

[Third Reprint]

ASSEMBLY, No. 4676

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED MARCH 16, 2017

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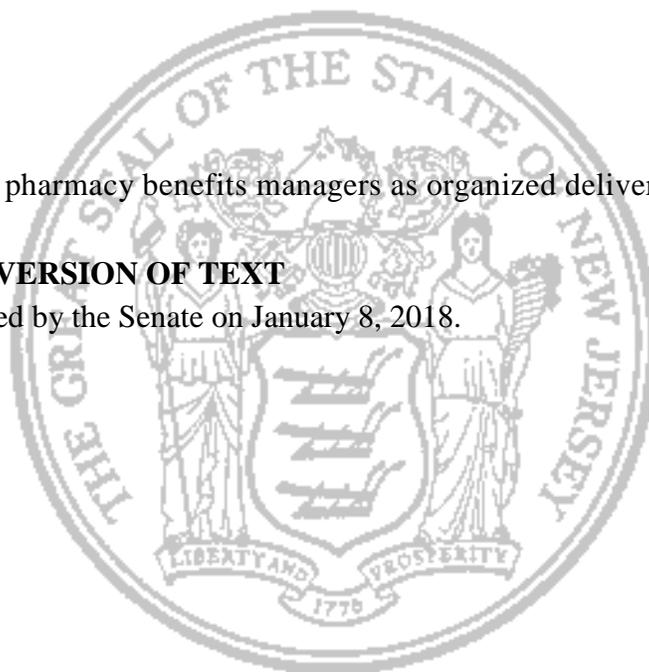
Assemblyman Giblin

SYNOPSIS

Regulates pharmacy benefits managers as organized delivery systems.

CURRENT VERSION OF TEXT

As amended by the Senate on January 8, 2018.



(Sponsorship Updated As Of: 1/9/2018)

1 AN ACT concerning pharmacy benefits managers and amending
2 P.L.1999, c.409 and supplementing P.L.2015, c.179 (C.17B:27F-
3 1 et seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 ¹**[1. (New section) This act shall be known and may be cited as**
9 **the “Prescription Drug Patient Protection Act.”]**¹

10
11 ¹**[2. (New section) a. After the effective date of this act, no**
12 **person, corporation, partnership or other entity shall operate as a**
13 **pharmacy benefits manager in this State except in accordance with**
14 **the provisions of this act.**

15 b. (1) A pharmacy benefits manager operating in this State on
16 the effective date of this act shall submit an application, as provided
17 in section 3 of this act, to the Commissioner of Banking and
18 Insurance for a certificate of authority to operate as a pharmacy
19 benefits manager no later than nine months after the effective date
20 of this act.

21 (2) The pharmacy benefits manager may continue to operate
22 during the pendency of its application, but in no event more than 18
23 months after the effective date of this act unless the commissioner
24 has approved the application.

25 (3) If the commissioner denies the application, the applicant
26 shall then be treated as a pharmacy benefits manager whose
27 certificate has been revoked pursuant to paragraph (2) of subsection
28 c. of section 3 of this act.

29 (4) Nothing in this act shall operate to impair any contract
30 which was entered into by a pharmacy benefits manager before the
31 effective date of this act.

32 c. A pharmacy benefits manager that seeks to commence
33 operations in this State after the effective date of this act shall
34 submit an application, as provided in section 3 of this act, to the
35 Commissioner of Banking and Insurance for a certificate of
36 authority to operate as a pharmacy benefits manager.]¹

37
38 ¹**[3. (New section) a. A pharmacy benefits manager shall**
39 **submit an application for a certificate of authority on a form and in**
40 **a manner to be prescribed by the commissioner by regulation. The**
41 **application shall be signed under oath by the chief executive officer**
42 **of the pharmacy benefits manager or by a legal representative of the**
43 **pharmacy benefits manager, and shall include the following:**

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹**Senate SCM committee amendments adopted December 14, 2017.**

²**Senate SBA committee amendments adopted January 5, 2018.**

³**Senate floor amendments adopted January 8, 2018.**

- 1 (1) the name, address, telephone number, and normal business
2 hours of the pharmacy benefits manager;
 - 3 (2) the name, address, and telephone number of a person who is
4 employed by, or otherwise represents, the pharmacy benefits
5 manager and who is available to answer questions concerning the
6 application that may be posed by representatives of the Department
7 of Banking and Insurance;
 - 8 (3) the proposed plan of operation for the pharmacy benefits
9 manager, including the manner in which pharmacy benefits
10 management services will be provided;
 - 11 (4) a copy of the most recent financial statement audited by an
12 independent certified public accountant; and
 - 13 (5) such other information as the commissioner may require to
14 ensure that the pharmacy benefits manager can and will comply
15 with the provisions of this act.
- 16 If there is a material change in any of the information included in
17 the application for a certificate of authority subsequent to its initial
18 submission, including a change subsequent to the issuance or
19 renewal of the certificate, the pharmacy benefits manager shall
20 inform the commissioner of the change on a form and in a manner
21 to be prescribed by the commissioner by regulation.
- 22 b. The commissioner shall issue a certificate of authority to
23 operate in this State to a pharmacy benefits manager if, in the
24 determination of the commissioner, the application demonstrates
25 that the pharmacy benefits manager:
 - 26 (1) will provide pharmacy benefits management services in
27 compliance with the provisions of this act and P.L.2015, c.179;
 - 28 (2) will provide a complaint resolution mechanism that includes
29 reasonable procedures for the resolution of complaints by
30 pharmacists, prescribers, and covered persons;
 - 31 (3) is financially sound and may reasonably be expected to meet
32 its obligations to purchasers and covered persons;
 - 33 (4) has a procedure to establish and maintain a uniform system
34 of cost accounting approved by the commissioner and a uniform
35 system of reporting and auditing, which meet the requirements of
36 the commissioner; and
 - 37 (5) has adopted procedures to ensure compliance with all State
38 and federal laws governing the confidentiality of its records with
39 respect to pharmacists, prescribers, and covered persons.
 - 40 c. (1) If the commissioner rejects an application by a
41 pharmacy benefits manager for a certificate of authority, the
42 commissioner shall specify in what respect the application fails to
43 comply with the requirements for certification.
 - 44 (2) If the commissioner revokes a certificate of authority for a
45 pharmacy benefits manager, the pharmacy benefits manager shall
46 proceed, immediately following the effective date of the order of
47 revocation, to pay all outstanding pharmacy benefits claims of
48 covered persons and shall conduct no further business except as

1 may be essential to the orderly conclusion of the affairs of the
2 pharmacy benefits manager. The commissioner may permit such
3 further operation of the pharmacy benefits manager as the
4 commissioner may find to be in the best interest of the purchaser
5 and covered persons.

6 d. A certificate of authority issued pursuant to this act shall be
7 valid for three years from the date of issuance by the commissioner,
8 and shall be renewed every three years thereafter.

9 e. The commissioner shall establish fees for an application for
10 a certificate of authority and for a renewal of a certificate of
11 authority, the amounts of which shall be no greater than is
12 reasonably necessary to enable the Department of Banking and
13 Insurance to carry out the provisions of this act.

14 f. The provisions of this act shall not apply to a pharmacy
15 benefits manager that is an affiliate of a carrier and provides
16 pharmacy benefits management services solely to that carrier. ¹

17

18 ³1. (New section) This act shall be known and may be cited as
19 the "Prescription Drug Patient Protection Act."²³

20

21 ³2. (New section) a. After the effective date of this act, no
22 person, corporation, partnership or other entity shall operate as a
23 pharmacy benefits manager in this State except in accordance with
24 the provisions of this act.

25 b. (1) A pharmacy benefits manager operating in this State on
26 the effective date of this act shall submit an application, as provided
27 in section 3 of this act, to the Commissioner of Banking and
28 Insurance for a certificate of authority to operate as a pharmacy
29 benefits manager no later than nine months after the effective date
30 of this act.

31 (2) The pharmacy benefits manager may continue to operate
32 during the pendency of its application, but in no event more than 18
33 months after the effective date of this act unless the commissioner
34 has approved the application.

35 (3) If the commissioner denies the application, the applicant
36 shall then be treated as a pharmacy benefits manager whose
37 certificate has been revoked pursuant to paragraph (2) of subsection
38 c. of section 3 of this act.

39 (4) Nothing in this act shall operate to impair any contract
40 which was entered into by a pharmacy benefits manager before the
41 effective date of this act.

42 c. A pharmacy benefits manager that seeks to commence
43 operations in this State after the effective date of this act shall
44 submit an application, as provided in section 3 of this act, to the
45 Commissioner of Banking and Insurance for a certificate of
46 authority to operate as a pharmacy benefits manager.²³

- 1 ³[²3. (New section) a. A pharmacy benefits manager shall
2 submit an application for a certificate of authority on a form and in
3 a manner to be prescribed by the commissioner by regulation. The
4 application shall be signed under oath by the chief executive officer
5 of the pharmacy benefits manager or by a legal representative of the
6 pharmacy benefits manager, and shall include the following:
- 7 (1) the name, address, telephone number, and normal business
8 hours of the pharmacy benefits manager;
- 9 (2) the name, address, and telephone number of a person who is
10 employed by, or otherwise represents, the pharmacy benefits
11 manager and who is available to answer questions concerning the
12 application that may be posed by representatives of the Department
13 of Banking and Insurance;
- 14 (3) the proposed plan of operation for the pharmacy benefits
15 manager, including the manner in which pharmacy benefits
16 management services will be provided;
- 17 (4) a copy of the most recent financial statement audited by an
18 independent certified public accountant; and
- 19 (5) such other information as the commissioner may require to
20 ensure that the pharmacy benefits manager can and will comply
21 with the provisions of this act.
- 22 If there is a material change in any of the information included in
23 the application for a certificate of authority subsequent to its initial
24 submission, including a change subsequent to the issuance or
25 renewal of the certificate, the pharmacy benefits manager shall
26 inform the commissioner of the change on a form and in a manner
27 to be prescribed by the commissioner by regulation.
- 28 b. The commissioner shall issue a certificate of authority to
29 operate in this State to a pharmacy benefits manager if, in the
30 determination of the commissioner, the application demonstrates
31 that the pharmacy benefits manager:
- 32 (1) will provide pharmacy benefits management services in
33 compliance with the provisions of this act and P.L.2015, c.179;
- 34 (2) will provide a complaint resolution mechanism that includes
35 reasonable procedures for the resolution of complaints by
36 pharmacists, prescribers, and covered persons;
- 37 (3) is financially sound and may reasonably be expected to meet
38 its obligations to purchasers and covered persons;
- 39 (4) has a procedure to establish and maintain a uniform system
40 of cost accounting approved by the commissioner and a uniform
41 system of reporting and auditing, which meet the requirements of
42 the commissioner; and
- 43 (5) has adopted procedures to ensure compliance with all State
44 and federal laws governing the confidentiality of its records with
45 respect to pharmacists, prescribers, and covered persons.
- 46 c. (1) If the commissioner rejects an application by a pharmacy
47 benefits manager for a certificate of authority, the commissioner

1 shall specify in what respect the application fails to comply with the
 2 requirements for certification.

3 (2) If the commissioner revokes a certificate of authority for a
 4 pharmacy benefits manager, the pharmacy benefits manager shall
 5 proceed, immediately following the effective date of the order of
 6 revocation, to pay all outstanding pharmacy benefits claims of
 7 covered persons and shall conduct no further business except as
 8 may be essential to the orderly conclusion of the affairs of the
 9 pharmacy benefits manager. The commissioner may permit such
 10 further operation of the pharmacy benefits manager as the
 11 commissioner may find to be in the best interest of the purchaser
 12 and covered persons.

13 d. A certificate of authority issued pursuant to this act shall be
 14 valid for three years from the date of issuance by the commissioner,
 15 and shall be renewed every three years thereafter.

16 e. The commissioner shall establish fees for an application for
 17 a certificate of authority and for a renewal of a certificate of
 18 authority, the amounts of which shall be no greater than is
 19 reasonably necessary to enable the Department of Banking and
 20 Insurance to carry out the provisions of this act.

21 f. The provisions of this act shall not apply to a pharmacy
 22 benefits manager that is an affiliate of a carrier and provides
 23 pharmacy benefits management services solely to that carrier.²³

24
 25 ¹[4.] ²[1.] ³[4.] ¹.³ Section 1 of P.L.1999, c.409
 26 (C.17:48H-1) is amended to read as follows:

27 1. As used in this act:

28 "Affiliate" means a person that directly, or indirectly through one
 29 or more intermediaries, controls, or is controlled by, or is under
 30 common control with, the organized delivery system.

31 "Capitation" means a fixed per member, per month, payment or
 32 percentage of premium payment for which the provider assumes the
 33 risk for the cost of contracted services without regard to the type,
 34 value or frequency of the services provided.

35 "Carrier" means an insurer authorized to transact the business of
 36 health insurance as defined at N.J.S.17B:17-4, a hospital service
 37 corporation authorized to transact business in accordance with
 38 P.L.1938, c.366 (C.17:48-1 et seq.), a medical service corporation
 39 authorized to transact business in accordance with P.L.1940, c.74
 40 (C.17:48A-1 et seq.), a health service corporation authorized to
 41 transact business in accordance with P.L.1985, c.236 (C.17:48E-1 et
 42 seq.) or a health maintenance organization authorized to transact
 43 business pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.).

44 "Certified organized delivery system" means an organized
 45 delivery system that is compensated on a basis which does not
 46 entail the assumption of financial risk by the organized delivery
 47 system and that is certified in accordance with this act.

1 "Comprehensive health care services" means the basic benefits
2 provided under a health benefits plan, including medical and
3 surgical services provided by licensed health care providers who
4 may include, but are not limited to, family physicians, internists,
5 cardiologists, psychiatrists, rheumatologists, dermatologists,
6 orthopedists, obstetricians, gynecologists, neurologists,
7 endocrinologists, radiologists, nephrologists, emergency services
8 physicians, ophthalmologists, pediatricians, pathologists, general
9 surgeons, osteopathic physicians, physical therapists and
10 chiropractors. Basic benefits may also include inpatient or
11 outpatient services rendered at a licensed hospital, covered services
12 performed at an ambulatory surgical facility and ambulance
13 services.

14 "Financial risk" means exposure to financial loss that is
15 attributable to the liability of an organized delivery system for the
16 payment of claims or other losses arising from covered benefits for
17 treatment or services other than those performed directly by the
18 person or organized delivery system liable for payment, including a
19 loss sharing arrangement. A payment method wherein a provider
20 accepts reimbursement in the form of a capitation payment for
21 which it undertakes to provide health care services on a prepayment
22 basis shall not be considered financial risk.

23 "Health benefits plan" means a ¹【benefits plan which pays or
24 provides hospital and medical expense benefits for covered
25 services, and is delivered or issued for delivery in this State by or
26 through a carrier. Health benefits plan includes, but is not limited
27 to, Medicare supplement coverage and risk contracts to the extent
28 not otherwise prohibited by federal law. For the purposes of this
29 act, health benefits plan shall not include the following plans,
30 policies or contracts: accident only, credit, disability, long-term
31 care, 【CHAMPUS】 TRICARE supplement coverage, coverage
32 arising out of a workers' compensation or similar law, automobile
33 medical payment insurance, personal injury protection insurance
34 issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.) or hospital
35 confinement indemnity coverage】 hospital and medical expense
36 insurance policy; health service corporation contract; hospital
37 service corporation contract; medical service corporation contract;
38 health maintenance organization subscriber contract; or other plan
39 for medical care delivered or issued for delivery in this State.
40 Health benefits plan shall not include one or more, or any
41 combination of, the following: coverage only for accident, or
42 disability income insurance, or any combination thereof; coverage
43 issued as a supplement to liability insurance; liability insurance,
44 including general liability insurance and automobile liability
45 insurance; stop loss or excess risk insurance; workers' compensation
46 or similar insurance; automobile medical payment insurance; credit-
47 only insurance; coverage for on-site medical clinics; and other
48 similar insurance coverage, as specified in federal regulations.

1 under which benefits for medical care are secondary or incidental to
2 other insurance benefits. Health benefits plans shall not include the
3 following benefits if they are provided under a separate policy,
4 certificate or contract of insurance or are otherwise not an integral
5 part of the plan: limited scope dental or vision benefits; benefits for
6 long-term care, nursing home care, home health care, community-
7 based care, or any combination thereof; and such other similar,
8 limited benefits as are specified in Federal regulations. Health
9 benefits plan shall not include hospital confinement indemnity
10 coverage if the benefits are provided under a separate policy,
11 certificate or contract of insurance, there is no coordination between
12 the provision of the benefits and any exclusion of benefits under
13 any group health benefits plan maintained by the same plan
14 sponsor, and those benefits are paid with respect to an event without
15 regard to whether benefits are provided with respect to such an
16 event under any group health plan maintained by the same plan
17 sponsor. Health benefits plan shall not include the following if it is
18 offered as a separate policy, certificate or contract of insurance:
19 Medicare supplemental health insurance as defined under section
20 1882(g)(1) of the Federal Social Security Act (42 U.S.C.
21 s.1395ss(g)(1)); and coverage supplemental to the coverage
22 provided under chapter 55 of Title 10, United States Code (10
23 U.S.C. s.1071 et seq.); and similar supplemental coverage provided
24 to coverage under a group health plan¹.

25 "Licensed organized delivery system" means an organized
26 delivery system that is compensated on a basis which entails the
27 assumption of financial risk by the organized delivery system and
28 that is licensed in accordance with this act.

29 "Limited health care services" means a health service or benefit
30 which a carrier has elected to subcontract for as a separate service,
31 which may include, but shall not be limited to, substance ¹**[abuse]**
32 use disorder¹ services, vision care services, mental health services,
33 podiatric care services, chiropractic services, pharmaceutical
34 services or rehabilitation services. Limited health care services
35 shall not include **[pharmaceutical services,]** case management
36 services or employee assistance plan services.

37 "Organized delivery system" or "system" means an organization
38 with defined governance that:

39 a. is organized for the purpose of and has the capability of
40 contracting with a carrier to provide, or arrange to provide, under its
41 own management substantially all or a substantial portion of the
42 comprehensive health care services or benefits under the carrier's
43 benefits plan on behalf of the carrier, which may or may not include
44 the payment of hospital and ancillary benefits; or

45 b. is organized for the purpose of acting on behalf of a carrier
46 to provide, or arrange to provide, limited health care services that
47 the carrier elects to subcontract for as a separate category of
48 benefits and services apart from its delivery of benefits under its

1 comprehensive benefits plan, which limited services are provided
 2 on a separate contractual basis and under different terms and
 3 conditions than those governing the delivery of benefits and
 4 services under the carrier's comprehensive benefits plan.

5 An organized delivery system shall not include an entity
 6 otherwise authorized or licensed in this State to provide
 7 comprehensive or limited health care services on a prepayment or
 8 other basis in connection with a health benefits plan or a carrier.

9 "Provider" means a physician, health care professional, health
 10 care facility, or any other person who is licensed or otherwise
 11 authorized to provide health care services or other benefits in the
 12 state or jurisdiction in which they are furnished.

13 (cf: P.L.1999, c.409, s.1)

14

15 ³~~[5.]~~ ²~~[2.1]~~ 5.² (New section) ¹~~[The Commissioner of~~
 16 Banking and Insurance shall adopt, pursuant to the "Administrative
 17 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
 18 regulations, including any penalty provisions the commissioner
 19 deems to be necessary, to effectuate the purposes of this act.] ²~~[A~~
 20 pharmacy benefits manager shall not require prior authorization for
 21 any prescription drug, unless there is an alternative drug that has a
 22 lower cost and is of equal quality and effectiveness to the
 23 prescribed drug, which alternative drug shall be provided without
 24 prior authorization.¹ ~~The Commissioner of Banking and Insurance~~
 25 shall adopt, pursuant to the "Administrative Procedure Act,"
 26 P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations,
 27 including any penalty provisions the commissioner deems to be
 28 necessary, to effectuate the purposes of this act.²]³

29

30 ¹~~[6.]~~ ²~~[3.1]~~ ³~~[6.2]~~ 2.³ This act shall take effect on the 90th
 31 day next following enactment.