

SENATE, No. 2221

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MARCH 7, 2022

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)

SYNOPSIS

Establishes new transparency standards for business practices of pharmacy benefits managers and establishes new licensure requirements.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning pharmacy benefits managers and licensing and
2 amending and 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
46 drug benefits for covered services, and is delivered or issued for
47 delivery in this State by or through a carrier or any other sponsor.

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

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

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

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

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

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

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

44 "Pharmacy benefits management services" means the provision
45 of any of the following services on behalf of a purchaser: the
46 procurement of prescription drugs at a negotiated rate for
47 dispensation within this State; the processing of prescription drug

1 claims; or the administration of payments related to prescription
2 drug claims.

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

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

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

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

13

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

20 (1) the name of the applicant;

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

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

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

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

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

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

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

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

42 f. (1) An applicant shall report any change to the information
43 provided within the application for a pharmacy benefits manager
44 license pursuant to subsection a. of this section to the department
45 within 30 days of the change occurring.

46 (2) Failure to report a change pursuant to paragraph (1) of this
47 subsection shall result in a civil penalty of \$50, to be recovered with
48 costs by the department in a civil action by a summary proceeding

S2221 GOPAL

- 1 pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999,
2 c.274 (C.2A:58-10 et seq.).
- 3 g. The department may suspend, revoke or place on probation a
4 pharmacy benefits manager license if:
- 5 (1) the pharmacy benefits manager has engaged in fraudulent
6 activity that constitutes a violation of State or federal law;
- 7 (2) the department has received consumer complaints that
8 justify an action under this subsection to protect the safety and
9 interests of consumers;
- 10 (3) the pharmacy benefits manager fails to pay the original
11 issuance or renewal fee for the license; or
- 12 (4) the pharmacy benefits manager fails to comply with any
13 requirement set forth in P.L. , c. (C.) (pending before the
14 Legislature as this bill).
- 15 h. If a corporation, business, or other entity acts as a pharmacy
16 benefits manager without obtaining a license pursuant to this
17 section, the corporation, business, or other entity shall be subject to:
- 18 (1) a warning notice;
- 19 (2) an opportunity to cure the violation within 14 days following
20 the issuance of the notice;
- 21 (3) a hearing before the commissioner within 70 days following
22 the issuance of the notice; and
- 23 (4) if the violation has not been cured pursuant to subsection a.
24 of this section, a penalty of not less than \$5,000 or more than
25 \$10,000.
- 26 i. Notwithstanding the provisions of subsection a. of this
27 section, a pharmacy benefits manager certified or licensed as an
28 organized delivery system prior to the effective date of
29 P.L. , c. (C.) (pending before the Legislature as this bill),
30 in accordance with P.L.1999, c.409 (C.17:48H-1 et seq.), may
31 continue to operate during the pendency of its application submitted
32 pursuant to this section, but no more than 18 months after the
33 effective date of this act.
- 34 j. All documents, materials, or other information, and copies
35 thereof, in the possession or control of the department in the course
36 of an application or investigation made pursuant to
37 P.L. , c. (C.) (pending before the Legislature as this bill)
38 shall be confidential and privileged, and shall not be subject to
39 P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the open
40 public records act, or be subject to subpoena or discovery. This
41 subsection shall only apply to disclosure of confidential documents
42 by the department and shall not create any privilege in favor of any
43 other party.
- 44 k. Fees collected pursuant to this section shall be remitted to
45 the department. Civil penalties recovered pursuant to subsection f.
46 of P.L. ,c. (C.) (pending before the Legislature as this bill)
47 shall be deposited into the General Fund.

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

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

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

7 b. A carrier that contracts with a pharmacy benefits manager to
8 perform any activities related to the carrier's prescription drug
9 benefits shall ensure that, under the contract, the pharmacy benefits
10 manager acts as the carrier's agent and owes a fiduciary duty to the
11 carrier in the pharmacy benefits manager's activities related to the
12 carrier's prescription drug benefits.

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

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

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

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

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

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

33 e. A carrier shall provide a reasonably adequate retail
34 pharmacy network for the provision of prescription drugs for its
35 covered persons. A mail order pharmacy shall not be included in
36 determining the adequacy of a retail pharmacy network.

37

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

40 2. Upon execution or renewal of each contract, or at such a
41 time when there is any material change in the term of the contract, a
42 pharmacy benefits manager shall, with respect to contracts between
43 a pharmacy benefits manager and a pharmacy services
44 administrative organization, or between a pharmacy benefits
45 manager and a contracted pharmacy:

46 a. (1) include in the contract the sources utilized to determine
47 multiple source generic drug pricing, brand drug pricing, and the
48 wholesaler in the State of New Jersey where pharmacies may

1 acquire the product, including, but not limited to, the brand
2 effective rate, generic effective rate, dispensing fee effective rate,
3 maximum allowable cost or any other pricing formula for pharmacy
4 reimbursement;

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

7 (3) establish a reasonable process by which contracted
8 pharmacies have a method to access relevant maximum allowable
9 cost pricing lists, brand effective rate, generic effective rate, and
10 dispensing fee effective rate, or any other pricing formulas for
11 pharmacy reimbursement~~]; and~~].

12 b. Additionally, a pharmacy benefits manager shall:

13 (1) ~~【Maintain】~~ maintain a procedure to eliminate drugs from the
14 list of drugs subject to multiple source generic drug pricing and
15 brand drug pricing, or modify maximum allowable cost rates, brand
16 effective rate, generic effective rate, dispensing fee effective rate or
17 any other applicable pricing formula in a timely fashion and make
18 that procedure easily accessible to the pharmacy services
19 administrative organizations or the pharmacies that they are
20 contractually obligated with to provide that information according
21 to the requirements of this section; and

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

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

28

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

31 3. a. ~~【In order to place a particular prescription drug on a~~
32 ~~multiple source generic list, the pharmacy benefits manager shall, at~~
33 ~~a minimum, ensure that:】~~ A carrier, or a pharmacy benefits manager
34 under contract with a carrier, shall use a single maximum allowable
35 cost list to establish the maximum amount to be paid by a health
36 benefits plan to a pharmacy provider for a generic drug or a brand-
37 name drug that has at least one generic equivalent available. A
38 carrier, or a pharmacy benefits manager under contract with a
39 carrier, shall use the same maximum allowable cost list for each
40 pharmacy provider.

41 b. A maximum allowable cost may be set for a prescription
42 drug, or a prescription drug may be allowed to continue on a
43 maximum allowable cost list, only if:

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

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

4 **【b.】** c. A pharmacy benefits manager shall not penalize a
5 pharmacist or pharmacy on audit if the pharmacist or pharmacy
6 performs a generic substitution pursuant to the "Prescription Drug
7 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-
8 1 et seq.).

9 d. A carrier, or a pharmacy benefits manager under contract
10 with a carrier, shall use the average wholesale price to establish the
11 maximum payment for a brand-name drug for which a generic
12 equivalent is not available or a prescription drug not included on a
13 maximum allowable cost list. In order to use the average wholesale
14 price of a brand-name drug or prescription drug not included on a
15 maximum allowable cost list, a carrier, or a pharmacy benefits
16 manager under contract with a carrier, shall use only one national
17 drug pricing source during a calendar year, unless the original drug
18 pricing source is no longer available. A carrier, or a pharmacy
19 benefits manager under contract with a carrier, shall use the same
20 national drug pricing source for each pharmacy provider and
21 identify on its publicly accessible website the name of the national
22 drug pricing source used to determine the average wholesale price
23 of a prescription drug not included on the maximum allowable cost
24 list.

25 e. The amount paid by a carrier or a carrier's pharmacy benefits
26 manager to a pharmacy provider under contract with the carrier or
27 the carrier's pharmacy benefits manager for dispensing a
28 prescription drug shall be the ingredient cost plus the dispensing fee
29 less any cost-sharing amount paid by a covered person.

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

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

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

36
37 6. (New section) a. Compensation remitted by or on behalf of
38 a pharmaceutical manufacturer, developer or labeler, directly or
39 indirectly, to a carrier or to a pharmacy benefits manager under
40 contract with a carrier related to prescription drug benefits shall be:

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

44 (2) remitted to, and retained by, the carrier. Compensation
45 remitted to the carrier shall be applied by the carrier in its plan
46 design and in future plan years to offset the premium for covered
47 persons.

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

7
8 7. (New section) a. A carrier, or a pharmacy benefits manager
9 under contract with a carrier, shall establish a pharmacy and
10 therapeutics committee responsible for managing the formulary
11 system.

12 b. A carrier, or a pharmacy benefits manager under contract
13 with a carrier, shall not allow a person with a conflict of interest to
14 be a member of its pharmacy and therapeutics committee. A person
15 shall not serve as a member of a pharmacy and therapeutics
16 committee if the person:

17 (1) is employed, or was employed within the preceding year, by
18 a pharmaceutical manufacturer, developer, labeler, wholesaler, or
19 distributor; or

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

23
24 8. (New section) a. A carrier shall maintain and have the
25 ability to access all data related to the administration and provision
26 of prescription drug benefits administered by a pharmacy benefits
27 manager under the health benefits plan of the carrier, including, but
28 not limited to:

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

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

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

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

47 d. A carrier shall maintain all records, information and data
48 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. Upon request, a carrier shall provide to the department any
4 records, contracts, documents or data held by the carrier or the
5 carrier's pharmacy benefits manager for inspection, examination or
6 audit purposes.

7
8 9. (New section) a. If a carrier uses a pharmacy benefits
9 manager to administer or manage the prescription drug benefits of
10 covered persons, any pharmacy benefits manager compensation, for
11 purposes of calculating a carrier's anticipated loss ratio or any loss
12 ratio calculated as part of any applicable medical loss ratio filing or
13 rate filing, shall:

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

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

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

23 (1) a memorandum prepared by a qualified actuary describing
24 the calculation of the pharmacy benefits manager compensation;
25 and

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

29 c. Upon request, a carrier shall provide any records to the
30 department that relate to the calculation of the pharmacy benefits
31 manager compensation.

32 d. A pharmacy benefits manager shall provide any necessary
33 documentation requested by a carrier that relates to pharmacy
34 benefits manager compensation in order to comply with the
35 requirements of this section.

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

42
43
44 STATEMENT

45
46 This bill sets new transparency standards for the business
47 practices of pharmacy benefits managers (PBM) and establishes
48 new licensure requirements. The bill requires that PBMs apply for

1 a license with the Department of Banking and Insurance every two
2 years and requires carriers to ensure that a PBM under contract with
3 the carrier owes a fiduciary duty to the carrier. PBMs applying for
4 a license with the department must notify the department of any
5 changes made to the application within 30 days of the change
6 occurring, with a civil penalty of \$50 if the applicant fails to
7 comply. Any documents, material or information provided to the
8 department in relation to an application for a PBM license will be
9 confidential and privileged, and will not be subject to the Open
10 Public Records Act, a subpoena, or discovery. Carriers are to
11 maintain detailed records of transactions and submit annual
12 documentation showing that any compensation remitted by a
13 manufacturer, developer, or labeler to a carrier or PBM was either
14 remitted directly to the covered person at the point of sale to reduce
15 out of pocket expenses or used to offset premium costs for future
16 plan years. Additionally, the bill mandates that carriers and PBMs
17 establish pharmacy and therapeutics committees that are free from
18 conflicts of interest and use one or more formularies. For the
19 purposes of calculating a carrier's anticipated loss ratio, PBM
20 compensation constitutes an administrative cost rather than a
21 benefit.