ASSEMBLY, No. 3277

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 12, 2018

Sponsored by:
Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

SYNOPSIS
Regulates certain practices of pharmacy benefits management companies.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning pharmacy benefits management companies and
supplementing Title 17B of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. As used in this act:
"Carrier" means an insurance company, health service
corporation, hospital service corporation, medical service
corporation, or health maintenance organization authorized to issue
health benefits plans in this State.
"Covered person" means a person on whose behalf a carrier or
other entity, who is the sponsor of the health benefits plan, is
obligated to pay benefits pursuant to a health benefits plan.
"Drug" means a drug or device as defined in R.S.24:1-1.
"Health benefits plan" means a benefits plan which pays hospital
or medical expense benefits for covered services, or prescription
drug benefits for covered services, and is delivered or issued for
delivery in this State by or through a carrier or any other sponsor,
including, but not limited to, a carrier, self-insured employer, or
union. For the purposes of this act, health benefits plan shall not
include the following plans, policies or contracts: accident only;
credit disability; long-term care, Medicare supplement coverage;
TRICARE supplement coverage, coverage for Medicare services
pursuant to a contract with the United States government; coverage
arising out of a worker's compensation or similar law; coverage
under a policy of private passenger automobile insurance issued
pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), or hospital
confinement indemnity coverage.
"Pharmacy" means any place in the State where drugs are
dispensed or pharmaceutical care is provided by a licensed
pharmacist, but shall not include a medical office under the control
of a licensed physician.
"Pharmacy benefits management company" means a corporation,
business, or other entity, or unit within a corporation, business, or
other entity, that administers prescription drug benefits on behalf of
a purchaser.
"Pharmacy benefits management services" means the provision
of any of the following services on behalf of a purchaser: the
procurement of prescription drugs at a negotiated rate for
dispensation within this State; the processing of prescription drug
claims; or the administration of payments related to prescription
drug claims.
"Prescription" means a prescription as defined in section 5 of
"Prescription drug benefits" means the benefits provided for
prescription drugs and pharmacy services for covered services
under a health benefits plan contract.
"Purchaser" means any sponsor of a health benefits plan who enters into an agreement with a pharmacy benefits management company for the provision of pharmacy benefits management services to covered persons.

2. a. A pharmacy benefits management company shall not:
   (1) mandate that a covered person use a specific retail pharmacy, mail-order pharmacy, or specialty pharmacy; or
   (2) provide for variations in a network agreement between the pharmacy benefits management company and a purchaser, including, but not limited to, variations in premiums, deductibles, copayments or coinsurance rates, as an incentive to encourage purchasers and covered persons to use a specific retail pharmacy, mail-order pharmacy, or specialty pharmacy, unless the incentive applies to all pharmacies in the network agreement.

   b. A pharmacy benefits management company that has an ownership interest in a retail pharmacy, mail-order pharmacy, or specialty pharmacy, shall disclose that interest, including the percentage ownership in each entity and the total annual revenue obtained from each, in writing to the purchaser prior to entering into an agreement with the purchaser.

3. A pharmacy benefits management company, or an entity acting on its behalf, that conducts an audit of a pharmacy shall comply with the following procedures:
   a. The period covered by an audit shall not exceed 18 months from the date the claim was adjudicated by the pharmacy benefits management company.
   b. An audit that involves clinical or professional judgment shall be conducted by a pharmacist licensed to practice in this State pursuant to the “New Jersey Pharmacy Practice Act,” P.L.2003, c.280 (C.45:14-40 et seq.).
   c. A pharmacy shall not be required to maintain more stringent recordkeeping than that required by State or federal law.
   d. A pharmacy being audited shall be entitled to use:
      (1) the records of a hospital, physician, or other authorized health care professional to validate the pharmacy’s records; and
      (2) any legal prescription that complies with New Jersey State Board of Pharmacy requirements to validate claims in connection with prescriptions, refills, or changes in prescriptions.
   e. If an audit results in the identification of any clerical or recordkeeping error such as a typographical error, scrivener’s error, or computer error regarding a required document or record, the pharmacy shall not be subject to recoupment of funds by the pharmacy benefits management company unless the pharmacy benefits management company provides proof of intent by the pharmacy to commit fraud or the error results in actual financial
harm to a purchaser, the pharmacy benefits management company, or a covered person.

f. Extrapolation or other statistical expansion techniques shall not be used in calculating recoupment amounts.

g. The amount of a recoupment shall not include the cost of the drug if it has been dispensed to the covered person.

h. A pharmacy shall be entitled to provide post audit documentation and recoupment amounts shall be adjusted in accordance with the post audit documentation.

i. A pharmacy benefits management company shall:

   (1) established a written process for a pharmacy to appeal preliminary and final audit reports;

   (2) provide a report of any audit recoupment amounts to the purchaser and return the recoupment amounts to the purchaser; and

   (3) provide a copy of the report of audit recoupment amounts to the pharmacy.

4. A pharmacy benefits management company shall comply with the requirements of the “Health Claims Authorization, Processing and Payment Act,” P.L.2005, c.352 (C.17B:30-48 et al.), to the extent the requirements are determined to be applicable and appropriate by the Commissioner of Banking and Insurance.

5. The Commissioner of Banking and Insurance shall adopt pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations, including any penalty provisions the commissioner deems to be necessary, to effectuate the purposes of this act.

6. This act shall take effect on the 90th day next following enactment and shall apply to all contracts or agreements for pharmacy benefits management services that are executed or renewed on or after the effective date.

STATEMENT

This bill applies certain requirements to the activities of pharmacy benefits management companies operating in this State. Pharmacy benefits management companies (“PBMs”) manage prescription drug benefits under a health benefits plan that is sponsored by an insurer, public or private employer, union, or other entity.

The bill provides that a PBM shall not:

   (1) mandate that a covered person use a specific retail pharmacy, mail-order pharmacy, specialty pharmacy, or other pharmacy practice site; or
(2) provide for variations in a network agreement between the pharmacy benefits management company and a purchaser of pharmacy benefits management service, including, but not limited to, variations in premiums, deductibles, copayments or coinsurance rates, as an incentive to encourage purchasers and covered persons to use a specific retail pharmacy, mail-order pharmacy, specialty pharmacy, or other pharmacy practice site, unless the incentive applies to all pharmacies in the network agreement.

The bill also provides that if a PBM has an ownership interest in a retail pharmacy, mail-order pharmacy, or specialty pharmacy, the PBM shall disclose that interest, including the percentage ownership in each entity and the total annual revenue obtained from each, in writing to the purchaser prior to entering into an agreement with the purchaser.

This bill establishes standards for the audit of pharmacies conducted by or on behalf of PBMs, including standards relating to: the period covered by an audit, the use of licensed pharmacists in certain situations, the appropriate use of pharmacy records to comply with an audit, the determination and reporting of amounts subject to recoupment by the PBM, and appealing audit reports.

The bill also requires that PBMs comply with the “Health Claims Authorization, Processing and Payment Act,” P.L.2005, c.352 (C.17B:30-48 et al.), which requires payment of health care claims within certain time periods, to the extent that act’s requirements are determined to be applicable and appropriate by the Commissioner of Banking and Insurance.

Finally, the bill provides that the commissioner shall adopt pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations, including any penalty provisions the commissioner deems to be necessary, to effectuate the purposes of the bill.