

[First Reprint]

## **ASSEMBLY, No. 3717**

# **STATE OF NEW JERSEY**

## **218th LEGISLATURE**

INTRODUCED MARCH 22, 2018

**Sponsored by:**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblywoman JOANN DOWNEY**

**District 11 (Monmouth)**

**Assemblyman ERIC HOUGHTALING**

**District 11 (Monmouth)**

**Co-Sponsored by:**

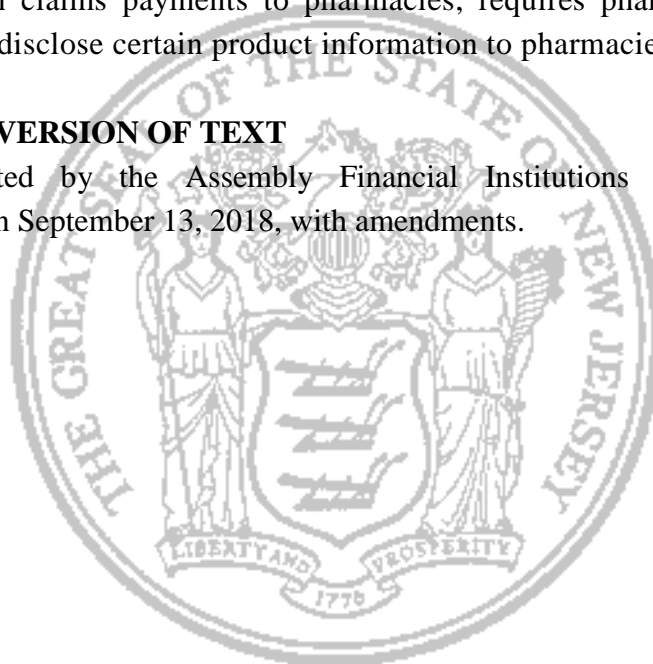
**Assemblymen Holley, Milam, Land, Karabinchak and Assemblywoman Jasey**

### **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.

### **CURRENT VERSION OF TEXT**

As reported by the Assembly Financial Institutions and Insurance Committee on September 13, 2018, with amendments.



**(Sponsorship Updated As Of: 5/24/2019)**

1 AN ACT concerning pharmacy benefits managers <sup>1</sup>and amending<sup>1</sup>  
 2 and supplementing P.L.2015, c.179 <sup>1</sup>[(C.17B:27F-1 et seq.)].<sup>1</sup>

3  
 4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
 5 *of New Jersey:*

6  
 7 1. (New section) a. After the date of receipt of a clean claim for  
 8 payment made by a pharmacy, a pharmacy benefits manager shall  
 9 not retroactively reduce payment on the claim, either directly or  
 10 indirectly, through aggregated effective rate <sup>1</sup>, direct or indirect  
 11 remuneration, quality assurance program,<sup>1</sup> or otherwise, except if  
 12 the claim is found not to be a clean claim during the course of a  
 13 routine audit performed pursuant to an agreement between the  
 14 pharmacy benefits manager and the pharmacy. <sup>1</sup>[(Nothing in this  
 15 section shall be construed to prohibit any retroactive increase in  
 16 payment to a pharmacy pursuant to a written agreement between the  
 17 pharmacy benefits manager and the pharmacy.)] When a pharmacy  
 18 adjudicates a claim at the point of sale, the reimbursement amount  
 19 provided to the pharmacy by the pharmacy benefits manager shall  
 20 constitute a final reimbursement amount.<sup>1</sup>

21 b. For the purpose of this section, “clean claim” means a claim  
 22 that has no defect or impropriety, including a lack of any required  
 23 substantiating documentation, or particular circumstance requiring  
 24 special treatment that prevents timely payment from being made on  
 25 the claim.

26  
 27 <sup>1</sup>2. Section 2 of P.L.2015, c.179 (C.17B:27F-2) is amended to  
 28 read as follows:

29 2. Upon execution or renewal of each contract, or at such a  
 30 time when there is any change in the term of the contract, a  
 31 pharmacy benefits manager shall, with respect to contracts between  
 32 a pharmacy benefits manager and a contracted pharmacy:

33 a. (1) include in the contract the sources utilized to determine  
 34 multiple source generic drug pricing, the outlet in the State of New  
 35 Jersey where pharmacies may acquire the product and brand  
 36 effective rate, generic effective rate, and professional fee, including,  
 37 if applicable, the maximum allowable cost or any successive pricing  
 38 formula, or other pricing methodology utilized by the pharmacy  
 39 benefits manager as a benchmark for pharmacy reimbursement of  
 40 the pharmacy benefits manager;

41 (2) update that pricing information every seven calendar days;  
 42 and

43 (3) establish a reasonable process by which contracted

**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:

<sup>1</sup>Assembly AFI committee amendments adopted September 13, 2018.

1 pharmacies have a method to access relevant maximum allowable  
2 cost pricing lists, brand effective rate, generic effective rate,  
3 professional fee, any successive pricing formulas and any other  
4 pricing methodology utilized by the pharmacy benefits manager as  
5 a benchmark for pharmacy reimbursement and any successive  
6 pricing formulas in a timely manner; and

7 b. Maintain a procedure to eliminate drugs from the list of  
8 drugs subject to multiple source generic drug pricing or modify  
9 maximum allowable cost rates in a timely fashion and make that  
10 procedure easily accessible to pharmacies<sup>1</sup>.

11 (cf: P.L.2015, c.179, s.2)

12

13 <sup>1</sup>3. Section 4 of P.L.2015, c.179 (C.17B:27F-4) is amended to  
14 read as follows:

15 4. All contracts between a pharmacy benefits manager and a  
16 contracted pharmacy shall include a process to appeal, investigate,  
17 and resolve disputes regarding multiple source generic drug pricing,  
18 brand effective rate, generic effective rate, professional fees, State  
19 Health Benefits Program plans and any other pricing methodology  
20 utilized by the pharmacy benefits manager as a benchmark for  
21 pharmacy reimbursement. The contract provision establishing the  
22 process shall include the following:

23 a. The right to appeal shall be limited to 14 calendar days  
24 following the initial claim;

25 b. The appeal shall be investigated and resolved by the  
26 pharmacy benefits manager through an internal process within 14  
27 calendar days of receipt of the appeal by the pharmacy benefits  
28 manager;

29 c. A telephone number at which a pharmacy may contact the  
30 pharmacy benefits manager and speak with an individual who is  
31 involved in the appeals process; and

32 d. (1) If the appeal is denied, the pharmacy benefits manager  
33 shall provide the reason for the denial **【and】**, identify the national  
34 drug code of a drug product that is available for purchase by  
35 **【contracted pharmacies】** the specific contracted pharmacy  
36 appealing the claim in this State from wholesalers registered  
37 pursuant to P.L.1961, c.52 (C.24:6B-1 et seq.) and the outlet in the  
38 State of New Jersey where pharmacies may acquire the product at a  
39 price which is available to the specific contracted pharmacy  
40 appealing the claim and which is equal to or less than the maximum  
41 allowable cost or the brand effective rate, generic effective rate and  
42 professional fee for the appealed drug as determined by the  
43 pharmacy benefits manager;

44 (2) If the appeal is approved, the pharmacy benefits manager  
45 shall make the price correction, permit the reporting pharmacy to  
46 reverse and rebill the appealed claim, and make the price correction  
47 effective for all similarly situated pharmacies from the date of the  
48 approved appeal.

1     e. A pharmacy licensed in the State of New Jersey shall be  
2 permitted to make product deliveries and mail prescriptions to  
3 patients without contractual restrictions by a pharmacy benefits  
4 manager.<sup>1</sup>

5 (cf: P.L.2015, c.179, s.4)

6  
7     <sup>1</sup>4. (New section) A pharmacy benefits manager or third-party  
8 payer shall not require pharmacy accreditation standards or  
9 recertification requirements to participate in a network which are  
10 inconsistent with, more stringent than, or in addition to, the federal  
11 and State requirements for licensure as a pharmacy in this State.<sup>1</sup>

12  
13     <sup>1</sup>5. (New section) The Commissioner of Banking and Insurance  
14 may review and approve the compensation program of a pharmacy  
15 benefits manager with a health benefits plan to ensure that the  
16 reimbursement for pharmacist services paid to a pharmacist or  
17 pharmacy is fair and reasonable to provide an adequate pharmacy  
18 benefits manager network for a health benefits plan.<sup>1</sup>

19  
20     <sup>1</sup>6. (New section) P.L.2015, c.179 (C.17B:27F-1 et seq.) shall  
21 apply to all pharmacy benefits managers operating in the State of  
22 New Jersey and shall apply to plans offered through the State  
23 Health Benefits Program.<sup>1</sup>

24  
25     <sup>1</sup>7. (New section) A pharmacy benefits manager that violates  
26 any provision of P.L.2015, c.179 (C.17B:27F-1 et seq.) shall be  
27 subject to a penalty, after notice and opportunity for a hearing, for  
28 each day during which the violation continues, of not less than  
29 \$5,000 or more than \$10,000 for each violation.<sup>1</sup>

30  
31     <sup>1</sup>**[2.] 8.**<sup>1</sup> This act shall take effect immediately.