>~~Plan~~ Program<sup>2</sup>, the State Medicaid program established pursuant to  
20 P.L.1968, c.413 (C.30:4D-1 et seq.), or a self-insured health benefits  
21 plan governed by the provisions of the federal “Employee Retirement  
22 Income Security Act of 1974,” 29 U.S.C., ss.1001 et seq.  
23 (cf: P.L.2019, c.274, s.6)  
24

25 <sup>2</sup>12. Section 7 of P.L.2019, c.274 (C.17B:27F-10) is amended to  
26 read as follows:

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

30 [a. a warning notice;

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

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

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

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

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

40 b. In addition to any other penalties permitted by law, the  
41 Commissioner of Banking and Insurance may require a pharmacy  
42 benefits manager that violates the provisions of P.L.2015, c.179  
43 (C.17B:27F-1 et seq.) to make restitution and pay compensatory  
44 damages, in an amount to be determined by the commissioner, to  
45 any person injured by the violation.<sup>2</sup>

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

1       <sup>2</sup>13. (New section) The Drug Affordability Council, established  
2 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
3 Senate Bill No. 1615 or Assembly Bill No. 2840 of 2022-2023), shall,  
4 in the first report issued by the council, examine the existing  
5 prescription drug rebate system and evaluate measures and reforms  
6 that could reduce the cost of prescription drugs, including, but not  
7 limited to, the elimination of rebates and the establishment of rebate  
8 transparency provisions.<sup>2</sup>

9  
10       <sup>1</sup>~~11.~~ <sup>2</sup>~~12.~~ <sup>1</sup>14.<sup>2</sup> This act shall take effect on the first day of the  
11 <sup>2</sup>~~seventh~~ <sup>2</sup>18<sup>th</sup> month next following the date of enactment, <sup>2</sup>and  
12 shall apply to contracts and agreements entered into, renewed,  
13 modified, or amended on or after the effective date.<sup>2</sup> but the  
14 Commissioner of <sup>2</sup>~~the~~<sup>2</sup> Banking and Insurance may take such  
15 anticipatory administrative action in advance thereof as shall be  
16 necessary for the implementation of the act.

17

18

19

20

21       Establishes new transparency standards for pharmacy benefits  
22 manager business practices.