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ASSEMBLY, No. 3717

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED MARCH 22, 2018

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Senators Andrzejczak, Sacco, Stack and Weinberg**

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 Senate Commerce Committee on June 17, 2019, with amendments.

(Sponsorship Updated As Of: 6/21/2019)

1 AN ACT concerning pharmacy benefits managers ¹and amending¹
 2 and supplementing P.L.2015, c.179 ¹[(C.17B:27F-1 et seq.)].¹

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
 8 for payment made by a pharmacy, a pharmacy benefits manager
 9 shall not retroactively reduce payment on the claim, either directly
 10 or indirectly, through aggregated effective rate ¹, direct or indirect
 11 remuneration, quality assurance program,¹ 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. ¹[(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.¹ ²Nothing in this section
 21 shall be construed to prohibit any retroactive increase in payment to
 22 a pharmacy pursuant to a written agreement contract between the
 23 pharmacy benefits manager, and the pharmacy services
 24 administration organization, or a pharmacy.²

25 b. For the purpose of this section, “clean claim” means a claim
 26 that has no defect or impropriety, including a lack of any required
 27 substantiating documentation, or ²[(particular] other² circumstance
 28 requiring special treatment ², including, but not limited to, those
 29 listed in subsection d. of this section,² that prevents timely payment
 30 from being made on the claim.

31 ²c. A pharmacy benefit manager shall not recoup funds from a
 32 pharmacy in connection with claims for which the pharmacy has
 33 already been paid unless the recoupment is:

- 34 (1) otherwise permitted or required by law;
 35 (2) the result of an audit, performed pursuant to a contract
 36 between the pharmacy benefits manager and the pharmacy; or
 37 (3) the result of an audit, performed pursuant to a contract
 38 between the pharmacy benefits manager and the designated
 39 pharmacy services administrative organization.

40 d. The provisions of this section shall not apply to an
 41 investigative audit of pharmacy records when:

- 42 (1) fraud, waste, abuse or other intentional misconduct is
 43 indicated by physical review or review of claims data or statements;
 44 or

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:

¹Assembly AFI committee amendments adopted September 13, 2018.

²Senate SCM committee amendments adopted June 17, 2019.

1 (2) other investigative methods indicate a pharmacy is or has
2 been engaged in criminal wrongdoing, fraud or other intentional or
3 willful misrepresentation.²

4
5 ¹2. Section 2 of P.L.2015, c.179 (C.17B:27F-2) is amended to
6 read as follows:

7 2. Upon execution or renewal of each contract, or at such a
8 time when there is any ²material² change in the term of the contract,
9 a pharmacy benefits manager shall, with respect to contracts
10 between a pharmacy benefits manager and a ²pharmacy services
11 administrative organization, or between a pharmacy benefits
12 manager and a² contracted pharmacy:

13 a. (1) include in the contract the sources utilized to determine
14 multiple source generic drug pricing, ²brand drug pricing, and² the
15 ²["outlet"] wholesaler² in the State of New Jersey where pharmacies
16 may acquire the product ²[and brand effective rate, generic
17 effective rate, and professional fee.]² including, if applicable, the
18 ²brand effective rate, generic effective rate, dispensing fee effective
19 rate,² maximum allowable cost or any ²[successive] other² pricing
20 formula ²[, or other pricing methodology utilized by the pharmacy
21 benefits manager as a benchmark]² for pharmacy reimbursement
22 ²[of the pharmacy benefits manager]²;

23 (2) update that pricing information every seven calendar days;
24 and

25 (3) establish a reasonable process by which contracted
26 pharmacies have a method to access relevant maximum allowable
27 cost pricing lists, brand effective rate, generic effective rate,
28 ²[professional fee.] or² any ²[successive] other² pricing formulas
29 ²[and any other pricing methodology utilized by the pharmacy
30 benefits manager as a benchmark]² for pharmacy reimbursement
31 ²[and any successive pricing formulas in a timely manner]²; and

32 b. Maintain a procedure to eliminate drugs from the list of
33 drugs subject to multiple source generic drug pricing ²and brand
34 drug pricing,² or modify maximum allowable cost rates ², brand
35 effective rate, generic effective rate, dispensing fee effective rate or
36 any other applicable pricing formula² in a timely fashion and make
37 that procedure easily accessible to ²the pharmacy services
38 administrative organizations or the² pharmacies¹ ²that they are
39 contractually obligated with to provide that information according
40 to the requirements of this section².

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

42
43 ¹3. Section 4 of P.L.2015, c.179 (C.17B:27F-4) is amended to
44 read as follows:

45 4. All contracts between a pharmacy benefits manager and a
46 ²["contracted"] pharmacy services administrative organization, or its
47 contracted pharmacies, and all contracts directly between a pharmacy

1 benefits manager and a² pharmacy shall include a process to appeal,
2 investigate, and resolve disputes regarding ²brand and² multiple
3 source generic drug pricing, ²including, if applicable,² brand
4 effective rate, generic effective rate, ²professional fees, State
5 Health Benefits Program plans ²dispensing fee effective rate,² and
6 any other pricing ²methodology utilized by the pharmacy benefits
7 manager as a benchmark ²formula² for pharmacy reimbursement.
8 The contract provision establishing the process shall include the
9 following:

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

12 b. The appeal shall be investigated and resolved by the
13 pharmacy benefits manager through an internal process within 14
14 calendar days of receipt of the appeal by the pharmacy benefits
15 manager;

16 c. A telephone number at which a ²pharmacy services
17 administrative organization, or a pharmacy² may contact the
18 pharmacy benefits manager and speak with an individual who is
19 involved in the appeals process; and

20 d. (1) If the appeal is denied, the pharmacy benefits manager
21 shall²:

22 (a)² provide the reason for the denial **[and]**
23 ²to the pharmacy services administrative organization and its contra
24 cted pharmacies², ²and the pharmacy services administrative
25 organization shall inform its contracted pharmacies of the
26 availability, location and pricing of the appealed drug in the State;

27 (b) provide the reason for the denial directly to a pharmacy, if it
28 contracts directly with a pharmacy benefits manager;

29 (c)² identify the national drug code of a drug product that is
30 available for purchase by **[contracted pharmacies]** the specific
31 contracted pharmacy appealing the claim in this State from
32 wholesalers registered pursuant to P.L.1961, c.52 (C.24:6B-1 et
33 seq.) ²and the outlet in the State of New Jersey where pharmacies
34 may acquire the product]² at a price which is available to the
35 specific contracted pharmacy appealing the claim and which is
36 equal to or less than the maximum allowable cost or the brand
37 effective rate, generic effective rate ²and professional fee] or other
38 pricing² for the appealed drug as determined by the pharmacy
39 benefits manager; ²and

40 (d) provide the name of wholesalers registered under P.L.1961,
41 c.52 (C.24:6B-1 et seq.) from which the appealing pharmacy can
42 obtain the brand or multiple source generic drug at or below the
43 brand effective rate, generic effective rate, dispensing fee effective
44 rate, maximum allowable cost or any other pricing formula for
45 pharmacy reimbursement;²

46 (2) If the appeal is approved, the pharmacy benefits manager
47 shall make the price correction, permit the reporting pharmacy to

reverse and rebill the appealed claim, and make the price correction effective for all similarly situated pharmacies from the date of the approved appeal.

e. A pharmacy ²benefits manager shall not terminate a pharmacy² licensed in the State of New Jersey ²shall be permitted to make product deliveries solely on the basis that the pharmacy offers and provides store direct delivery² and mail prescriptions to ²patients without contractual restrictions by a pharmacy benefits manager an insured as an ancillary service².¹

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

¹4. (New section) A pharmacy benefits manager or third-party payer shall not require pharmacy accreditation standards or recertification requirements to participate in a network which are inconsistent with, more stringent than, or in addition to, the federal and State requirements for ²licensure as ²a pharmacy in this State.¹

¹5. (New section) 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 paid to a pharmacist or pharmacy is fair and reasonable to provide an adequate pharmacy benefits manager network for a health benefits plan.¹

¹6. (New section) P.L.2015, c.179 (C.17B:27F-1 et seq.) shall apply to all pharmacy benefits managers operating in the State of New Jersey ²and shall apply to plans offered through the State Health Benefits Program ².¹

¹7. (New section) A pharmacy benefits manager that violates any provision of P.L.2015, c.179 (C.17B:27F-1 et seq.) shall be subject to²:

a.² a ²penalty, after ²warning² notice ²and²:

b. an² opportunity ²for² to cure the violation within 14 days following the issuance of the notice;

c.² a hearing ²for² each day during which the violation continues, before the commissioner within 70 days following the issuance of the notice; and

d. if the violation has not been cured pursuant to subsection b. of this section, a penalty² of not less than \$5,000 or more than \$10,000 for each violation.¹

¹[2.] ¹8.¹ This act shall take effect ²immediately on the 90th day next following enactment, except that section 7 of P.L. ____, c. (C. __) (pending before the Legislature as this bill) shall take effect following the promulgation of regulations by the Department of Banking and Insurance implementing that section².