

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 3717

STATE OF NEW JERSEY
218th LEGISLATURE

DATED: MAY 28, 2019

SUMMARY

- Synopsis:

Prohibits pharmacy benefits managers from making certain retroactive reductions in claims payments to pharmacies; requires pharmacy benefits managers to disclose certain product information to pharmacies.
- Type of Impact:

State and local government expenditure increase; State revenue increase.
- Agencies Affected:

Division of Pensions and Benefits, Department of the Treasury; local government entities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost		Indeterminate increase	
State Revenue		Indeterminate increase	
Local Cost		Indeterminate increase	

- The Office of Legislative Services (OLS) estimates that the bill could increase State and local prescription drug benefit costs by indeterminate amounts. This conclusion is based on information provided by the Division of Pensions and Benefits, Department of the Treasury, that by prohibiting retroactive drug payment reductions by a pharmacy benefit manager (PBM) to pharmacies under contractual drug pricing provisions such as direct or indirect remuneration and quality assurance programs, the bill will restrict a pharmacy benefit manager’s ability negotiate price concessions from its network pharmacies. This restriction thus erodes the ability of a pharmacy benefit manager (PBM) to establish and maintain an incentive-based payment structure with its pharmacy network that results in lower prescription drug costs. The division did not offer any quantification of the bill’s impact on the State Health Benefits program.
- The bill’s prohibits on pharmacy benefit managers’ or third-party payers’ requiring pharmacy accreditation standards that are more stringent than, or in addition to, federal and State licensure requirements may also inhibit the achievement of prescription drug cost reductions. According to the division, additional accreditation standards are necessary to ensure the safe

dispensation of specialty drugs; absent these standards, higher costs may result from inefficiency in shipping, storage, dispensation, or disposal.

- State revenue may increase by indeterminate amounts through the bill's imposition of a financial penalty of at least \$5,000 and no more than \$10,000 a day for each violation of the law by pharmacy benefit managers.

BILL DESCRIPTION

This bill prohibits a pharmacy benefits manager from retroactively reducing payment on a properly filed claim for payment by a pharmacy. These retroactive reductions in payment are often, particularly in the case of Medicare Part D, referred to as direct and indirect remuneration (DIR) fees. Since these fees are commonly “clawed back” retroactively, and in many cases months after the claim is made, this process makes it difficult for pharmacies to operate with predictable revenues.

Specifically, the bill provides that, after the date of receipt of a clean claim for payment made by a pharmacy, a pharmacy benefits manager shall not retroactively reduce payment on the claim, either directly or indirectly, through aggregated effective rate, direct or indirect remuneration, quality assurance program, or otherwise, except if the claim is found not to be clean during the course of a routine audit performed pursuant to an agreement between the pharmacy benefits manager and the pharmacy.

A “clean claim” is defined as a claim that has no defect or impropriety, including a lack of any required substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim.

The bill also requires, with respect to execution, renewals, and changes in terms of a contract between a pharmacy benefits manager and a pharmacy, more information to be disclosed to the pharmacy in the contract, and a reasonable process by which contracted pharmacies can access certain pricing information.

The bill also requires all contracts between a pharmacy benefits manager and a contracted pharmacy to include certain factors that are subject to a process to appeal disputes. With respect to appeals that are denied, the bill provides that the pharmacy benefits manager is required to provide certain information relating to the denial.

The bill also provides that a pharmacy licensed in the State of New Jersey shall be permitted to make product deliveries and mail prescriptions to patients without contractual restrictions by a pharmacy benefits manager.

The bill prohibits a pharmacy benefit manager or third-party payer from requiring accreditation standards that are more stringent than, or in addition to, the federal and State requirements for licensure as a pharmacy in this State.

The bill provides that the Commissioner of Banking and Insurance may review and approve the compensation program of a pharmacy benefits manager with a health benefits plan to ensure that the reimbursement for pharmacist services is fair and reasonable.

The bill applies P.L.2015, c.179 (C.17B:27F-1 et seq.), the law regulating pharmacy benefits managers, to all pharmacy benefits managers operating in the State and to plans offered through the State Health Benefits Program.

Finally, the bill provides that a pharmacy benefits manager that violates any provision of that law shall be subject to a penalty, for each day during which the violation continues, of not less than \$5,000 or more than \$10,000 for each violation.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill could increase State and local prescription drug benefit costs by indeterminate amounts. This conclusion is based in part upon the following information, provided in response to a discussion point in the FY 2020 OLS Interdepartmental Accounts budget analysis, the Division of Pensions and Benefits:

The current pharmacy Direct or Indirect Remuneration (DIR) price concessions are used to support the incentive based payments to network pharmacies based on quality programs ranging from drug adherence, high cost specialty drug adherence, and overall member satisfaction based on National Provider Score (NPS) scores. These programs provide necessary focus on quality metrics that help improve the overall health of members and reduce the cost of care across the care continuum. PBMs negotiate DIR with pharmacies to reflect how they performed on contractually agreed-upon measures such as generic substitution rates, adherence rates, etc. Provisions to require unwaivable terms and conditions taken together with the restrictive DIR approach would end PBM's abilities to negotiate pay for performance based on individual pharmacy capabilities. This would impede efforts to improve quality of care and services.

The division also indicates through informal communications with OLS that the current pharmacy accreditation standards under its PBM contract provide more stringent requirements for a pharmacy to administer specialty drugs. Additional accreditations are necessary for the safe dispensation of specialty drugs that may require a higher level of operational support and facility capability in terms of shipping, storage, dispensation, and disposal. Unlike generics, specialty drugs, especially some oncological prescriptions, can cost hundreds of thousands of dollars and require special operational procedures. Additional accreditations standards are also necessary from a financial perspective to ensure pharmacy adherence to safe and cost effective prescription drug dispensation.

The bill imposes a financial penalty of at least \$5,000 and no more than \$10,000 a day for each violation of the law regarding pharmacy benefit managers, N.J.S.A. (C.17B:27F-1 et seq.). Imposition of these penalties would result in increased State revenues of indeterminate amount.

Section: State Government

Analyst: Kimberly M. Clemmenssen
Lead Fiscal Analyst

Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).