

SENATE, No. 3199

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED OCTOBER 13, 2022

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Senator VIN GOPAL

District 11 (Monmouth)

SYNOPSIS

Regulates certain practices of pharmacy benefits managers and health insurance carriers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/27/2022)

1 AN ACT concerning pharmacy benefits managers and health
2 insurance carriers and supplementing P.L.2015, c.179
3 (C.17B:27F-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. The Legislature finds and declares that:

9 a. The practice of steering by a pharmacy benefits manager
10 represents a conflict of interest;

11 b. These practices have resulted in harm, including increasing
12 drug prices, overcharging covered persons and carriers, restricting
13 or underpaying covered persons' choice of pharmacies and
14 fragmenting and creating barriers to care, particularly in rural New
15 Jersey and for patients battling life-threatening illnesses and chronic
16 diseases; and

17 c. Imposing a surcharge on pharmacy benefits managers that
18 engage in steering in this State may encourage carriers to use
19 pharmacy benefits managers committed to refraining from steering
20 practices.
21

22 2. As used in this act:

23 "Commissioner" means the Commissioner of Banking and
24 Insurance.

25 "Credentialing" means the process of assessing and validating
26 the qualifications of a health care provider including, but not
27 limited to, an evaluation of licensure status, education, training,
28 experience, competence and professional judgement.

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

30 "Health care provider" means an individual, which, acting within
31 the scope of its licensure or certification, provides health care
32 services, and includes, but is not limited to: a physician, dentist,
33 nurse, pharmacist or other health care professional and whose
34 professional practice is regulated pursuant to Title 45 of the Revised
35 Statutes. "Health care provider" shall also mean a hospital or other
36 health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1
37 et seq.)

38 "Medicaid" means the program established pursuant to P.L.1968,
39 c.413 (C.30:4D-1 et seq.).

40 "National average drug acquisition cost" means the monthly
41 survey of retail pharmacies conducted by the federal Centers for
42 Medicare and Medicaid Services to determine average acquisition
43 cost for Medicaid covered outpatient drugs.

44 "Steering" means a practice employed by a pharmacy benefit
45 manager or health carrier that channels a prescription to an
46 affiliated pharmacy, or pharmacy in which a pharmacy benefits
47 manager or carrier has an ownership interest, and includes but is not
48 limited to retail, mail-order, or specialty pharmacies.

- 1 3. A pharmacy benefits manager shall:
 - 2 a. not require a covered person to use a mail-order
3 pharmaceutical distributor, including a mail-order pharmacy;
 - 4 b. offer a health benefits plan the option of charging such
5 health plan the same price for a prescription drug as it pays a
6 pharmacy for the prescription drug; provided, however, that a
7 pharmacy benefits manager shall charge a health benefits plan, the
8 same price for a prescription drug as it pays a pharmacy for the
9 prescription drug;
 - 10 c. report in the aggregate to a health benefits plan the
11 difference between the amount a pharmacy benefits manager
12 reimbursed a pharmacy and the amount a pharmacy benefits
13 manager charged a health benefits plan; and
 - 14 d. when calculating a covered person's contribution to any out-
15 of-pocket maximum, deductible, or copayment responsibility,
16 include any amount paid by the covered person or paid on his or her
17 behalf through a third-party payment, financial assistance, discount,
18 or product voucher for a prescription drug that does not have a
19 generic equivalent or that has a generic equivalent but was obtained
20 through prior authorization, a step therapy protocol, or the carrier's
21 exceptions and appeals process. Nothing in this subsection shall be
22 construed to require that a pharmacy benefits manager accept a
23 third-party payment, financial assistance, discount, or product
24 voucher submitted on behalf of a covered person.
25
- 26 4. A pharmacy benefits manager shall be proscribed from:
 - 27 a. prohibiting a pharmacist or pharmacy from providing a
28 covered person information on the amount of the covered person's
29 cost sharing for the covered person's prescription drug and the
30 clinical efficacy of a more affordable alternative drug if one is
31 available;
 - 32 b. charging or collecting from a covered person a copayment
33 that exceeds the total submitted charges by the network pharmacy
34 for which the pharmacy is paid;
 - 35 c. transferring or sharing records relative to prescription
36 information containing patient-identifiable and prescriber-
37 identifiable data to an affiliated pharmacy for any commercial
38 purpose; provided, however, that nothing shall be construed to
39 prohibit the exchange of prescription information between a
40 pharmacy benefits manager and an affiliated pharmacy for the
41 limited purposes of pharmacy reimbursement, formulary
42 compliance, pharmacy care, or utilization review;
 - 43 d. knowingly making a misrepresentation to a covered person,
44 pharmacist or pharmacy;
 - 45 e. charging a pharmacy a fee in connection with network
46 enrollment;
 - 47 f. removing a drug from a formulary or denying coverage of a
48 drug for the purpose of incentivizing a covered person to seek
49 coverage from a different health plan; and

1 g. withholding coverage or requiring prior authorization for a
2 lower cost, therapeutically equivalent drug available to a covered
3 person or failing to reduce a covered person's cost sharing amount
4 when a covered person selects a lower cost, therapeutically
5 equivalent drug.

6
7 5. a. A pharmacy benefits manager that engages in the practice
8 of steering or imposing point-of-sale fees or retroactive fees shall
9 be subject to a surcharge payable to the State of 10 percent on the
10 aggregate dollar amount it reimbursed pharmacies in the previous
11 calendar year for prescription drugs.

12 b Any person operating a health benefits plan and licensed
13 under this title whose contracted pharmacy benefits manager
14 engages in the practice of steering in connection with its health
15 benefits plans shall be subject to a surcharge payable to the State of
16 10 percent on the aggregate dollar amount its pharmacy benefits
17 manager reimbursed pharmacies on its behalf in the previous
18 calendar year for prescription drugs.

19 c. On March 1 of each year, a pharmacy benefits manager or
20 any other person operating a health benefits plan that utilizes a
21 contracted pharmacy benefits manager shall provide a letter to the
22 commissioner attesting as to whether or not, in the previous
23 calendar year, it engaged in the practice of steering. The pharmacy
24 benefits manager shall also submit to the commissioner, in a form
25 and manner specified by the commissioner, data detailing all
26 prescription drug claims it administered for covered persons on
27 behalf of each health plan client and any other data the
28 commissioner deems necessary to evaluate whether a pharmacy
29 benefits manager is engaged in the practice of steering. Such data
30 shall be confidential and not be subject to P.L.1963, c.73 (C.47:1A-
31 1 et seq.); provided, however, that the commissioner shall prepare
32 an aggregate report reflecting the total number of prescriptions
33 administered by the reporting pharmacy benefits manager on behalf
34 of all health plans in the State along with the total sum due to the
35 State. The department shall have access to all confidential data
36 collected by the Commissioner for audit purposes.

37 d. On April 1 of each year, a pharmacy benefits manager or
38 other person operating a health benefits plan and licensed under this
39 title shall pay into the general fund of the State treasury the
40 surcharge owed, if any, as contained in the report submitted
41 pursuant to subsection c. of this section.

42 e. Nothing in this section shall be construed to authorize the
43 practice of steering where otherwise prohibited by law.

44
45 6. A carrier or pharmacy benefits manager shall not require
46 satisfaction of pharmacy accreditation standards or recertification
47 requirements in order to participate in a network which is
48 inconsistent with, more stringent than, or in addition to, the federal
49 and State requirements for a pharmacy in this State.

1 or pharmacy in which a pharmacy benefit manager or carrier has an
2 ownership interest, and includes but is not limited to retail, mail-
3 order, or specialty pharmacies.

4 On March 1 of each year, a pharmacy benefits manager or carrier
5 that utilizes a contracted pharmacy benefits manager will be
6 required to provide a letter to the commissioner attesting as to
7 whether or not, in the previous calendar year, it engaged in the
8 practice of steering. The pharmacy benefits manager will also
9 submit to the commissioner, in a form and manner specified by the
10 commissioner, data detailing all prescription drug claims it
11 administered for covered persons on behalf of each health plan
12 client and any other data the commissioner deems necessary to
13 evaluate whether a pharmacy benefits manager is engaged in the
14 practice of steering. This data will be confidential and not be
15 subject to the "Open Public Records Act;" provided, however, that
16 the commissioner prepare an aggregate report reflecting the total
17 number of prescriptions administered by the reporting pharmacy
18 benefits manager on behalf of all health plans in the State along
19 with the total sum due to the State. The department will have access
20 to all confidential data collected by the Commissioner for audit
21 purposes.

22 Under the bill, a pharmacy benefits manager that engages in the
23 practice of steering or imposing point-of-sale fees or retroactive
24 fees will be subject to a surcharge payable to the State of 10 percent
25 on the aggregate dollar amount it reimbursed pharmacies in the
26 previous calendar year for prescription drugs. Any other person
27 operating a health plan and licensed under this title whose
28 contracted pharmacy benefits manager engages in the practice of
29 steering in connection with its health plans will be subject to a
30 surcharge payable to the State of 10 percent on the aggregate dollar
31 amount its pharmacy benefits manager reimbursed pharmacies on
32 its behalf in the previous calendar year for prescription drugs.

33 The bill also provides that a pharmacy benefits manager will be
34 proscribed from, among other provisions:

35 (1) prohibiting a pharmacist or pharmacy from providing a
36 covered person information on the amount of the covered person's
37 cost sharing for the covered person's prescription drug and the
38 clinical efficacy of a more affordable alternative drug if one is
39 available;

40 (2) charging or collecting from a covered person a copayment
41 that exceeds the total submitted charges by the network pharmacy
42 for which the pharmacy is paid; or

43 (3) transferring or sharing records relative to prescription
44 information containing patient-identifiable and prescriber-
45 identifiable data to an affiliated pharmacy for any commercial
46 purpose; provided, however, that nothing shall be construed to
47 prohibit the exchange of prescription information between a
48 pharmacy benefits manager and an affiliated pharmacy for the

1 limited purposes of pharmacy reimbursement, formulary
2 compliance, pharmacy care, or utilization review.

3 The bill further provides that a health insurance carrier or
4 pharmacy benefits manager will:

5 (1) be prohibited from requiring pharmacy accreditation
6 standards or recertification requirements to participate in a network
7 which is inconsistent with, more stringent than, or in addition to,
8 the federal and State requirements for a pharmacy in this State; and

9 (2) suspend denials based on health care provider credentialing
10 requirements. Any credentialing determination shall be issued
11 within 45 days after receipt by the health insurance carrier of a
12 universal physician application credentialing application or a
13 complete New Jersey physician recredentialing application.

14 The bill additionally provides that a health insurance carrier or
15 pharmacy benefits manager will produce a report every four
16 months, which will be provided to the commissioner and published
17 by the pharmacy benefits manager on a website available to the
18 public for no less than 24 months, of all drugs appearing on the
19 national average drug acquisition cost list reimbursed 10 percent
20 above or below the national average drug acquisition cost, as well
21 as all drugs reimbursed 10 percent or above the national average
22 drug acquisition cost.

23 Under the bill, a pharmacy benefits manager will not be allowed
24 to engage in the practice of medicine, unless a physician employed
25 or contracted by a pharmacy benefits manager is advising on or
26 making determinations specific to a covered person in connection
27 with a prior authorization or step therapy appeal or determination
28 review and is able to meet certain requirements. Finally, the bill
29 provides that a pharmacy benefits manager will, among other
30 related provisions:

31 (1) not require covered persons to use a mail-order
32 pharmaceutical distributor, including a mail-order pharmacy; or

33 (2) offer a health insurance carrier the ability to receive 100
34 percent of all rebates it receives from pharmaceutical
35 manufacturers. In addition, a pharmacy benefits manager shall
36 report annually to each client, which shall include but not be limited
37 to insurers, payors, health plans, and the department the aggregate
38 amount of all rebates and other payments that a pharmacy benefits
39 manager received from a pharmaceutical manufacturer in
40 connection with claims, if administered on behalf of the client and
41 the aggregate amount of such rebates a pharmacy benefits manager
42 received from a pharmaceutical manufacturer did not pass through
43 to the client health plan.