

ASSEMBLY, No. 5410

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 1, 2021

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

“New Jersey Pharmacy Benefits Manager Licensure and Regulation Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/1/2021)

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

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

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7 1. This act shall be known as and may be cited as the “New
8 Jersey Pharmacy Benefits Manager Licensure and Regulation Act.”

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10 2. The purpose of this act is to:

11 a. promote, preserve, and protect the public health, safety, and
12 welfare through effective regulation and licensure of pharmacy
13 benefits managers;

14 b. promote the solvency of the commercial health insurance
15 industry, the regulation of which is reserved to the states by the
16 “McCarran-Ferguson Act” (15 U.S.C. s.1011 et seq.), as well as
17 provide for consumer savings, and fairness in prescription benefits;

18 c. provide for powers and duties of the Commissioner of
19 Banking and Insurance; and

20 d. prescribe penalties and fines for violations of this act.

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22 3. As used in this act:

23 "Claims processing services" means the administrative services
24 performed in connection with the processing and adjudicating of
25 claims relating to pharmacist services that include:

26 (1) receiving payments for pharmacist services; and

27 (2) making payments to pharmacists or pharmacies for
28 pharmacist services.

29 "Commissioner" means the Commissioner of Banking and
30 Insurance.

31 "Department" means the Department of Banking and Insurance.

32 "Other prescription drug or device services" means services other
33 than claims processing services, provided directly or indirectly,
34 whether in connection with or separate from claims processing
35 services, including without limitation:

36 (1) negotiating rebates, discounts, or other financial incentives
37 and arrangements with drug companies;

38 (2) disbursing or distributing rebates;

39 (3) managing or participating in incentive programs or
40 arrangements for pharmacist services;

41 (4) negotiating or entering into contractual arrangements with
42 pharmacists or pharmacies, or both;

43 (5) developing formularies;

44 (6) designing prescription benefit programs; and

45 (7) advertising or promoting services.

46 "Pharmacist" means an individual currently licensed by this State
47 to engage in the practice of pharmacy.

1 "Pharmacist services" means products, goods, and services, or
2 any combination of products, goods, and services, provided as a
3 part of the practice of pharmacy.

4 "Pharmacy" means any place in this State where drugs are
5 dispensed or pharmaceutical care is provided by a licensed
6 pharmacist, but shall not include a medical office under the control
7 of a licensed physician.

8 "Pharmacy benefits manager" means a person, business, or
9 entity, including a wholly or partially owned or controlled
10 subsidiary of a pharmacy benefits manager, that provides claims
11 processing services or other prescription drug or device services, or
12 both, for health benefit plans. "Pharmacy benefits manager" does
13 not include a:

14 (1) health care facility as defined in section 2 of P.L.1971, c.136
15 (C.26:2H-2);

16 (2) health care professional licensed to practice a health care
17 profession pursuant to Title 45 of the Revised Statutes; or

18 (3) consultant who only provides advice as to the selection or
19 performance of a pharmacy benefits manager.

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21 4. a. (1) A person or organization shall not establish or
22 operate as a pharmacy benefits manager in this State for health
23 benefit plans without obtaining a license from the commissioner
24 pursuant to this act.

25 (2) The commissioner shall prescribe the application for a
26 license to operate in this State as a pharmacy benefits manager and
27 may charge application fees and renewal fees.

28 b. The commissioner shall establish the licensing, fees,
29 application, financial standards, and reporting requirements of
30 pharmacy benefits managers pursuant to this act.

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32 5. a. In a participation contract between a pharmacy benefits
33 manager and a pharmacist or pharmacy providing prescription drug
34 coverage for health benefit plans, a pharmacy or pharmacist shall
35 not be prohibited, restricted, or penalized in any way from
36 disclosing to a covered person:

37 (1) any health care information that the pharmacy or pharmacist
38 deems appropriate regarding the nature of treatment, risks, or
39 alternatives thereto;

40 (2) the availability of alternate therapies, consultations, or tests;

41 (3) the decision of utilization reviewers or similar persons to
42 authorize or deny services;

43 (4) the process used to authorize or deny health care services or
44 benefits; or

45 (5) information on financial incentives and structures used by
46 the insurer.

1 b. A pharmacy or pharmacist may provide to an insured
2 information regarding the insured's total cost for pharmacist
3 services for a prescription drug.

4 c. A pharmacy benefits manager shall not prohibit a pharmacy
5 or pharmacist from:

6 (1) providing information regarding the total cost for pharmacist
7 services for a prescription drug; or

8 (2) selling a more affordable alternative to an insured if a more
9 affordable alternative is available.

10 d. A pharmacy benefits manager contract with a participating
11 pharmacist or pharmacy shall not prohibit, restrict, or limit
12 disclosure of information to the commissioner, law enforcement, or
13 state and federal governmental officials investigating or examining
14 a complaint or conducting a review of a pharmacy benefits
15 manager's compliance with the requirements of this act.

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17 6. a. The commissioner shall enforce the provisions of this act.

18 b. (1) The commissioner may examine or audit the books and
19 records of a pharmacy benefits manager providing claims
20 processing services or other prescription drug or device services for
21 a health benefit plan to determine if the pharmacy benefits manager
22 is in compliance with the provisions of this act.

23 (2) The information or data acquired during an examination
24 pursuant to paragraph (1) of this subsection is:

25 (a) considered proprietary and confidential; and

26 (b) not subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et
27 seq.).

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29 7. a. The commissioner shall, in accordance with the
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
31 seq.), adopt any rules and regulations as the commissioner deems
32 necessary to carry out the provisions of this act.

33 b. Rules and regulations adopted pursuant to this act shall set
34 penalties or fines, including without limitation monetary fines,
35 suspension of licensure, and revocation of licensure for violations
36 of this act and rules and regulations adopted pursuant to this act.

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38 8. a. This act is applicable to a contract or health benefit plan
39 that is delivered, issued, executed, or renewed in this State on or
40 after January 1, 2022.

41 b. A contract existing on the date of licensure of the pharmacy
42 benefits manager shall comply with the requirements of this act as a
43 condition of licensure for the pharmacy benefits manager.

44 c. Nothing in this act is intended or shall be construed to be in
45 conflict with existing relevant federal law.

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47 9. This act shall take effect on the 90th day after the date of
48 enactment.

STATEMENT

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This bill provides for the licensure of pharmacy benefits managers. Under the bill, the Commissioner of Banking and Insurance is to create the application for a license to operate in this State as a pharmacy benefits manager and may charge application fees and renewal fees. The commissioner is also to establish the licensing, fees, application, financial standards, and reporting requirements of pharmacy benefits managers.

The bill provides that, in any participation contracts between pharmacy benefits managers and pharmacists or pharmacies providing prescription drug coverage for health benefit plans, no pharmacy or pharmacist may be prohibited, restricted, or penalized in any way from disclosing to any covered person any health care information that the pharmacy or pharmacist deems appropriate regarding the nature of treatment, risks, or alternatives thereto, the availability of alternate therapies, consultations, or tests, the decision of utilization reviewers or similar persons to authorize or deny services, the process that is used to authorize or deny health care services or benefits, or information on financial incentives and structures used by the insurer.

Under the bill, a pharmacy or pharmacist may provide to an insured information regarding the insured's total cost for pharmacist services for a prescription drug. A pharmacy benefits manager is not to prohibit a pharmacy or pharmacist from discussing information regarding the total cost for pharmacist services for a prescription drug or from selling a more affordable alternative to the insured if a more affordable alternative is available.

Pursuant to the bill, the commissioner may examine or audit the books and records of a pharmacy benefits manager providing claims processing services or other prescription drug or device services for a health benefit plan to determine if the pharmacy benefits manager is in compliance with the provisions of the bill. The information or data acquired during such an examination is to be considered proprietary and confidential and is not to be subject to the provisions of the open public records act.

The bill applies to contracts or health benefit plans that are delivered, issued, executed, or renewed in the State on or after January 1, 2022.