

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 2690 and 2727**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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ADOPTED JANUARY 17, 2019

**Sponsored by:**

**Senator M. TERESA RUIZ**

**District 29 (Essex)**

**Senator JOSEPH P. CRYAN**

**District 20 (Union)**

**Senator JAMES BEACH**

**District 6 (Burlington and Camden)**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

**Senators Diegnan, Gopal, Greenstein and Addiego**

**SYNOPSIS**

Prohibits pharmacy benefits managers and carriers from engaging in “clawback” and “gag clause” practices; requires certain disclosures by pharmacists; requires Commissioner of Health to conduct public information campaign.

**CURRENT VERSION OF TEXT**

As amended by the Senate on January 31, 2019.

(Sponsorship Updated As Of: 2/22/2019)

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 charge a covered  
13       person a copayment for a prescription drug benefit in an amount  
14       that exceeds the cost of the prescription drug that the pharmacy  
15       would charge to persons who do not purchase the prescription drug  
16       through their health insurance coverage.

17       b.   A pharmacy benefits manager shall not prohibit a network  
18       pharmacy from disclosing to a covered person lower cost  
19       prescription drug options, including those that are available to the  
20       covered person if the covered person purchases the prescription  
21       drug without using health insurance coverage.

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

24       d.   A violation of this section shall be an unlawful practice and  
25       a violation of P.L.1960, c.39 (C.56:8-1 et seq.).

26

27       2.   Notwithstanding any law or contract to the contrary, a  
28       pharmacist at a pharmacy practice site shall inform each patient, at  
29       the time of taking an order from a patient for home delivery or at  
30       the time of dispensing a prescription drug to the patient at the  
31       practice site:

32       a.   of the lowest cost option for the prescription drug; and

33       b.   whether there is an alternative drug that is less expensive and  
34       interchangeable with the prescription drug, and if needed, that the  
35       consumer can discuss with the prescribing health care provider  
36       whether the alternative drug would be appropriate for the consumer.

37

38       <sup>1</sup>**[**3. a. When a carrier provides coverage for a prescription drug  
39       under a covered person's health insurance policy or health benefits  
40       plan, and the covered person elects not to use that coverage to  
41       purchase the prescription drug but instead purchases the  
42       prescription drug at a lesser cost than the covered person's  
43       copayment for that prescription drug if the covered person  
44       purchased the prescription drug using that coverage, then the carrier

**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:

<sup>1</sup> Senate floor amendments adopted January 31, 2019.

1 shall apply the amount of the lesser cost actually paid toward any  
2 individual or family out-of-pocket limits for that covered person's  
3 policy for that policy period, provided the covered person provides  
4 the carrier with a sales receipt that documents the amount the  
5 covered person paid for the prescription drug.

6 b. A carrier shall provide an annual notice to covered persons  
7 regarding the right of covered persons to have the costs that they  
8 actually paid applied to out-of-pocket limits for the policy under the  
9 circumstances set forth in subsection a. of this section.】<sup>1</sup>

10  
11 <sup>1</sup>3. a. A carrier that provides benefits for prescription drugs shall  
12 not charge a covered person a copayment for a prescription drug  
13 benefit in an amount that exceeds the cost of the prescription drug that  
14 the pharmacy would charge to persons who do not purchase the  
15 prescription drug through their health insurance coverage.

16 b. A carrier shall not prohibit a network pharmacy from  
17 disclosing to a covered person lower cost prescription drug options,  
18 including those that are available to the covered person if the covered  
19 person purchases the prescription drug without using health insurance  
20 coverage.

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

23 d. A violation of this section shall be an unlawful practice and a  
24 violation of P.L.1960, c.39 (C.56:8-1 et seq.).<sup>1</sup>

25  
26 4. The Commissioner of Health shall develop a public  
27 information campaign to educate consumers in this State about their  
28 right to <sup>1</sup>【:

29 (1)】<sup>1</sup> ask a pharmacist about the lowest cost option for any  
30 prescription drug <sup>1</sup>【; and

31 (2) have their costs actually paid applied to out-of-pocket limits  
32 for the policy under the circumstances set forth in subsection a. of  
33 section 3 of this act】<sup>1</sup>.

34 As part of the information campaign, the commissioner shall  
35 develop a method that informs consumers about these rights, in a  
36 highly visible location near the point of purchase for prescription  
37 drugs. The commissioner shall integrate the consumer notification  
38 with other consumer informational requirements for pharmacists.

39  
40 5. This act shall take effect on the 90th day next following  
41 enactment.