

[First Reprint]

SENATE, No. 1616

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 14, 2022

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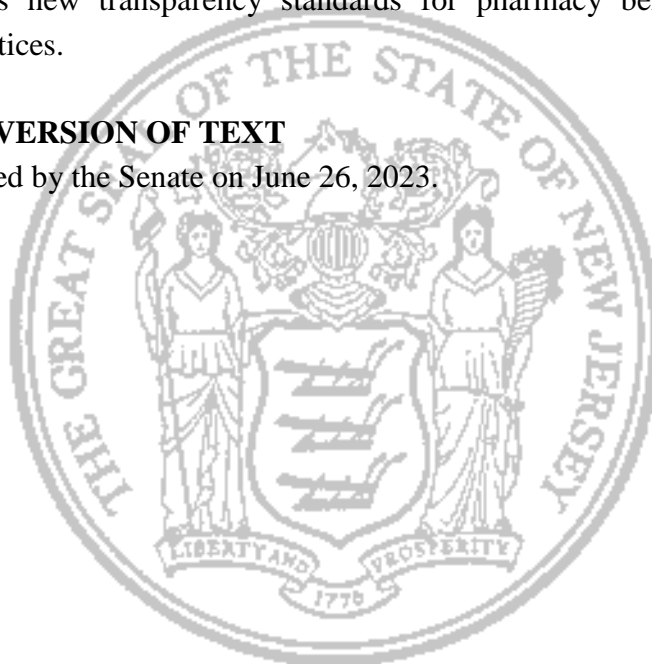
Senators Greenstein, Gill, Ruiz and Turner

SYNOPSIS

Establishes new transparency standards for pharmacy benefits manager business practices.

CURRENT VERSION OF TEXT

As amended by the Senate on June 26, 2023.



(Sponsorship Updated As Of: 6/27/2023)

1 AN ACT concerning pharmacy benefits managers ¹**and amending**
 2 **and**,¹ supplementing P.L.2015, c.179¹, and amending various
 3 parts of the statutory law¹.

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 read
 9 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 the
 12 future benefits payments, including claim offsets after the point of
 13 sale, to the present value of the future premiums of a policy form over
 14 the entire period for which rates are computed to provide health
 15 insurance coverage.

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

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

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

28 ¹**"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.**¹

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 person
 37 as required under the covered person's health benefits plan for a
 38 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 obligated
 41 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 drug

EXPLANATION – Matter enclosed in bold-faced brackets **this** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined this is new matter

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted June 26, 2023.

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

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

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

"Network pharmacy" means a licensed retail pharmacy or other pharmacy provider that contracts with a pharmacy benefits manager¹ either directly or by and through a contract with a pharmacy services administrative organization¹.

"Pharmacy" means any place in the State, either physical or electronic, 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 benefits manager" means a corporation, business, or other entity, or unit within a corporation, business, or other entity, that, pursuant to a contract or under an employment relationship with a carrier, a self-insurance plan or other third-party payer, either directly or through an intermediary, administers prescription drug benefits on behalf of a purchaser.

"Pharmacy benefits manager compensation" means the difference between: (1) the ¹**value** amount¹ of payments made by a carrier of a health benefits plan to its pharmacy benefits manager; and (2) the value of payments made by the pharmacy benefits manager to dispensing pharmacists for the provision of prescription drugs or pharmacy services with regard to pharmacy benefits covered by the health benefits plan.

"Pharmacy benefits management services" means the provision of any of the following services on behalf of a purchaser: the

1 procurement of prescription drugs at a negotiated rate for dispensation
2 within this State; the processing of prescription drug claims; or the
3 administration of payments related to prescription drug claims.

4 ¹"Pharmacy services administrative organization" means an entity
5 operating within the State that contracts with independent pharmacies
6 to conduct business on their behalf with third-party payers.¹

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

9 "Prescription drug benefits" means the benefits provided for
10 prescription drugs and pharmacy services for covered services under a
11 health benefits plan contract.

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

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

17
18 2. (New section) a. A corporation, business, or other entity shall
19 not act as a pharmacy benefits manager ¹**["in this State"]** without first
20 obtaining a license ¹from the department or as a pharmacy services
21 administrative organization without first obtaining registration¹ from
22 the department. An applicant for licensure ¹**["as a pharmacy benefits**
23 **manager"] or registration**¹ shall provide to the department information
24 that includes, but is not limited to, the following:

25 (1) the name of the applicant;

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

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

29 (4) the name and address of each person ¹**["beneficially interested"]**
30 owning 10 percent or greater interest¹ in the applicant; ¹**["and"]** ¹

31 (5) the name and address of each person with management or
32 control over the applicant ¹;

33 (6) for pharmacy benefits managers, the information required
34 under section 4 of P.L.1999, c.409 (C.17:48H-4);

35 (7) for pharmacy benefits managers, all contracts and documents
36 between pharmacies, pharmacy benefits managers, and pharmacy
37 services administrative organizations; and

38 (8) for pharmacy services administrative organizations, upon the
39 department's request, any contracts and documents between
40 pharmacies, pharmacy benefits managers, and pharmacy services
41 administrative organizations¹.

42 b. A license ¹or registration¹ issued pursuant to this section shall
43 be valid for a period of three years and may be renewed at the end of
44 the three-year period. The commissioner shall establish fees for a
45 license ¹or registration¹ issued or renewed pursuant to this section.

46 c. The department may issue a pharmacy benefits manager
47 license to an applicant only if the department is satisfied that the

1 applicant possesses the necessary organization, expertise, and financial
2 integrity to supply the services sought to be offered. ¹The department
3 shall establish, by regulation, minimum standards for the issuance of a
4 license to a pharmacy benefits manager. The minimum standards
5 established pursuant to this subsection shall contain both prerequisites
6 for the issuance of a license to a pharmacy benefits manager and
7 requirements for maintenance of a license by a pharmacy benefits
8 manager and shall address, without limitation:

9 (1) conflicts of interest between pharmacy benefits managers and
10 health benefits plans;

11 (2) deceptive practices in connection with the performance of
12 pharmacy benefits management services;

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

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

17 (5) pricing models used by pharmacy benefits managers both for
18 their services and for the payment of services to the pharmacy benefits
19 manager;

20 (6) standards and practices used in the creation of pharmacy
21 networks and contracting with network pharmacies and other
22 providers, including promotion and use of independent and community
23 pharmacies and patient access and minimizing excessive concentration
24 and vertical integration of markets; and

25 (7) protection of consumers.¹

26 d. The department may issue a ¹["pharmacy benefits manager"]¹
27 license ¹to a pharmacy benefits manager¹ subject to restrictions or
28 limitations, including the type of services that may be supplied or the
29 activities in which the pharmacy benefits manager may engage.

30 e. A license ¹or registration¹ issued pursuant to this section shall
31 not be transferable.

32 f. The department may suspend, revoke or place on probation a
33 ¹["pharmacy benefits manager license"] licensee or registered entity¹ if:

34 (1) the pharmacy benefits manager ¹or pharmacy services
35 administrative organization¹ has engaged in fraudulent activity ¹or any
36 activity¹ that constitutes a violation of State or federal law;

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

40 (3) the pharmacy benefits manager ¹or pharmacy services
41 administrative organization¹ fails to pay the original issuance or
42 renewal fee for the license ¹or registration¹; or

43 (4) the pharmacy benefits manager ¹or pharmacy services
44 administrative organization¹ fails to comply with any requirement set
45 forth in P.L. , c. (C.) (pending before the Legislature as this
46 bill).

g. If a corporation, business, or other entity acts as a pharmacy benefits manager ¹or pharmacy services administrative organization¹ without obtaining a license ¹or registration¹ pursuant to this section, the corporation, business, or other entity shall be subject to ¹【:

(1) a warning notice;

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

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

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

h. ¹(1)¹ Notwithstanding the provisions of subsection a. of this section, a pharmacy benefits manager ¹【certified or licensed】 that applied for, or received, certification or licensure¹ as an organized delivery system prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), in accordance with P.L.1999, c.409 (C.17:48H-1 et seq.), may continue to operate during the pendency of its application submitted pursuant to this section, but no more than ¹【18】 24¹ months after the effective date of this act.

¹(2) A corporation, business, or other entity that acts as a pharmacy benefits manager, and applies for, receives, and maintains a license as an organized delivery system, in accordance with P.L.1999, c.409 (C.17:48H-1 et seq.), shall not be required to maintain that license as an organized delivery system upon the issuance of a license pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), and during any subsequent applications for renewal of the license as a pharmacy benefits manager pursuant to the requirements of P.L. , c. (C.) (pending before the Legislature as this bill).

i. A licensee shall be subject to the following except to the extent inconsistent with this act or where the commissioner determines that any provisions are inappropriate as applied to a pharmacy benefits manager:

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

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

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

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

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

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

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

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

1 b. A carrier that contracts with a pharmacy benefits manager to
2 perform any activities related to the carrier's prescription drug benefits
3 shall ensure that, under the contract, the pharmacy benefits manager
4 acts as the carrier's agent ¹and owes a fiduciary duty to the carrier in
5 the pharmacy benefits manager's activities related to the carrier's
6 prescription drug benefits **in good faith and fair dealing in the**
7 **performance of all of its contractual duties. All funds received by the**
8 **pharmacy benefits manager in relation to providing pharmacy benefits**
9 **management services shall be used or distributed only pursuant to the**
10 **pharmacy benefits manager's contract with the health benefits plan or**
11 **carrier or applicable law; including any administrative fee or payment**
12 **to the pharmacy benefits manager expressly provided for in the**
13 **contract to compensate the pharmacy benefits manager for its services.**
14 **Any funds received by the pharmacy benefits manager through spread**
15 **pricing shall be subject to this subsection**¹.

16 c. ¹A carrier shall not enter into a contract or agreement, or
17 allow a pharmacy benefits manager or any entity acting on the carrier's
18 behalf to enter into a contract or agreement, that prohibits a pharmacy
19 from:

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

24 (2) providing information to a State or federal agency, law
25 enforcement agency, or the department when such information is
26 required by law **](1) A pharmacy benefits manager interacting with a**
27 **covered person shall have the same duty to a covered person as the**
28 **health benefits plan or carrier for whom it is performing pharmacy**
29 **benefits management services.**

30 (2) **A pharmacy benefits manager shall have a duty of good faith**
31 **and fair dealing with all parties, including but not limited to covered**
32 **persons and pharmacies, with whom it interacts in the performance of**
33 **pharmacy benefits management services**¹.

34 d. A carrier or pharmacy benefits manager shall not require a
35 covered person to make a payment at the point of sale for a covered
36 prescription drug in an amount greater than ¹**the lesser of**:

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

38 (2) ¹**the total amount the pharmacy will be reimbursed for the**
39 **prescription drug from the pharmacy benefits manager or carrier,**
40 **including the cost-sharing amount paid by a covered person,**
41 **whichever is less** **the amount a covered person would pay for the**
42 **prescription medication if the covered person purchased the**
43 **prescription medication without using a health benefits plan**¹.

44 e. A carrier shall provide a reasonably adequate retail pharmacy
45 network for the provision of prescription drugs for its covered persons.

46 ¹**A mail order pharmacy shall not be included in determining the**
47 **adequacy of a retail pharmacy network.**¹

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

7
8 4. Section 2 of P.L.2015, c.179 (C.17B:27F-2) is amended to read
9 as follows:

10 2. Upon execution or renewal of each contract, or at such a time
11 when there is any material change in the term of the contract, a
12 pharmacy benefits manager shall, with respect to contracts between a
13 pharmacy benefits manager and a pharmacy services administrative
14 organization, or between a pharmacy benefits manager and a
15 contracted pharmacy:

16 a. (1) include in the contract the sources utilized to determine
17 multiple source generic drug pricing, brand drug pricing, and the
18 wholesaler in the State of New Jersey where pharmacies may acquire
19 the product, including, but not limited to, the brand effective rate,
20 generic effective rate, dispensing fee effective rate, maximum
21 allowable cost or any other pricing formula for pharmacy
22 reimbursement;

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

24 (3) establish a reasonable process by which contracted pharmacies
25 have a method to access relevant maximum allowable cost pricing
26 lists, brand effective rate, generic effective rate, and dispensing fee
27 effective rate, or any other pricing formulas for pharmacy
28 reimbursement **【; and】**.

29 b. Additionally, a pharmacy benefits manager shall:

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

38 (2) provide ¹【a reasonable administrative appeal procedure,
39 including a right to appeal in accordance with section 4 of PL.2015,
40 c.179 (C.17B:27F-4), to allow pharmacies with which】 an internal
41 appeal mechanism to resolve any dispute raised by a carrier or
42 pharmacy, regardless of whether¹ the carrier or pharmacy benefits
43 manager has a contract to challenge maximum allowable costs for a
44 specified drug. ¹Any dispute regarding the determination of an
45 internal appeal conducted pursuant to this subsection may be referred
46 to arbitration. The Commissioner of Banking and Insurance shall

1 contract with a nationally recognized, independent organization that
2 specializes in arbitration to conduct the arbitration proceedings.¹

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

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

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

17 b. A maximum allowable cost may be set for a prescription
18 drug, or a prescription drug may be allowed to continue on a
19 maximum allowable cost list, only if:

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

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

28 **【b.】** c. A pharmacy benefits manager shall not penalize a
29 pharmacist or pharmacy on audit if the pharmacist or pharmacy
30 performs a generic substitution pursuant to the "Prescription Drug
31 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-
32 1 et seq.).

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

1 e. The amount paid by a carrier or a carrier's pharmacy benefits
2 manager to a pharmacy provider under contract with the carrier or
3 the carrier's pharmacy benefits manager for dispensing a
4 prescription drug shall be the ingredient cost plus the dispensing fee
5 less any cost-sharing amount paid by a covered person.

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

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

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

12
13 6. (New section) a. Compensation remitted by or on behalf of a
14 pharmaceutical manufacturer, developer or labeler, directly or
15 indirectly, to a carrier or to a pharmacy benefits manager under
16 contract with a carrier related to prescription drug benefits shall be:

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

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

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

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

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

41
42 7. (New section) a. A carrier, or a pharmacy benefits manager
43 under contract with a carrier, shall establish a pharmacy and
44 therapeutics committee responsible for managing the formulary
45 system.

46 b. A carrier, or a pharmacy benefits manager under contract with
47 a carrier, shall not allow a person with a conflict of interest to be a
48 member of its pharmacy and therapeutics committee. ¹[A person shall

1 not serve as a member of a pharmacy and therapeutics committee if the
2 person:

3 (1) is employed, or was employed within the preceding year, by a
4 pharmaceutical manufacturer, developer, labeler, wholesaler, or
5 distributor; or

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

15 8. (New section) a. A carrier ¹or health benefits plan, including
16 the State Health Benefits Program, the School Employees' Health
17 Benefits Program, the State Medicaid program, or a self-insured health
18 benefits plan governed by the provisions of the federal "Employee
19 Retirement Income Security Act of 1974," 29 U.S.C. s.1001 et seq.,¹
20 shall ¹【maintain and】¹ have the ability to access all data related to the
21 administration and provision of prescription drug benefits
22 administered by a pharmacy benefits manager under the health
23 benefits plan ¹【of the carrier】¹, including, but not limited to:

24 (1) the names, addresses, member identification numbers,
25 protected health information and other personal information of covered
26 persons; and

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

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

37 c. A carrier ¹or health benefits plan, including the State Health
38 Benefits Program, the School Employees' Health Benefits Program,
39 the State Medicaid program, or a self-insured health benefits plan¹ may
40 audit all transaction records related to the dispensing of prescription
41 drugs to covered persons under a health benefits plan. A carrier ¹or
42 health benefits plan, including the State Health Benefits Program, the
43 School Employees' Health Benefits Program, the State Medicaid
44 program, or a self-insured health benefits plan¹ may conduct audits at a
45 location of its choosing and with an auditor of its choosing.

46 d. A carrier shall maintain all records, information and data
47 described in subsection a. of this section and all audit records

1 described in subsection c. of this section for a period of no less than
2 five years.

3 e. ¹(1)¹ Upon request, a carrier ¹or pharmacy benefits manager¹
4 shall provide to the department any records, contracts, documents or
5 data held by the carrier or the carrier's pharmacy benefits manager for
6 inspection, examination or audit purposes. ¹The department shall keep
7 confidential all information submitted pursuant to this section and
8 shall protect it from public disclosure. Any records, documents, or
9 data provided to the department pursuant to this subsection shall not be
10 considered a government record under P.L.1963, c.73 (C.47:1A-1 et
11 seq.) or the common law concerning access to government records.

12 (2) A person who is authorized to access information submitted by
13 a pharmacy benefits manager to the department who willfully
14 discloses such information to any person or entity who is not
15 authorized to access the information shall be subject to a civil penalty
16 in an amount not to exceed \$500.

17 A civil penalty imposed under this subsection shall be collected by
18 the commissioner pursuant to the "Penalty Enforcement Law of 1999,"
19 P.L.1999, c.274 (C.2A:58-10 et seq.).

20 f. A pharmacy benefits manager shall disclose in writing to a
21 carrier or health benefits plan any activity, policy, practice, contract or
22 arrangement of the pharmacy benefits manager that directly or
23 indirectly presents any conflict of interest with the pharmacy benefits
24 manager's relationship with or obligation to the carrier or plan.¹

25
26 9. (New section) a. If a carrier uses a pharmacy benefits
27 manager to administer or manage the prescription drug benefits of
28 covered persons, any pharmacy benefits manager compensation, for
29 purposes of calculating a carrier's anticipated loss ratio or any loss
30 ratio calculated as part of any applicable medical loss ratio filing or
31 rate filing, shall:

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

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

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

41 (1) a memorandum prepared by a qualified actuary describing the
42 calculation of the pharmacy benefits manager compensation; and

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

46 c. Upon request, a carrier shall provide any records to the
47 department that relate to the calculation of the pharmacy benefits

1 manager ¹and pharmacy services administrative organization¹
2 compensation.

3 d. A pharmacy benefits manager ¹and pharmacy services
4 administrative organization¹ shall provide any necessary
5 documentation requested by a carrier that relates to pharmacy benefits
6 manager compensation in order to comply with the requirements of
7 this section.

8

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

11 1. a. A pharmacy benefits manager, in connection with any
12 contract or arrangement with a private health insurer, prescription
13 benefit plan, or the State Health Benefits Program or School
14 Employees' Health Benefits Program, shall not require a covered
15 person to make a payment at the point of sale for any amount for a
16 deductible, coinsurance payment, or a copayment for a prescription
17 drug benefit in an amount that exceeds the amount **the covered**
18 **person would pay for the prescription drug if the covered person**
19 **purchased the prescription drug without using a health benefits plan**
20 permitted pursuant to subsection d. of section 3 of P.L. , c. (C.)
21 (pending before the Legislature as this bill).

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

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

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

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

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

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

43 (cf: P.L.2019, c.257, s.1)

44

45 ¹**10.1** Section 6 of P.L.2019, c.274 (C.17B:27F-9) is
46 amended to read as follows:

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

¹12. Section 7 of P.L.2019, c.274 (C.17B:27F-10) is amended to read as follows:

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

- [a. a warning notice;**
- b. an opportunity to cure the violation within 14 days following the issuance of the notice;**
- c. a hearing before the commissioner within 70 days following the issuance of the notice; and**
- d. if the violation has not been cured pursuant to subsection b. of this section,]**

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

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

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

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

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

¹**[11.] 14.**¹ This act shall take effect on the first day of the ¹**[seventh] 18th**¹ month next following the date of enactment, ¹and

1 shall apply to contracts and agreements entered into, renewed,
2 modified, or amended on or after the effective date,¹ but the
3 Commissioner of **'[the]'** Banking and Insurance may take such
4 anticipatory administrative action in advance thereof as shall be
5 necessary for the implementation of the act.