

SENATE, No. 1616

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 14, 2022

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SYNOPSIS

Establishes new transparency standards for pharmacy benefits manager business practices.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/12/2022)

1 AN ACT concerning pharmacy benefits managers and amending and
2 supplementing P.L.2015, c.179.

3

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

6

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

9 1. As used in **[this act]** P.L.2015, c.179 (C.17B:27F-1 et seq.):

10 "Anticipated loss ratio" means the ratio of the present value of
11 the future benefits payments, including claim offsets after the point
12 of sale, to the present value of the future premiums of a policy form
13 over the entire period for which rates are computed to provide
14 health insurance coverage.

15 "Average wholesale price" means the average wholesale price of
16 a prescription drug determined by a national drug pricing publisher
17 selected by a carrier. The average wholesale price shall be
18 identified using the national drug code published by the National
19 Drug Code Directory within the United States Food and Drug
20 Administration.

21 "Brand-name drug" means a prescription drug marketed under a
22 proprietary name or registered trademark name, including a
23 biological product.

24 "Carrier" means an insurance company, health service
25 corporation, hospital service corporation, medical service
26 corporation, or health maintenance organization authorized to issue
27 health benefits plans in this State.

28 "Compensation" means any direct or indirect financial benefit,
29 including, but not limited to, rebates, discounts, credits, fees, grants,
30 chargebacks or other payments or benefits of any kind.

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

- 33 a. the pharmacy benefits manager directly;
34 b. a pharmacy services administration organization; or
35 c. a pharmacy group purchasing organization.

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

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

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

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

44 "Health benefits plan" means a benefits plan which pays hospital
45 or medical expense benefits for covered services, or 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.

1 drug benefits for covered services, and is delivered or issued for
2 delivery in this State by or through a carrier or any other sponsor.
3 For the purposes of P.L.2015, c.179 (C.17B:27F-1), health benefits
4 plan shall not include the following plans, policies or contracts:
5 accident only, credit disability, long-term care, Medicare
6 supplement coverage; TRICARE supplement coverage, coverage
7 for Medicare services pursuant to a contract with the United States
8 government, the State Medicaid program established pursuant to
9 P.L.1968, c.413 (C.30:4D-1 et seq.), coverage arising out of a
10 worker's compensation or similar law, the State Health Benefits
11 Program, the School Employees' Health Benefits Program, or a self-
12 insured health benefits plan governed by the provisions of the
13 federal "Employee Retirement Income Security Act of 1974,"
14 29 U.S.C. s.1001 et seq., coverage under a policy of private
15 passenger automobile insurance issued pursuant to P.L.1972, c.70
16 (C.39:6A-1 et seq.), or hospital confinement indemnity coverage.

17 "Mail order pharmacy" means a pharmacy, the principle business
18 of which is to receive a prescription by mail, fax or electronic
19 submission, and to dispense medication to a covered person using
20 the United States Postal Service or other common or contract carrier
21 service and that provides consultation with patients electronically
22 rather than in person.

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

26 "Network pharmacy" means a licensed retail pharmacy or other
27 pharmacy provider that contracts with a pharmacy benefits
28 manager.

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

33 "Pharmacy benefits manager" means a corporation, business, or
34 other entity, or unit within a corporation, business, or other entity,
35 that, pursuant to a contract or under an employment relationship
36 with a carrier, a self-insurance plan or other third-party payer, either
37 directly or through an intermediary, administers prescription drug
38 benefits on behalf of a purchaser.

39 "Pharmacy benefits manager compensation" means the
40 difference between: (1) the value of payments made by a carrier of
41 a health benefits plan to its pharmacy benefits manager; and (2) the
42 value of payments made by the pharmacy benefits manager to
43 dispensing pharmacists for the provision of prescription drugs or
44 pharmacy services with regard to pharmacy benefits covered by the
45 health benefits plan.

46 "Pharmacy benefits management services" means the provision
47 of any of the following services on behalf of a purchaser: the
48 procurement of prescription drugs at a negotiated rate for

1 dispensation within this State; the processing of prescription drug
2 claims; or the administration of payments related to prescription
3 drug claims.

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

6 "Prescription drug benefits" means the benefits provided for
7 prescription drugs and pharmacy services for covered services
8 under a health benefits plan contract.

9 "Purchaser" means any sponsor of a health benefits plan who
10 enters into an agreement with a pharmacy benefits management
11 company for the provision of pharmacy benefits management
12 services to covered persons.

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

14

15 2. (New section) a. A corporation, business, or other entity
16 shall not act as a pharmacy benefits manager in this State without
17 first obtaining a license from the department. An applicant for
18 licensure as a pharmacy benefits manager shall provide to the
19 department information that includes, but is not limited to, the
20 following:

21 (1) the name of the applicant;

22 (2) the address and telephone number of the applicant;

23 (3) the name and address of the applicant's agent for service of
24 process in the State;

25 (4) the name and address of each person beneficially interested
26 in the applicant; and

27 (5) the name and address of each person with management or
28 control over the applicant.

29 b. A license issued pursuant to this section shall be valid for a
30 period of three years and may be renewed at the end of the three-
31 year period. The commissioner shall establish fees for a license
32 issued or renewed pursuant to this section.

33 c. The department may issue a pharmacy benefits manager
34 license to an applicant only if the department is satisfied that the
35 applicant possesses the necessary organization, expertise, and
36 financial integrity to supply the services sought to be offered.

37 d. The department may issue a pharmacy benefits manager
38 license subject to restrictions or limitations, including the type of
39 services that may be supplied or the activities in which the
40 pharmacy benefits manager may engage.

41 e. A license issued pursuant to this section shall not be
42 transferable.

43 f. The department may suspend, revoke or place on probation a
44 pharmacy benefits manager license if:

45 (1) the pharmacy benefits manager has engaged in fraudulent
46 activity that constitutes a violation of State or federal law;

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

4 (3) the pharmacy benefits manager fails to pay the original
5 issuance or renewal fee for the license; or

6 (4) the pharmacy benefits manager fails to comply with any
7 requirement set forth in P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9 g. If a corporation, business, or other entity acts as a pharmacy
10 benefits manager without obtaining a license pursuant to this
11 section, the corporation, business, or other entity shall be subject to:

12 (1) a warning notice;

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

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

17 (4) if the violation has not been cured pursuant to subsection a.
18 of this section, a penalty of not less than \$5,000 or more than
19 \$10,000.

20 h. Notwithstanding the provisions of subsection a. of this
21 section, a pharmacy benefits manager certified or licensed as an
22 organized delivery system prior to the effective date of
23 P.L. , c. (C.) (pending before the Legislature as this bill),
24 in accordance with P.L.1999, c.409 (C.17:48H-1 et seq.), may
25 continue to operate during the pendency of its application submitted
26 pursuant to this section, but no more than 18 months after the
27 effective date of this act.

28

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

30 (1) monitor all activities carried out on behalf of the carrier by a
31 pharmacy benefits manager if the carrier contracts with a pharmacy
32 benefits manager and is related to a carrier's prescription drug
33 benefits; and

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

35 b. A carrier that contracts with a pharmacy benefits manager to
36 perform any activities related to the carrier's prescription drug
37 benefits shall ensure that, under the contract, the pharmacy benefits
38 manager acts as the carrier's agent and owes a fiduciary duty to the
39 carrier in the pharmacy benefits manager's activities related to the
40 carrier's prescription drug benefits.

41 c. A carrier shall not enter into a contract or agreement, or
42 allow a pharmacy benefits manager or any entity acting on the
43 carrier's behalf to enter into a contract or agreement, that prohibits a
44 pharmacy from:

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

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

4 d. A carrier or pharmacy benefits manager shall not require a
5 covered person to make a payment at the point of sale for a covered
6 prescription drug in an amount greater than:

7 (1) the applicable cost-sharing amount for the prescription drug;
8 or

9 (2) the total amount the pharmacy will be reimbursed for the
10 prescription drug from the pharmacy benefits manager or carrier,
11 including the cost-sharing amount paid by a covered person,
12 whichever is less.

13 e. A carrier shall provide a reasonably adequate retail
14 pharmacy network for the provision of prescription drugs for its
15 covered persons. A mail order pharmacy shall not be included in
16 determining the adequacy of a retail pharmacy network.

17

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

20 2. Upon execution or renewal of each contract, or at such a
21 time when there is any material change in the term of the contract, a
22 pharmacy benefits manager shall, with respect to contracts between
23 a pharmacy benefits manager and a pharmacy services
24 administrative organization, or between a pharmacy benefits
25 manager and a contracted pharmacy:

26 a. (1) include in the contract the sources utilized to determine
27 multiple source generic drug pricing, brand drug pricing, and the
28 wholesaler in the State of New Jersey where pharmacies may
29 acquire the product, including, but not limited to, the brand
30 effective rate, generic effective rate, dispensing fee effective rate,
31 maximum allowable cost or any other pricing formula for pharmacy
32 reimbursement;

33 (2) update that pricing information every seven calendar days;
34 and

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

40 b. Additionally, a pharmacy benefits manager shall:

41 (1) **【Maintain】** maintain a procedure to eliminate drugs from the
42 list of drugs subject to multiple source generic drug pricing and
43 brand drug pricing, or modify maximum allowable cost rates, brand
44 effective rate, generic effective rate, dispensing fee effective rate or
45 any other applicable pricing formula in a timely fashion and make
46 that procedure easily accessible to the pharmacy services
47 administrative organizations or the pharmacies that they are

1 contractually obligated with to provide that information according
2 to the requirements of this section; and

3 (2) provide a reasonable administrative appeal procedure,
4 including a right to appeal in accordance with section 4 of PL.2015,
5 c.179 (C.17B:27F-4), to allow pharmacies with which the carrier or
6 pharmacy benefits manager has a contract to challenge maximum
7 allowable costs for a specified drug.

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

9

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

12 3. a. **【**In order to place a particular prescription drug on a
13 multiple source generic list, the pharmacy benefits manager shall, at
14 a minimum, ensure that:**】** A carrier, or a pharmacy benefits manager
15 under contract with a carrier, shall use a single maximum allowable
16 cost list to establish the maximum amount to be paid by a health
17 benefits plan to a pharmacy provider for a generic drug or a brand-
18 name drug that has at least one generic equivalent available. A
19 carrier, or a pharmacy benefits manager under contract with a
20 carrier, shall use the same maximum allowable cost list for each
21 pharmacy provider.

22 b. A maximum allowable cost may be set for a prescription
23 drug, or a prescription drug may be allowed to continue on a
24 maximum allowable cost list, only if:

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

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

33 **【b.】** c. A pharmacy benefits manager shall not penalize a
34 pharmacist or pharmacy on audit if the pharmacist or pharmacy
35 performs a generic substitution pursuant to the "Prescription Drug
36 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-
37 1 et seq.).

38 d. A carrier, or a pharmacy benefits manager under contract
39 with a carrier, shall use the average wholesale price to establish the
40 maximum payment for a brand-name drug for which a generic
41 equivalent is not available or a prescription drug not included on a
42 maximum allowable cost list. In order to use the average wholesale
43 price of a brand-name drug or prescription drug not included on a
44 maximum allowable cost list, a carrier, or a pharmacy benefits
45 manager under contract with a carrier, shall use only one national
46 drug pricing source during a calendar year, unless the original drug
47 pricing source is no longer available. A carrier, or a pharmacy
48 benefits manager under contract with a carrier, shall use the same

1 national drug pricing source for each pharmacy provider and
2 identify on its publicly accessible website the name of the national
3 drug pricing source used to determine the average wholesale price
4 of a prescription drug not included on the maximum allowable cost
5 list.

6 e. The amount paid by a carrier or a carrier's pharmacy benefits
7 manager to a pharmacy provider under contract with the carrier or
8 the carrier's pharmacy benefits manager for dispensing a
9 prescription drug shall be the ingredient cost plus the dispensing fee
10 less any cost-sharing amount paid by a covered person.

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

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

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

17

18 6. (New section) a. Compensation remitted by or on behalf of
19 a pharmaceutical manufacturer, developer or labeler, directly or
20 indirectly, to a carrier or to a pharmacy benefits manager under
21 contract with a carrier related to prescription drug benefits shall be:

22 (1) remitted directly to the covered person at the point of sale to
23 reduce the out-of-pocket cost to the covered person associated with
24 a particular prescription drug; or

25 (2) remitted to, and retained by, the carrier. Compensation
26 remitted to the carrier shall be applied by the carrier in its plan
27 design and in future plan years to offset the premium for covered
28 persons.

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

35

36 7. (New section) a. A carrier, or a pharmacy benefits manager
37 under contract with a carrier, shall establish a pharmacy and
38 therapeutics committee responsible for managing the formulary
39 system.

40 b. A carrier, or a pharmacy benefits manager under contract
41 with a carrier, shall not allow a person with a conflict of interest to
42 be a member of its pharmacy and therapeutics committee. A person
43 shall not serve as a member of a pharmacy and therapeutics
44 committee if the person:

45 (1) is employed, or was employed within the preceding year, by
46 a pharmaceutical manufacturer, developer, labeler, wholesaler, or
47 distributor; or

1 (2) receives compensation, or received compensation within the
2 preceding year, from a pharmaceutical manufacturer, developer,
3 labeler, wholesaler, or distributor.

4
5 8. (New section) a. A carrier shall maintain and have the
6 ability to access all data related to the administration and provision
7 of prescription drug benefits administered by a pharmacy benefits
8 manager under the health benefits plan of the carrier, including, but
9 not limited to:

10 (1) the names, addresses, member identification numbers,
11 protected health information and other personal information of
12 covered persons; and

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

17 b. A sale or transaction involving the transfer of any records,
18 information or data described in subsection a. of this section must
19 comply with the federal Health Insurance Portability and
20 Accountability Act of 1996, Pub. L. No. 104-191, and the federal
21 Health Information Technology for Economic and Clinical Health
22 Act, Pub. L. No. 111-5, and any regulations adopted pursuant to
23 those laws.

24 c. A carrier may audit all transaction records related to the
25 dispensing of prescription drugs to covered persons under a health
26 benefits plan. A carrier may conduct audits at a location of its
27 choosing and with an auditor of its choosing.

28 d. A carrier shall maintain all records, information and data
29 described in subsection a. of this section and all audit records
30 described in subsection c. of this section for a period of no less than
31 five years.

32 e. Upon request, a carrier shall provide to the department any
33 records, contracts, documents or data held by the carrier or the
34 carrier's pharmacy benefits manager for inspection, examination or
35 audit purposes.

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

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

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

1 b. Any rate filing submitted by a carrier with respect to a health
2 benefits plan that provides coverage for prescription drugs or
3 pharmacy services, that is administered or managed by a pharmacy
4 benefits manager, shall include:

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

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

11 c. Upon request, a carrier shall provide any records to the
12 department that relate to the calculation of the pharmacy benefits
13 manager compensation.

14 d. A pharmacy benefits manager 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 10. Section 6 of P.L.2019, c.274 (C.17B:27F-9) is amended to
20 read as follows:

21 6. The licensing requirements of P.L.2015, c.179 (C.17B:27F-
22 1 et seq.) shall apply to all pharmacy benefits managers operating in
23 the State of New Jersey [, except for any]. Requirements imposed
24 on carriers by the provisions of P.L.2015, c.179 (C.17B:27F-
25 1 et seq.) shall not apply to an agreement by a pharmacy benefits
26 manager to administer prescription drug benefits on behalf of the
27 State Health Benefits Plan, the School Employees Health Benefits
28 Plan, the State Medicaid program established pursuant to P.L.1968,
29 c.413 (C.30:4D-1 et seq.), or a self-insured health benefits plan
30 governed by the provisions of the federal “Employee Retirement
31 Income Security Act of 1974,” 29 U.S.C., ss.1001 et seq.

32 (cf: P.L.2019, c.274, s.6)

33

34 11. This act shall take effect on the first day of the seventh
35 month next following the date of enactment, but the Commissioner
36 of the Banking and Insurance may take such anticipatory
37 administrative action in advance thereof as shall be necessary for
38 the implementation of the act.

39

40

41

STATEMENT

42

43 This bill sets new transparency standards for pharmacy benefits
44 manager (PBM) business practices. Specifically, the bill concerns
45 the licensing and reporting requirements of a carrier or a PBM. The
46 bill requires that PBMs apply for a license with the Department of
47 Banking and Insurance every three years and requires carriers to
48 ensure that a PBM under contract with the carrier owes a fiduciary

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1 duty to the carrier. Carriers are to maintain detailed records of
2 transactions and submit annual documentation showing that any
3 compensation remitted by a manufacturer, developer, or labeler to a
4 carrier or PBM was either remitted directly to the covered person at
5 the point of sale to reduce out of pocket expenses or used to offset
6 premium costs for future plan years. Additionally, the bill mandates
7 that carriers and PBMs establish pharmacy and therapeutics
8 committees that are free from conflicts of interest and use one or
9 more formularies. For the purposes of calculating a carrier's
10 anticipated loss ratio, PBM compensation constitutes an
11 administrative cost rather than a benefit.