

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2690 and 2727

STATE OF NEW JERSEY
218th LEGISLATURE

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)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Assemblyman BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

Assemblyman R. BRUCE LAND

District 1 (Atlantic, Cape May and Cumberland)

Co-Sponsored by:

Senators Diegnan, Gopal, Greenstein, Addiego, Assemblyman A.M.Bucco, Assemblywoman Murphy, Assemblyman Benson, Assemblywomen Pinkin, B.DeCroce, Assemblymen Auth, Webber, Conaway, Assemblywoman Downey and Assemblyman Calabrese

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the General Assembly on May 23, 2019.

(Sponsorship Updated As Of: 6/21/2019)

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 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 coverage] 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.

35
36 2. Notwithstanding any law or contract to the contrary, a
37 pharmacist at a pharmacy practice site shall inform each patient, at
38 the time of taking an order from a patient for home delivery or at
39 the time of dispensing a prescription drug to the patient at the
40 practice site:

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

42 b. whether there is an alternative drug that is less expensive
43 and interchangeable with the prescription drug, and if needed, that

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 the consumer can discuss with the prescribing health care provider
2 whether the alternative drug would be appropriate for the consumer.

3
4 ¹[3. a. When a carrier provides coverage for a prescription drug
5 under a covered person's health insurance policy or health benefits
6 plan, and the covered person elects not to use that coverage to
7 purchase the prescription drug but instead purchases the
8 prescription drug at a lesser cost than the covered person's
9 copayment for that prescription drug if the covered person
10 purchased the prescription drug using that coverage, then the carrier
11 shall apply the amount of the lesser cost actually paid toward any
12 individual or family out-of-pocket limits for that covered person's
13 policy for that policy period, provided the covered person provides
14 the carrier with a sales receipt that documents the amount the
15 covered person paid for the prescription drug.

16 b. A carrier shall provide an annual notice to covered persons
17 regarding the right of covered persons to have the costs that they
18 actually paid applied to out-of-pocket limits for the policy under the
19 circumstances set forth in subsection a. of this section.]¹

20
21 ¹3. a. A carrier that provides benefits for prescription drugs
22 shall not ²[charge] require² a covered person ²to make a payment
23 at the point of sale for any amount for a deductible, coinsurance
24 payment, or² a copayment for a prescription drug benefit in an
25 amount that exceeds the ²[cost of the prescription drug that the
26 pharmacy would charge to persons who do not purchase the
27 prescription drug through their health insurance coverage] amount
28 the covered person would pay for the prescription drug if the
29 covered person purchased the prescription drug without using a
30 health benefits plan².

31 b. A carrier shall not prohibit a network pharmacy from
32 disclosing ², and shall not apply a penalty or any other type of
33 disincentive to a network pharmacy that discloses,² to a covered
34 person lower cost prescription drug options, including those that are
35 available to the covered person if the covered person purchases the
36 prescription drug without using health insurance coverage.

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

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

44
45 4. The ²[Commissioner] Director² of ²[Health] the Division
46 of Consumer Affairs in the Department of Law and Public Safety²

1 shall develop a public information campaign to educate consumers
2 in this State about their right to ¹【:

3 (1) ¹【 ask a pharmacist about the lowest cost option for any
4 prescription drug ¹【; and

5 (2) have their costs actually paid applied to out-of-pocket limits
6 for the policy under the circumstances set forth in subsection a. of
7 section 3 of this act ¹【.

8 As part of the information campaign, the ²【commissioner】
9 director² shall develop a method that informs consumers about
10 these rights, in a highly visible location near the point of purchase
11 for prescription drugs. The ²【commissioner】 director² shall
12 integrate the consumer notification with other consumer
13 informational requirements for pharmacists.

14

15 5. This act shall take effect on the 90th day next following
16 enactment.