

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3717

STATE OF NEW JERSEY

DATED: MAY 20, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3717 (1R).

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 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 IMPACT:

The Office of Legislative Services estimates that the bill will increase state expenditures for prescription drug benefits by an indeterminate amount, and will also increase those costs by indeterminate amounts for local government employers participating in the State Health Benefits program. This conclusion is based on information provided by the Division of Pensions and Benefits that the bill will affect the division's ability to engage in value-based contracting with pharmacy benefits managers, because the bill restricts the ability of pharmacy benefits managers to obtain price concessions that support an incentive-based payment structure with network pharmacies. The bill may also increase State revenue in indeterminate amounts from the potential collection of penalties it imposes on pharmacy benefits managers that violate the bill's provisions.