

ASSEMBLY, No. 4953

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED OCTOBER 17, 2024

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

“Patient and Provider Protection Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning pharmacy benefits managers, amending
2 P.L.2023, c.107, 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. Section 7 of P.L.2023, c.107 (C.17B:27F-3.3) is amended to
9 read as follows:

10 7. a. A carrier, or a pharmacy benefits manager under contract
11 with a carrier, shall establish a pharmacy and therapeutics
12 committee responsible for managing the formulary system.

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

16 A carrier, or a pharmacy benefits manager under contract with a
17 carrier, shall require that its pharmacy and therapeutics committee
18 meet the requirements for conflict of interest as set by the Centers
19 for Medicare and Medicaid Services or meets the accreditation
20 standards of the National Committee for Quality Assurance or
21 another independent accrediting organization.

22 c. A pharmacy and therapeutics committee shall ensure that no
23 decision concerning the inclusion of a prescription drug in a
24 formulary system, or in a particular tier of the formulary system,
25 places a prescription drug with a higher cost in a more favorable
26 position than a generic or biosimilar prescription drug with a lower
27 cost.

28 (cf: P.L.2023, c.107, s.7)
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30 2. Section 9 of P.L.2023, c.107 (C.17B:27F-3.4) is amended to
31 read as follows:

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

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

40 (2) not constitute a benefit provided under a health benefits plan.

41 A carrier shall claim only the amounts paid by the pharmacy
42 benefits manager to a pharmacy or pharmacist as an incurred claim.

43 b. Any rate filing submitted by a carrier with respect to a health
44 benefits plan that provides coverage for prescription drugs or
45 pharmacy services and that is administered or managed by a
46 pharmacy benefits manager shall include:

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

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

6 c. Upon request, a carrier shall provide any records to the
7 department that relate to the calculation of the pharmacy benefits
8 manager and pharmacy services administrative organization
9 compensation.

10 d. A pharmacy benefits manager and pharmacy services
11 administrative organization shall provide any necessary
12 documentation requested by a carrier that relates to pharmacy
13 benefits manager compensation in order to comply with the
14 requirements of this section.

15 e. Compensation to a pharmacy benefits manager shall be in a
16 flat fee arrangement. No pharmacy benefits manager shall receive
17 compensation in any form of commission structure.

18 (cf: P.L.2023, c.107, s.9)

19

20 3. (New section) a. A pharmacy benefits manager shall have a
21 fiduciary duty to the long term health outcomes of covered persons.

22 b. A pharmacy benefits manager shall not engage in any
23 marketing activity that uses inaccurate or misleading information to
24 convince or attempt to convince covered persons to use a contracted
25 or network pharmacy.

26

27 4. (New section) An agreement between a pharmacy benefits
28 manager and a manufacturer shall not be valid if the contract
29 conditions any rebate on the exclusion of generic drugs from
30 coverage.

31

32 5. (New section) a. A contract between a pharmacy benefits
33 manager and a contracted pharmacy or network pharmacy shall, in
34 the event of a dispute, be presumed to be a “contract of adhesion.”

35 b. A pharmacy benefits manager shall, for a prescription drug,
36 reimburse:

37 (1) a contracted pharmacy or a network pharmacy at a rate that
38 is at least equal to the pharmacy’s cost of acquiring the prescription
39 drug; and

40 (2) an independent pharmacy at a rate that is up to five percent
41 lower than the lowest reimbursement rate provided to a contracted
42 pharmacy or a network pharmacy, but shall not reimburse an
43 independent pharmacy at a rate that is less than the pharmacy’s cost
44 of acquiring the prescription drug.

45 c. A pharmacy benefits manager shall not prohibit an
46 independent pharmacy from offering a prescription drug to a
47 covered person in the same quantity and at the same price as a
48 contracted pharmacy or a network pharmacy.

1 d. As used in this section, “independent pharmacy” means a
2 pharmacy that is not a contracted pharmacy or a network pharmacy.

3
4 6. This act shall take effect on the first day of the seventh
5 month next following the date of enactment and shall apply to
6 contracts and agreements entered into, renewed, modified, or
7 amended on or after the effective date, but the Commissioner of
8 Banking and Insurance may take such anticipatory administrative
9 action in advance thereof as shall be necessary for the
10 implementation of the act.

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13 STATEMENT

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15 This bill, the “Patient and Provider Protection Act,” establishes
16 certain requirements for pharmacy benefits managers relating to
17 contractual agreements with manufacturers and pharmacies.

18 Under the bill, pharmacy benefits managers have a fiduciary duty
19 to the long term health outcomes of covered persons. In addition,
20 pharmacy benefits managers are prohibited from engaging in any
21 marketing activity that uses inaccurate or misleading information to
22 convince or attempt to convince covered persons to use a contracted
23 or network pharmacy. Furthermore, the bill stipulates that an
24 agreement between a pharmacy benefits manager and a
25 manufacturer is not valid if the contract conditions any rebate on
26 the exclusion of generic drugs from coverage.

27 As it relates to pharmacy benefits managers and pharmacies, the
28 bill stipulates that a contract between a pharmacy benefits manager
29 and a contracted pharmacy or network pharmacy is, in the event of
30 a dispute, to be presumed to be a “contract of adhesion.” A contract
31 of adhesion is a standardized contract in which one party has
32 significantly superior bargaining power. In a contractual dispute
33 involving a contract of adhesion, the courts may subject the contract
34 to special scrutiny.

35 The bill also requires pharmacy benefits managers, for a
36 prescription drug, to reimburse:

37 (1) a contracted pharmacy or a network pharmacy at a rate that
38 is at least equal to the pharmacy’s cost of acquiring the prescription
39 drug; and

40 (2) an independent pharmacy at a rate that is up to five percent
41 lower than the lowest reimbursement rate provided to a contracted
42 pharmacy or a network pharmacy, but not less than the pharmacy’s
43 cost of acquiring the prescription drug.

44 The bill also stipulates that a pharmacy benefits manager may
45 not prohibit an independent pharmacy from offering a prescription
46 drug to a covered person in the same quantity and at the same price
47 as a contracted pharmacy or a network pharmacy.

1 Lastly, the bill stipulates that a pharmacy and therapeutics
2 committee is to ensure that no decision concerning the inclusion of
3 a prescription drug in a formulary system, or in a particular tier of
4 the formulary system, places a prescription drug with a higher cost
5 in a more favorable position than a generic or biosimilar
6 prescription drug with a lower cost.