

SENATE, No. 887

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 27, 2020

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

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SYNOPSIS

Requires DHS to transition Medicaid prescription drug services from managed care to fee-for-service; provides for procurement by State of pharmacy benefits manager to administer Medicaid fee-for-service prescription drug services.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/24/2020)

1 AN ACT concerning prescription drug services provided under the
2 Medicaid program and supplementing Title 30 of the Revised
3 Statutes.

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

7
8 1. The Legislature finds and declares:

9 a. The State has a continuing responsibility to ensure that funds
10 expended under the Medicaid program are used appropriately and
11 efficiently to promote the public health;

12 b. Currently, prescription drug services provided under the
13 Medicaid program are delivered via managed care organizations
14 (MCOs) who contract with the Division of Medical Assistance and
15 Health Services in the Department of Human Services to provide
16 those Medicaid benefits at a fixed annual fee per patient;

17 c. Under the State's current delivery model, each MCO contracts
18 with a pharmacy benefits manager (PBM) to administer the
19 prescription drug benefit;

20 d. Experience in other states, however, has demonstrated that
21 transitioning this benefit to a fee-for-service (FFS) delivery system,
22 in which the state reimburses pharmacies directly, potentially via a
23 single PBM, generates significant prescription drug savings due to
24 lower overall spending and a reduction in program administration
25 costs;

26 e. For example, the West Virginia Medicaid Agency realized a
27 savings of \$54.4 million in the first year of such a transition;

28 f. Such savings has the potential to grow with the
29 implementation of a reverse auction for the State's PBM contract to
30 administer the FFS Medicaid prescription drug benefit, similar to the
31 reduced costs of prescription drugs achieved within the State Health
32 Benefits Program and School Employees' Health Benefits Program
33 through the PBM reverse auction conducted in 2017; and

34 g. As prescription drug prices continue to rise, the State must
35 employ innovative policy initiatives that help cover the costs of
36 Medicaid services and prevent harmful benefit reductions for
37 Medicaid recipients; and

38 h. Therefore, it is in the best interest of the State to transition
39 Medicaid prescription drug services from a managed care to a FFS
40 delivery system and to procure the most cost-effective PBM to
41 administer such benefits.

42
43 2. a. The Division of Medical Assistance and Health Services in
44 the Department of Human Services shall take all necessary actions to
45 transition the prescription drug services provided under the Medicaid
46 program, established pursuant to P.L.1968, c.413 (C.30:4D-1 et
47 seq.), via a managed care delivery system to a fee-for-service
48 delivery system by December 31, 2020. This section shall not apply

1 to the provision of prescription drug benefits under section 340B of
2 the federal Public Health Service Act (42 U.S.C. s.2566).

3 b. Beginning January 1, 2021, the division shall provide all
4 prescription drug services under the Medicaid program, except those
5 benefits exempt pursuant to subsection a. of this section, via a fee-
6 for-service delivery system.

7
8 3. The Commissioner of Human Services shall apply for such
9 State plan amendments or waivers as may be necessary to implement
10 the provisions of this act and to secure federal financial participation
11 for State Medicaid expenditures under the federal Medicaid program.

12
13 4. The Commissioner of Human Services shall adopt rules and
14 regulations pursuant to the "Administrative Procedure Act,"
15 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of
16 this act.

17
18 5. a. Notwithstanding the provisions of any other law to the
19 contrary, the Division of Purchase and Property in the Department of
20 the Treasury shall conduct a reverse auction for the purposes of
21 awarding a contract to a Pharmacy Benefits Manager (PBM) to
22 administer the prescription drug services provided under fee-for-
23 service delivery system of the Medicaid program, established
24 pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.). To effectuate the
25 purpose of this subsection, the division shall procure from qualified
26 vendors the following services based upon price and other factors:

27 (1) a technology platform required to conduct a reverse auction
28 and any related professional services through an expedited
29 procurement process, as provided in subsection b. and subsection c.
30 of this section, no later than July 1, 2020. The contract for such
31 services shall not be awarded to a vendor that is a PBM, is a
32 subsidiary or affiliate of a PBM, is managed by a PBM, or receives
33 remuneration from a PBM for aggregating clients into a contractual
34 relationship with a PBM. The vendor may not outsource any part of
35 the reverse auction or the automated, real-time, electronic, line-by-
36 line, review of PBM prescription drug reimbursements.

37 The technology platform shall, at a minimum, possess the ability
38 to:

39 (i) conduct an automated, online, reverse auction of PBM
40 services;

41 (ii) automate re-pricing of PBM proposals for Medicaid
42 prescription drug spending using Medicaid claims data and other
43 nationally-accepted data sources, as determined by the
44 Commissioner of Human Services, for comparisons of the costs of
45 PBM proposals;

46 (iii) produce an automated report and analysis of PBM bids,
47 including the ranking of bids, based on the comparative costs and

1 qualitative aspects thereof, within a 48-hour time period following
2 close of each round of reverse auction bidding;

3 (iv) perform real-time, electronic, line-by-line, review of PBM
4 Medicaid prescription drug reimbursements using an automated
5 technology platform that allows for online comparison of PBM
6 reimbursements and auditing of other aspects of the services
7 provided by the PBM; and

8 (v) conform to pricing restrictions of federal and State
9 government.

10 Related professional services shall include, at a minimum,
11 technical assistance to the State to evaluate the qualifications of
12 bidders on a PBM procurement, to provide online automated reverse
13 auction services to support the Department of the Treasury in
14 comparing the pricing for the PBM procurement, and any other
15 services deemed necessary by the Department of Treasury; and

16 (2) a PBM and related services via a reverse auction process
17 through the expedited procurement process, as provided in
18 subsection b. and subsection c. of this section, no later than January
19 1, 2021.

20 b. Except as otherwise provided in subsection c. of this section,
21 the division shall procure the services outlined in subsection a. of this
22 section without the need for formal advertisement, but through the
23 solicitation of proposals from professional services vendors.

24 c. Notwithstanding the provisions of any other law to the
25 contrary, for the purpose of expediting the procurements required
26 pursuant to subsection a. of this section, the following provisions
27 shall apply as modifications to law or regulation that may interfere
28 with the expedited award of the outlined services:

29 (1) the timeframes for challenging the specifications shall be
30 modified as determined by the division;

31 (2) in lieu of advertising in accordance with sections 2, 3, and 4
32 of P.L.1954, c.48 (C.52:34-7, C.52:34-8, and C.52:34-9), the division
33 shall advertise the request for proposals for the above services and
34 any addenda thereto on the division's website;

35 (3) the period of time that the State Comptroller has to review the
36 request for proposals for these professional services procurements for
37 compliance with applicable public contracting laws, rules and
38 regulations, pursuant to section 10 of P.L.2007, c.52 28 (C.52:15C-
39 10), shall be 10 business days or less if practicable, as determined by
40 the State Comptroller;

41 (4) the timeframes for submission under section 4 of P.L.2012,
42 c.25 (C.52:32-58) and section 1 of P.L.1977, c.33 (C.52:25-24.2)
43 shall be extended to prior to the issuance of a Notice of Intent to
44 Award;

45 (5) the provisions of section 1 of P.L.2005, c.92 (C.52:34-13.2)
46 shall not apply to technical and support services, under this section,
47 provided by a vendor using a "24/7 follow-the-sun model" as long as

1 the contractor is able to provide such services in the United States
2 during the business day; and

3 (6) the term “bids” in subparagraph (f) of subsection a. of section
4 7 of P.L.1954, c.48 (C.52:34-12) shall not include pricing which will
5 be revealed to all responsive bidders during the negotiation process.

6 d. The division may, to the extent necessary, waive or modify
7 any other law or regulation that may interfere with the expeditious
8 procurement of these services.

9 e. For the purposes of this section:

10 “Reverse auction” means an automated bidding process conducted
11 online that starts with an opening price and allows qualified bidders
12 to counter offer a lower price, for as many rounds of bidding as
13 determined by the division.

14 “Price” means the projected cost of a PBM bid for administering
15 prescription drug services provided under the Medicaid program
16 based on automated re-pricing of PBM bids for purposes of
17 comparison of PBM proposal costs to the State over the duration of
18 the contract.

19
20 6. This act shall take effect immediately.
21
22

23 STATEMENT 24

25 The bill requires the Department of Human Services (DHS) to
26 transition Medicaid prescription drug services from a managed care
27 to a fee-for-service (FFS) delivery system, and provides for the
28 procurement by the State of a pharmacy benefits manager (PBM) to
29 administer those FFS Medicaid benefits. As defined by the bill,
30 “reverse auction” means an automated bidding process conducted
31 online that starts with an opening price and allows qualified bidders
32 to counter offer a lower price, for as many rounds of bidding as
33 determined by the Division of Purchase and Property in the
34 Department of the Treasury.

35 The transition to a FFS delivery system is expected to generate
36 significant prescription drug savings under the Medicaid program
37 due to lower overall spending and a reduction in program
38 administration costs. West Virginia’s Medicaid agency implemented
39 a similar transition in July 2017, anticipating a \$30 million savings
40 for the state. In March 2019, the West Virginia Bureau for Medical
41 Services released a report showing actual savings of \$54.4 million to
42 the state Medicaid program for the first year of the carve-out. It is
43 further anticipated that the implementation of a reverse auction from
44 the PBM contract will save additional public funds, similar to the
45 reduced costs of prescription drugs achieved within the State Health
46 Benefits Program and School Employees’ Health Benefits Program
47 through the PBM reverse auction conducted in 2017.

1 Specifically, under the bill, the Division of Medical Assistance
2 and Health Services in the DHS is required to take all necessary
3 actions to transition all prescription drug services provided under the
4 Medicaid program via a managed care delivery system to a fee-for-
5 service delivery system by December 31, 2020. This bill explicitly
6 states that this transition does not apply to the provision of
7 prescription drug benefits under section 340B of the federal Public
8 Health Service Act (42 U.S.C. s.2566). Beginning January 1, 2021,
9 the division is required to provide all prescription drug services under
10 the Medicaid program, except those benefits exempt as identified
11 above, via a fee-for-service delivery system

12 Furthermore, notwithstanding the provisions of any other law to
13 the contrary, the Division of Purchase and Property in the
14 Department of the Treasury is required to conduct a reverse auction
15 for the purposes of awarding a contract to a Pharmacy Benefits
16 Manager (PBM) to administer the Medicaid prescription drug
17 services provided under the fee-for-service delivery system.

18 The bill directs the division to procure from qualified vendors the
19 following services based upon price and other factors:

20 (1) a technology platform required to conduct a reverse auction
21 and any related professional services through an expedited
22 procurement process, as outlined in the bill, no later than July 1,
23 2020. The contract for such services shall not be awarded to a vendor
24 that is a PBM, is a subsidiary or affiliate of a PBM, is managed by a
25 PBM, or receives remuneration from a PBM for aggregating clients
26 into a contractual relationship with a PBM. The vendor may not
27 outsource any part of the reverse auction or the automated, real-time,
28 electronic, line-by-line, review of PBM prescription drug
29 reimbursements.

30 The technology platform is required, at a minimum, to possess the
31 ability to: conduct an automated, online, reverse auction of PBM
32 services; automate re-pricing of PBM proposals for Medicaid
33 prescription drug spending using Medicaid claims data and other
34 nationally-accepted data sources, as determined by the
35 Commissioner of Human Services, for comparisons of the costs of
36 PBM proposals; produce an automated report and analysis of PBM
37 bids, including the ranking of bids, based on the comparative costs
38 and qualitative aspects thereof, within a 48-hour time period
39 following close of each round of reverse auction bidding; perform
40 real-time, electronic, line-by-line, review of PBM Medicaid
41 prescription drug reimbursements using an automated technology
42 platform that allows for online comparison of PBM reimbursements
43 and auditing of other aspects of the services provided by the PBM;
44 and conform to pricing restrictions of federal and State government.

45 Any related professional services are to include, at a minimum,
46 technical assistance to the State to evaluate the qualifications of
47 bidders on a PBM procurement, to provide online automated reverse
48 auction services to support the Department of the Treasury in

1 comparing the pricing for the PBM procurement, and any other
2 services deemed necessary by the Department of Treasury; and

3 (2) a PBM and related services via a reverse auction process
4 through the expedited procurement process, as provided in
5 subsection b. and subsection c. of this section, no later than January
6 1, 2021.

7 The bill also establishes an expedited process for the procurement
8 of the services outline in the bill. For example, except as otherwise
9 provided below, the division is required to procure these services
10 without the need for formal advertisement, but through the
11 solicitation of proposals from professional services vendors.

12 In addition, notwithstanding the provisions of any other law to the
13 contrary, the bill provides for the following modifications to law or
14 regulation that may interfere with the expedited award of the outlined
15 services:

16 (1) the timeframes for challenging the specifications are to be
17 modified as determined by the division;

18 (2) in lieu of advertising in accordance with sections 2, 3, and 4
19 of P.L.1954, c.48 (C.52:34-7, C.52:34-8, and C.52:34-9), the division
20 is required to advertise the request for proposals for the above
21 services and any addenda thereto on the division's website;

22 (3) the period of time that the State Comptroller has to review the
23 request for proposals for these professional services procurements for
24 compliance with applicable public contracting laws, rules and
25 regulations, pursuant to section 10 of P.L.2007, c.52 28 (C.52:15C-
26 10), is to be 10 business days or less if practicable, as determined by
27 the State Comptroller;

28 (4) the timeframes for submission under section 4 of P.L.2012,
29 c.25 (C.52:32-58) and section 1 of P.L.1977, c.33 (C.52:25-24.2) are
30 to be extended to prior to the issuance of a Notice of Intent to Award;

31 (5) the provisions of section 1 of P.L.2005, c.92 (C.52:34-13.2)
32 are to not apply to technical and support services, under this section,
33 provided by a vendor using a "24/7 follow-the-sun model" as long as
34 the contractor is able to provide such services in the United States
35 during the business day; and

36 (6) the term "bids" in subparagraph (f) of subsection a. of section
37 7 of P.L.1954, c.48 (C.52:34-12) is to not include pricing which will
38 be revealed to all responsive bidders during the negotiation process.

39 The bill further authorizes the division, to the extent necessary, to
40 waive or modify any other law or regulation that may interfere with
41 the expeditious procurement of these services.