

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 4953

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2024

The Assembly Financial Institutions and Insurance Committee adopts amendments to Assembly Bill No. 4953.

As amended, this bill, the “Patient and Provider Protection Act,” establishes certain requirements for pharmacy benefits managers relating to contractual agreements with manufacturers and pharmacies.

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

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

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

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

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

The bill also stipulates that a pharmacy benefits manager may not prohibit an unaffiliated pharmacy from offering a prescription drug to

a covered person in the same quantity and at the same price as a contracted pharmacy or a network pharmacy.

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

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) require pharmacy benefits managers to disclose to the department or the purchaser the amount of any fees paid by the pharmacy benefits manager to a third party broker upon request;

(2) adjust the definition of “health benefits plan” to include self-insured health benefits plans; and

(3) replace certain references to independent pharmacies with references to unaffiliated pharmacies.