

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 728

# STATE OF NEW JERSEY

DATED: JUNE 17, 2019

The Senate Commerce Committee reports favorably a Senate Committee Substitute for Senate Bill No. 728.

This substitute 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 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.

This Senate Committee Substitute is identical to Assembly Bill No.3717 (2R).

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.