

SENATE COMMERCE COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3717

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 2019

The Senate Commerce Committee reports favorably and with committee amendments Assembly Bill No. 3717 (1R).

This bill, as amended, 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 may 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 a clean claim during the course of a routine audit performed pursuant to an agreement between the pharmacy benefits manager and the pharmacy. Under the bill, when a pharmacy adjudicates a claim at the point of sale, the reimbursement amount provided to the pharmacy by the pharmacy benefits manager constitutes a final reimbursement amount. The bill is not to be construed to prohibit any retroactive increase in payment to a pharmacy pursuant to a written agreement contract between the pharmacy benefits manager, and the pharmacy services administration organization, or a pharmacy.

Pursuant to the bill, “clean claim” means a claim that has no defect or impropriety, including a lack of any required substantiating documentation, or other circumstance requiring special treatment.

This bill provides that a pharmacy benefits manager may not recoup funds from a pharmacy in connection with claims for which the pharmacy has already been paid unless the recoupment is:

- (1) otherwise permitted or required by law;

(2) the result of an audit, performed pursuant to a contract between the pharmacy benefits manager and the pharmacy; or

(3) the result of an audit, performed pursuant to a contract between the pharmacy benefits manager and the designated pharmacy services administrative organization.

The provisions of the bill not apply to an investigative audit of pharmacy records when:

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

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

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 provides that a pharmacy benefits manager may not terminate a pharmacy licensed in the State of New Jersey solely on the basis that the pharmacy offers and provides store direct delivery and mail prescriptions to an insured as an ancillary service.

The bill prohibits a pharmacy benefits manager or third-party payer from requiring 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 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 paid to a pharmacist or pharmacy is fair and reasonable to provide an adequate pharmacy benefits manager network for a health benefits plan.

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:

(1) a warning notice;

(2) an opportunity to cure the violation within 14 days following the issuance of the notice;

(3) a hearing before the commissioner within 70 days following the issuance of the notice; and

(4) if the violation has not been cured, a penalty of not less than \$5,000 or more than \$10,000 for each violation.

As amended and released by the committee, this bill is the same as the Senate Committee Substitute for Senate Bill No.728, which was adopted by the committee at today's meeting.

Committee Amendments:

The committee amendments provide:

1) The bill does not prohibit any retroactive increase in payment to a pharmacy pursuant to a written agreement contract between the pharmacy benefits manager, and the pharmacy services administration organization, or a pharmacy.

2) A pharmacy benefits manager may not recoup funds from a pharmacy in connection with claims for which the pharmacy has already been paid unless the recoupment is:

(1) otherwise permitted or required by law;

(2) the result of an audit, performed pursuant to a contract between the pharmacy benefits manager and the pharmacy; or

(3) the result of an audit, performed pursuant to a contract between the pharmacy benefits manager and the designated pharmacy services administrative organization.

3) The provisions of the bill do not apply to an investigative audit of pharmacy records when fraud, waste, abuse or other intentional misconduct is indicated by physical review or review of claims data or statements; or other investigative methods indicate a pharmacy is or has been engaged in criminal wrongdoing, fraud or other intentional or willful misrepresentation.

4) The provisions of bill pertaining to pharmacy benefits manager contracts apply at execution or renewal of a contract, or when there has been a material change in the contract. These provisions also apply to contracts with pharmacy services administrative organizations.

5) A pharmacy benefits manager contract must include in the contract the sources utilized to determine multiple source generic drug pricing, brand drug pricing, and the wholesaler in the State of New Jersey where pharmacies may acquire the product, including, if applicable, the brand effective rate, generic effective rate, dispensing fee effective rate, maximum allowable cost or any other pricing formula for pharmacy reimbursement.

6) A pharmacy benefits manager contract must establish a reasonable process by which contracted pharmacies have a method to access relevant maximum allowable cost pricing lists, brand effective rate, generic effective rate, any other pricing formulas for pharmacy reimbursement.

7) A pharmacy benefits manager contract must maintain a procedure to eliminate drugs from the list of drugs subject to multiple source generic drug pricing and brand drug pricing, or modify maximum allowable cost rates, brand effective rate, generic effective rate, dispensing fee effective rate or any other applicable pricing formula in a timely fashion and make that procedure easily accessible to the pharmacy services administrative organizations or the pharmacies that they are contractually obligated with to provide that information.

8) All contracts between a pharmacy benefits manager and a pharmacy services administrative organization, or its contracted pharmacies, and all contracts directly between a pharmacy benefits manager and a pharmacy must include a process to appeal, investigate, and resolve disputes regarding brand and multiple source generic drug pricing, including, if applicable, brand effective rate, generic effective rate, dispensing fee effective rate, and any other pricing formula for pharmacy reimbursement.

9) If an appeal from a pharmacy benefits manager decision is denied, the pharmacy benefits manager must:

(a) provide the reason for the denial to the pharmacy services administrative organization and its contracted pharmacies, and the pharmacy services administrative organization must inform its contracted pharmacies of the availability, location and pricing of the appealed drug in the State;

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

(c) identify the national drug code of a drug product that is available for purchase by the specific contracted pharmacy appealing the claim in this State from wholesalers at a price which is available to the specific contracted pharmacy appealing the claim; and

(d) provide the name of wholesalers from which the appealing pharmacy can obtain the brand or multiple source generic drug at or below the brand effective rate, generic effective rate, dispensing fee effective rate, maximum allowable cost or any other pricing formula for pharmacy reimbursement.

10) If the appeal is approved, the pharmacy benefits manager must 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.

11) A pharmacy benefits manager may not terminate a pharmacy licensed in the State of New Jersey solely on the basis that the pharmacy offers and provides store direct delivery and mail prescriptions to an insured as an ancillary service.

12) A pharmacy benefits manager or third-party payer may 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 a pharmacy in this State.

13) A pharmacy benefits manager that violates any provision of P.L.2015, c.179 (C.17B:27F-1 et seq.) is subject to: a warning notice; an opportunity to cure the violation within 14 days following the issuance of the notice; a hearing before the commissioner within 70 days following the issuance of the notice; and if the violation has not been cured, a penalty of not less than \$5,000 or more than \$10,000 for each violation.