

§1 - C.17B:27F-6
§§2,4 -
C.45:14-67.3 &
45:14-67.4
§3 - C.26:2S-10.9
§5 - Note

P.L. 2019, CHAPTER 257, *approved August 23, 2019*
Senate Committee Substitute (*Second Reprint*) for Senate, Nos. 2690 and 2727

1 **AN ACT** concerning pharmacy benefits managers and pharmacies
2 and supplementing P.L.2015, c.179 (C.17B:27F-1 et seq.),
3 P.L.2003, c.280 (C.45:14-40 et seq.), and Title 26 of the Revised
4 Statutes.

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

8
9 1. a. A pharmacy benefits manager, in connection with any
10 contract or arrangement with a private health insurer, prescription
11 benefit plan, or the State Health Benefits Program or School
12 Employees' Health Benefits Program, shall not ²**[charge]** require² a
13 covered person ²to make a payment at the point of sale for any
14 amount for a deductible, coinsurance payment, or² a copayment for
15 a prescription drug benefit in an amount that exceeds the ²**[cost of**
16 the prescription drug that the pharmacy would charge to persons
17 who do not purchase the prescription drug through their health
18 insurance coverage² amount the covered person would pay for the
19 prescription drug if the covered person purchased the prescription
20 drug without using a health benefits plan².

21 b. A pharmacy benefits manager shall not prohibit a network
22 pharmacy from disclosing ², and shall not apply a penalty or any
23 other type of disincentive to a network pharmacy that discloses,² to
24 a covered person lower cost prescription drug options, including
25 those that are available to the covered person if the covered person
26 purchases the prescription drug without using health insurance
27 coverage.

28 c. Any provision of a contract that conflicts with the provisions
29 of subsection b. of this section shall be void and unenforceable.

30 d. A violation of this section shall be an unlawful practice and
31 a violation of P.L.1960, c.39 (C.56:8-1 et seq.) ², and shall also be
32 subject to any enforcement action that the Commissioner of
33 Banking and Insurance is authorized to take pursuant to section 5 of
34 P.L.2015, c.179 (C.17B:27F-5)².

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:

¹ Senate floor amendments adopted January 31, 2019.

² Assembly floor amendments adopted May 23, 2019.

1 2. Notwithstanding any law or contract to the contrary, a
2 pharmacist at a pharmacy practice site shall inform each patient, at
3 the time of taking an order from a patient for home delivery or at
4 the time of dispensing a prescription drug to the patient at the
5 practice site:

- 6 a. of the lowest cost option for the prescription drug; and
7 b. whether there is an alternative drug that is less expensive
8 and interchangeable with the prescription drug, and if needed, that
9 the consumer can discuss with the prescribing health care provider
10 whether the alternative drug would be appropriate for the consumer.
11

12 ¹3. a. When a carrier provides coverage for a prescription drug
13 under a covered person's health insurance policy or health benefits
14 plan, and the covered person elects not to use that coverage to
15 purchase the prescription drug but instead purchases the
16 prescription drug at a lesser cost than the covered person's
17 copayment for that prescription drug if the covered person
18 purchased the prescription drug using that coverage, then the carrier
19 shall apply the amount of the lesser cost actually paid toward any
20 individual or family out-of-pocket limits for that covered person's
21 policy for that policy period, provided the covered person provides
22 the carrier with a sales receipt that documents the amount the
23 covered person paid for the prescription drug.

24 b. A carrier shall provide an annual notice to covered persons
25 regarding the right of covered persons to have the costs that they
26 actually paid applied to out-of-pocket limits for the policy under the
27 circumstances set forth in subsection a. of this section.¹
28

29 ¹3. a. A carrier that provides benefits for prescription drugs
30 shall not ²[charge] require² a covered person ²to make a payment
31 at the point of sale for any amount for a deductible, coinsurance
32 payment, or² a copayment for a prescription drug benefit in an
33 amount that exceeds the ²[cost of the prescription drug that the
34 pharmacy would charge to persons who do not purchase the
35 prescription drug through their health insurance coverage] amount
36 the covered person would pay for the prescription drug if the
37 covered person purchased the prescription drug without using a
38 health benefits plan².

39 b. A carrier shall not prohibit a network pharmacy from
40 disclosing ², and shall not apply a penalty or any other type of
41 disincentive to a network pharmacy that discloses,² to a covered
42 person lower cost prescription drug options, including those that are
43 available to the covered person if the covered person purchases the
44 prescription drug without using health insurance coverage.

45 c. Any provision of a contract that conflicts with the provisions
46 of subsection b. of this section shall be void and unenforceable.

1 d. A violation of this section shall be an unlawful practice and
2 a violation of P.L.1960, c.39 (C.56:8-1 et seq.)², and shall also be
3 subject to any enforcement action that the Commissioner of
4 Banking and Insurance is authorized to take pursuant to section 5 of
5 P.L.2015, c.179 (C.17B:27F-5)².¹
6

7 4. The ²**Commissioner** Director² of ²**Health** the Division
8 of Consumer Affairs in the Department of Law and Public Safety²
9 shall develop a public information campaign to educate consumers
10 in this State about their right to ¹**1**:

11 (1)¹**1** ask a pharmacist about the lowest cost option for any
12 prescription drug ¹**1**; and

13 (2) have their costs actually paid applied to out-of-pocket limits
14 for the policy under the circumstances set forth in subsection a. of
15 section 3 of this act¹.

16 As part of the information campaign, the ²**commissioner**
17 director² shall develop a method that informs consumers about
18 these rights, in a highly visible location near the point of purchase
19 for prescription drugs. The ²**commissioner** director² shall
20 integrate the consumer notification with other consumer
21 informational requirements for pharmacists.
22

23 5. This act shall take effect on the 90th day next following
24 enactment.
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29 Prohibits pharmacy benefits managers and carriers from
30 engaging in “clawback” and “gag clause” practices; requires certain
31 disclosures by pharmacists; requires Director of Division of
32 Consumer Affairs to conduct public information campaign.