

[Third Reprint]

ASSEMBLY, No. 3717

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED MARCH 22, 2018

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Quijano and Lampitt**

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 amended by the Senate on June 20, 2019.

(Sponsorship Updated As Of: 6/28/2019)

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 ³[(written agreement)]³ contract between
 23 the 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:

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.

³Senate floor amendments adopted June 20, 2019.

1 (1) fraud, waste, abuse or other intentional misconduct is
2 indicated by physical review or review of claims data or statements;
3 or

4 (2) other investigative methods indicate a pharmacy is or has
5 been engaged in criminal wrongdoing, fraud or other intentional or
6 willful misrepresentation.²
7

8 ³2. Section 1 of P.L.2015, c.179 (C.17B:27F-1) is amended to
9 read as follows:

10 1. As used in this act:

11 "Carrier" means an insurance company, health service
12 corporation, hospital service corporation, medical service
13 corporation, or health maintenance organization authorized to issue
14 health benefits plans in this State.

15 "Contracted **【Pharmacy】** pharmacy" means a pharmacy that
16 participates in the network of a pharmacy benefits manager through
17 a contract with:

- 18 a. the pharmacy benefits manager directly;
19 b. a pharmacy services administration organization; or
20 c. a pharmacy group purchasing organization.

21 "Covered person" means a person on whose behalf a carrier or
22 other entity, who is the sponsor of the health benefits plan, is
23 obligated to pay benefits pursuant to a health benefits plan.

24 "Drug" means a drug or device as defined in R.S.24:1-1.

25 "Health benefits plan" means a benefits plan which pays hospital
26 or medical expense benefits for covered services, or prescription
27 drug benefits for covered services, and is delivered or issued for
28 delivery in this State by or through a carrier or any other sponsor,
29 including, but not limited to, a carrier, self-insured employer, or
30 union. For the purposes of this act, health benefits plan shall not
31 include the following plans, policies or contracts: accident only,
32 credit disability, long-term care, Medicare supplement coverage;
33 **【CHAMPUS】** TRICARE supplement coverage, coverage for
34 Medicare services pursuant to a contract with the United States
35 government, coverage arising out of a worker's compensation or
36 similar law, the State Health Benefits Plan, the School Employees
37 Health Benefits Plan, or a self-insured health benefits plan governed
38 by the provisions of the federal "Employee Retirement Income
39 Security Act of 1974," 29 U.S.C. s.1001 et seq., coverage under a
40 policy of private passenger automobile insurance issued pursuant to
41 P.L.1972, c.70 (C.39:6A-1 et seq.), or hospital confinement
42 indemnity coverage.

43 "Pharmacy" means any place in the State where drugs are
44 dispensed or pharmaceutical care is provided by a licensed
45 pharmacist, but shall not include a medical office under the control
46 of a licensed physician.

47 "Pharmacy benefits manager" means a corporation, business, or
48 other entity, or unit within a corporation, business, or other entity,
49 that administers prescription drug benefits on behalf of a purchaser.

1 "Pharmacy benefits management services" means the provision
 2 of any of the following services on behalf of a purchaser: the
 3 procurement of prescription drugs at a negotiated rate for
 4 dispensation within this State; the processing of prescription drug
 5 claims; or the administration of payments related to prescription
 6 drug claims.

7 "Prescription" means a prescription as defined in section 5 of
 8 P.L.1977, c.240 (C.24:6E-4).

9 "Prescription drug benefits" means the benefits provided for
 10 prescription drugs and pharmacy services for covered services
 11 under a health benefits plan contract.

12 "Purchaser" means any sponsor of a health benefits plan who
 13 enters into an agreement with a pharmacy benefits management
 14 company for the provision of pharmacy benefits management
 15 services to covered persons.³

16 (cf: P.L.2015, c.179, s.1)

17

18 ³12.3 Section 2 of P.L.2015, c.179 (C.17B:27F-2) is
 19 amended to read as follows:

20 2. Upon execution or renewal of each contract, or at such a
 21 time when there is any ²material² change in the term of the contract,
 22 a pharmacy benefits manager shall, with respect to contracts
 23 between a pharmacy benefits manager and a ²pharmacy services
 24 administrative organization, or between a pharmacy benefits
 25 manager and a² contracted pharmacy:

26 a. (1) include in the contract the sources utilized to determine
 27 multiple source generic drug pricing, ²brand drug pricing, and² the
 28 ²outlet wholesaler² in the State of New Jersey where pharmacies
 29 may acquire the product ²and brand effective rate, generic
 30 effective rate, and professional fee,² including, if applicable, the
 31 ²brand effective rate, generic effective rate, dispensing fee effective
 32 rate,² maximum allowable cost or any ²successive other² pricing
 33 formula ², or other pricing methodology utilized by the pharmacy
 34 benefits manager as a benchmark² for pharmacy reimbursement
 35 ²of the pharmacy benefits manager²;

36 (2) update that pricing information every seven calendar days;
 37 and

38 (3) establish a reasonable process by which contracted
 39 pharmacies have a method to access relevant maximum allowable
 40 cost pricing lists, brand effective rate, generic effective rate,
 41 ²professional fee,³ and dispensing fee effective rate,³ or² any
 42 ²successive other² pricing formulas ²and any other pricing
 43 methodology utilized by the pharmacy benefits manager as a
 44 benchmark² for pharmacy reimbursement ²and any successive
 45 pricing formulas in a timely manner²; and

46 b. Maintain a procedure to eliminate drugs from the list of
 47 drugs subject to multiple source generic drug pricing ²and brand
 48 drug pricing,² or modify maximum allowable cost rates ², brand

1 effective rate, generic effective rate, dispensing fee effective rate or
2 any other applicable pricing formula² in a timely fashion and make
3 that procedure easily accessible to ²the pharmacy services
4 administrative organizations or the² pharmacies¹ ²that they are
5 contractually obligated with to provide that information according
6 to the requirements of this section².

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

8

9 ³**[¹ 3.] 4.** ³Section 4 of P.L.2015, c.179 (C.17B:27F-4) is
10 amended to read as follows:

11 4. All contracts between a pharmacy benefits manager and a
12 ²**[contracted]** pharmacy services administrative organization, or its
13 contracted pharmacies, and all contracts directly between a pharmacy
14 benefits manager and a² pharmacy shall include a process to appeal,
15 investigate, and resolve disputes regarding ²brand and² multiple
16 source generic drug pricing, ²including, if applicable,² brand
17 effective rate, generic effective rate, ²[professional fees, State
18 Health Benefits Program plans] dispensing fee effective rate,² and
19 any other pricing ²[methodology utilized by the pharmacy benefits
20 manager as a benchmark] formula² for pharmacy reimbursement.
21 The contract provision establishing the process shall include the
22 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 ²pharmacy services
30 administrative organization, or a pharmacy² may contact the
31 pharmacy benefits manager and speak with an individual who is
32 involved in the appeals process; and

33 d. (1) If the appeal is denied, the pharmacy benefits manager
34 shall²;

35 (a)² provide the reason for the denial **[and]**
36 ²to the pharmacy services administrative organization and its contra
37 cted pharmacies², ²and the pharmacy services administrative
38 organization shall inform its contracted pharmacies of the
39 availability, location and pricing of the appealed drug in the State;

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

42 (c)² identify the national drug code of a drug product that is
43 available for purchase by **[contracted pharmacies]** the specific
44 contracted pharmacy appealing the claim in this State from
45 wholesalers registered pursuant to P.L.1961, c.52 (C.24:6B-1 et
46 seq.) ²**[and the outlet in the State of New Jersey where pharmacies**
47 **may acquire the product]**² at a price which is available to the

1 specific contracted pharmacy appealing the claim and which is
 2 equal to or less than the maximum allowable cost or the brand
 3 effective rate, generic effective rate ² [and professional fee] or other
 4 pricing ² for the appealed drug as determined by the pharmacy
 5 benefits manager; ²and

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

12 (2) If the appeal is approved, the pharmacy benefits manager
 13 shall make the price correction, permit the reporting pharmacy to
 14 reverse and rebill the appealed claim, and make the price correction
 15 effective for all similarly situated pharmacies from the date of the
 16 approved appeal.

17 e. A pharmacy ²benefits manager shall not terminate a
 18 pharmacy ² licensed in the State of New Jersey ² [shall be permitted
 19 to make product deliveries] solely on the basis that the pharmacy
 20 offers and provides store direct delivery ² and mail prescriptions to
 21 ² [patients without contractual restrictions by a pharmacy benefits
 22 manager] an insured as an ancillary service ² . ¹

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

25 ³ [¹4. (New section) A pharmacy benefits manager or third-party
 26 payer shall not require pharmacy accreditation standards or
 27 recertification requirements to participate in a network which are
 28 inconsistent with, more stringent than, or in addition to, the federal and
 29 State requirements for ² [licensure as] ² a pharmacy in this State. ¹] ³

31 ¹5. (New section) The Commissioner of Banking and Insurance
 32 may review and approve the compensation program of a pharmacy
 33 benefits manager with a health benefits plan to ensure that the
 34 reimbursement for pharmacist services paid to a pharmacist or
 35 pharmacy is fair and reasonable to provide an adequate pharmacy
 36 benefits manager network for a health benefits plan. ¹

38 ¹6. (New section) P.L.2015, c.179 (C.17B:27F-1 et seq.) shall
 39 apply to all pharmacy benefits managers operating in the State of
 40 New Jersey ² [and shall apply to plans offered through the State
 41 Health Benefits Program] ² ³, except for any agreement by a
 42 pharmacy benefits manager to administer prescription drug benefits
 43 on behalf of the State Health Benefits Plan, the School Employees
 44 Health Benefits Plan, or a self-insured health benefits plan governed
 45 by the provisions of the federal "Employee Retirement Income
 46 Security Act of 1974," 29 U.S.C. s.1001 et seq ³ . ¹

- 1 ¹7. (New section) A pharmacy benefits manager that violates any
2 provision of P.L.2015, c.179 (C.17B:27F-1 et seq.) shall be subject
3 to²:
- 4 a.² a ²**[penalty, after]** warning² notice ²**[and]**;
5 b. an² opportunity ²**[for]** to cure the violation within 14 days
6 following the issuance of the notice;
- 7 c.² a hearing ²**[, for each day during which the violation**
8 continues,] before the commissioner within 70 days following the
9 issuance of the notice; and
- 10 d. if the violation has not been cured pursuant to subsection b.
11 of this section, a penalty² of not less than \$5,000 or more than
12 \$10,000 for each violation.¹
13
- 14 ¹**[2.]** 8.¹ This act shall take effect ²**[immediately]** on the 90th
15 day next following enactment, except that section 7 of P.L. , c.
16 (C.) (pending before the Legislature as this bill) shall take effect
17 following the promulgation of regulations by the Department of
18 Banking and Insurance implementing that section².