

ASSEMBLY, No. 3532

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Regulates certain practices of pharmacy benefits management companies.

CURRENT VERSION OF TEXT

As introduced.



A3532 VAINIERI HUTTLE

2

1 AN ACT concerning pharmacy benefits management companies and
2 supplementing Title 17B of the New Jersey Statutes.

3

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

6

7 1. As used in this act:

8 "Carrier" means an insurance company, health service
9 corporation, hospital service corporation, medical service
10 corporation, or health maintenance organization authorized to issue
11 health benefits plans in this State.

12 "Covered person" means a person on whose behalf a carrier or
13 other entity, who is the sponsor of the health benefits plan, is
14 obligated to pay benefits pursuant to a health benefits plan.

15 "Drug" means a drug or device as defined in R.S.24:1-1.

16 "Health benefits plan" means a benefits plan which pays hospital
17 or medical expense benefits for covered services, or prescription
18 drug benefits for covered services, and is delivered or issued for
19 delivery in this State by or through a carrier or any other sponsor,
20 including, but not limited to, a carrier, self-insured employer, or
21 union. For the purposes of this act, health benefits plan shall not
22 include the following plans, policies or contracts: accident only;
23 credit disability; long-term care, Medicare supplement coverage;
24 TRICARE supplement coverage, coverage for Medicare services
25 pursuant to a contract with the United States government; coverage
26 arising out of a worker's compensation or similar law; coverage
27 under a policy of private passenger automobile insurance issued
28 pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), or hospital
29 confinement indemnity coverage.

30 "Pharmacy" means any place in the State where drugs are
31 dispensed or pharmaceutical care is provided by a licensed
32 pharmacist, but shall not include a medical office under the control
33 of a licensed physician.

34 "Pharmacy benefits management company" means a corporation,
35 business, or other entity, or unit within a corporation, business, or
36 other entity, that administers prescription drug benefits on behalf of
37 a purchaser.

38 "Pharmacy benefits management services" means the provision
39 of any of the following services on behalf of a purchaser: the
40 procurement of prescription drugs at a negotiated rate for
41 dispensation within this State; the processing of prescription drug
42 claims; or the administration of payments related to prescription
43 drug claims.

44 "Prescription" means a prescription as defined in section 5 of
45 P.L.1977, c.240 (C.24:6E-4).

46 "Prescription drug benefits" means the benefits provided for
47 prescription drugs and pharmacy services for covered services
48 under a health benefits plan contract.

1 "Purchaser" means any sponsor of a health benefits plan who
2 enters into an agreement with a pharmacy benefits management
3 company for the provision of pharmacy benefits management
4 services to covered persons.

5

6 2. a. A pharmacy benefits management company shall not:
7 (1) mandate that a covered person use a specific retail
8 pharmacy, mail-order pharmacy, or specialty pharmacy; or

9 (2) provide for variations in a network agreement between the
10 pharmacy benefits management company and a purchaser,
11 including, but not limited to, variations in premiums, deductibles,
12 copayments or coinsurance rates, as an incentive to encourage
13 purchasers and covered persons to use a specific retail pharmacy,
14 mail-order pharmacy, or specialty pharmacy, unless the incentive
15 applies to all pharmacies in the network agreement.

16 b. A pharmacy benefits management company that has an
17 ownership interest in a retail pharmacy, mail-order pharmacy, or
18 specialty pharmacy, shall disclose that interest, including the
19 percentage ownership in each entity and the total annual revenue
20 obtained from each, in writing to the purchaser prior to entering into
21 an agreement with the purchaser.

22

23 3. A pharmacy benefits management company, or an entity
24 acting on its behalf, that conducts an audit of a pharmacy shall
25 comply with the following procedures:

26 a. The period covered by an audit shall not exceed 18 months
27 from the date the claim was adjudicated by the pharmacy benefits
28 management company.

29 b. An audit that involves clinical or professional judgment shall
30 be conducted by a pharmacist licensed to practice in this State
31 pursuant to the "New Jersey Pharmacy Practice Act," P.L.2003,
32 c.280 (C.45:14-40 et seq.).

33 c. A pharmacy shall not be required to maintain more stringent
34 recordkeeping than that required by State or federal law.

35 d. A pharmacy being audited shall be entitled to use:

36 (1) the records of a hospital, physician, or other authorized
37 health care professional to validate the pharmacy's records; and

38 (2) any legal prescription that complies with New Jersey State
39 Board of Pharmacy requirements to validate claims in connection
40 with prescriptions, refills, or changes in prescriptions.

41 e. If an audit results in the identification of any clerical or
42 recordkeeping error such as a typographical error, scrivener's error,
43 or computer error regarding a required document or record, the
44 pharmacy shall not be subject to recoupment of funds by the
45 pharmacy benefits management company unless the pharmacy
46 benefits management company provides proof of intent by the
47 pharmacy to commit fraud or the error results in actual financial

- 1 harm to a purchaser, the pharmacy benefits management company,
2 or a covered person.
- 3 f. Extrapolation or other statistical expansion techniques shall
4 not be used in calculating recoupment amounts.
- 5 g. The amount of a recoupment shall not include the cost of the
6 drug if it has been dispensed to the covered person.
- 7 h. A pharmacy shall be entitled to provide post audit
8 documentation and recoupment amounts shall be adjusted in
9 accordance with the post audit documentation.
- 10 i. A pharmacy benefits management company shall:
11 (1) established a written process for a pharmacy to appeal
12 preliminary and final audit reports;
13 (2) provide a report of any audit recoupment amounts to the
14 purchaser and return the recoupment amounts to the purchaser; and
15 (3) provide a copy of the report of audit recoupment amounts to
16 the pharmacy.
- 17
- 18 4. A pharmacy benefits management company shall comply
19 with the requirements of the "Health Claims Authorization,
20 Processing and Payment Act," P.L.2005, c.352 (C.17B:30-48 et al.),
21 to the extent the requirements are determined to be applicable and
22 appropriate by the Commissioner of Banking and Insurance.
23
- 24 5. The Commissioner of Banking and Insurance shall adopt
25 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
26 (C.52:14B-1 et seq.), rules and regulations, including any penalty
27 provisions the commissioner deems to be necessary, to effectuate
28 the purposes of this act.
29
- 30 6. This act shall take effect on the 90th day next following
31 enactment and shall apply to all contracts or agreements for
32 pharmacy benefits management services that are executed or
33 renewed on or after the effective date.
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36 STATEMENT
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38 This bill applies certain requirements to the activities of
39 pharmacy benefits management companies operating in this State.
40 Pharmacy benefits management companies ("PBMs") manage
41 prescription drug benefits under a health benefits plan that is
42 sponsored by an insurer, public or private employer, union, or other
43 entity.

44 The bill provides that a PBM shall not:
45 (1) mandate that a covered person use a specific retail
46 pharmacy, mail-order pharmacy, specialty pharmacy, or other
47 pharmacy practice site; or

1 (2) provide for variations in a network agreement between the
2 pharmacy benefits management company and a purchaser of
3 pharmacy benefits management service, including, but not limited
4 to, variations in premiums, deductibles, copayments or coinsurance
5 rates, as an incentive to encourage purchasers and covered persons
6 to use a specific retail pharmacy, mail-order pharmacy, specialty
7 pharmacy, or other pharmacy practice site, unless the incentive
8 applies to all pharmacies in the network agreement.

9 The bill also provides that if a PBM has an ownership interest in
10 a retail pharmacy, mail-order pharmacy, or specialty pharmacy, the
11 PBM shall disclose that interest, including the percentage
12 ownership in each entity and the total annual revenue obtained from
13 each, in writing to the purchaser prior to entering into an agreement
14 with the purchaser.

15 This bill establishes standards for the audit of pharmacies
16 conducted by or on behalf of PBMs, including standards relating to:
17 the period covered by an audit, the use of licensed pharmacists in
18 certain situations, the appropriate use of pharmacy records to
19 comply with an audit, the determination and reporting of amounts
20 subject to recoupment by the PBM, and appealing audit reports.

21 The bill also requires that PBMs comply with the “Health Claims
22 Authorization, Processing and Payment Act,” P.L.2005, c.352
23 (C.17B:30-48 et al.), which requires payment of health care claims
24 within certain time periods, to the extent that act’s requirements are
25 determined to be applicable and appropriate by the Commissioner
26 of Banking and Insurance.

27 Finally, the bill provides that the commissioner shall adopt
28 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
29 (C.52:14B-1 et seq.), rules and regulations, including any penalty
30 provisions the commissioner deems to be necessary, to effectuate
31 the purposes of the bill.