

[Fifth Reprint]

**ASSEMBLY, No. 3717**

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

INTRODUCED MARCH 22, 2018

**Sponsored by:**

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**District 33 (Hudson)**

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**District 11 (Monmouth)**

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**District 11 (Monmouth)**

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**Assemblymen Holley, Milam, Land, Karabinchak, Assemblywoman Jasey, Senators Andrzejczak, Sacco, Gill, Stack, Weinberg, Assemblywomen Quijano and Lampitt**

**SYNOPSIS**

Prohibits pharmacy benefits managers from making certain retroactive reductions in claims payments to pharmacies; requires pharmacy benefits managers to disclose certain product information to pharmacies.

**CURRENT VERSION OF TEXT**

As amended on November 18, 2019 by the General Assembly pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 6/28/2019)

1 AN ACT concerning pharmacy benefits managers <sup>1</sup>and amending<sup>1</sup>  
 2 and supplementing P.L.2015, c.179 <sup>1</sup>[(C.17B:27F-1 et seq.)].<sup>1</sup>

3  
 4 **BE IT ENACTED** by the Senate and General Assembly of the State  
 5 of New Jersey:

6  
 7 1. (New section) a. After the date of receipt of a clean claim  
 8 for payment made by a pharmacy, a pharmacy benefits manager  
 9 shall not retroactively reduce payment on the claim, either directly  
 10 or indirectly, through aggregated effective rate <sup>1</sup>, direct or indirect  
 11 remuneration, quality assurance program,<sup>1</sup> or otherwise, except if  
 12 the claim is found not to be a clean claim during the course of a  
 13 routine audit performed pursuant to an agreement between the  
 14 pharmacy benefits manager and the pharmacy. <sup>1</sup>[(Nothing in this  
 15 section shall be construed to prohibit any retroactive increase in  
 16 payment to a pharmacy pursuant to a written agreement between the  
 17 pharmacy benefits manager and the pharmacy.)] When a pharmacy  
 18 adjudicates a claim at the point of sale, the reimbursement amount  
 19 provided to the pharmacy by the pharmacy benefits manager shall  
 20 constitute a final reimbursement amount.<sup>1</sup> <sup>2</sup>Nothing in this section  
 21 shall be construed to prohibit any retroactive increase in payment to  
 22 a pharmacy pursuant to a <sup>3</sup>[(written agreement)]<sup>3</sup> contract between  
 23 the pharmacy benefits manager, and the pharmacy services  
 24 administration organization, or a pharmacy.<sup>2</sup>

25 b. For the purpose of this section, “clean claim” means a claim  
 26 that has no defect or impropriety, including a lack of any required  
 27 substantiating documentation, or <sup>2</sup>[(particular)] other<sup>2</sup> circumstance  
 28 requiring special treatment <sup>2</sup>, including, but not limited to, those  
 29 listed in subsection d. of this section,<sup>2</sup> that prevents timely payment  
 30 from being made on the claim.

31 <sup>2</sup>c. A pharmacy benefit manager shall not recoup funds from a  
 32 pharmacy in connection with claims for which the pharmacy has  
 33 already been paid unless the recoupment is:

34 (1) otherwise permitted or required by law;

35 (2) the result of an audit, performed pursuant to a contract  
 36 between the pharmacy benefits manager and the pharmacy; or

37 (3) the result of an audit, performed pursuant to a contract  
 38 between the pharmacy benefits manager and the designated  
 39 pharmacy services administrative organization.

40 d. The provisions of this section shall not apply to an  
 41 investigative audit of pharmacy records when:

**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>Assembly AFI committee amendments adopted September 13, 2018.

<sup>2</sup>Senate SCM committee amendments adopted June 17, 2019.

<sup>3</sup>Senate floor amendments adopted June 20, 2019.

<sup>4</sup>Assembly floor amendments adopted June 27, 2019.

<sup>5</sup>Assembly amendments adopted in accordance with Governor's recommendations November 18, 2019.

1       (1) fraud, waste, abuse or other intentional misconduct is  
2 indicated by physical review or review of claims data or statements;

3 or

4       (2) other investigative methods indicate a pharmacy is or has  
5 been engaged in criminal wrongdoing, fraud or other intentional or  
6 willful misrepresentation.<sup>2</sup>

7  
8       <sup>3</sup>2. Section 1 of P.L.2015, c.179 (C.17B:27F-1) is amended to  
9 read as follows:

10       1. As used in this act:

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

15       "Contracted **【Pharmacy】** pharmacy" means a pharmacy that  
16 participates in the network of a pharmacy benefits manager through  
17 a contract with:

- 18       a. the pharmacy benefits manager directly;  
19       b. a pharmacy services administration organization; or  
20       c. a pharmacy group purchasing organization.

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

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

25       "Health benefits plan" means a benefits plan which pays hospital  
26 or medical expense benefits for covered services, or prescription  
27 drug benefits for covered services, and is delivered or issued for  
28 delivery in this State by or through a carrier or any other sponsor  
29 <sup>4</sup>**【**, including, but not limited to, a carrier, self-insured employer, or  
30 union<sup>4</sup>**】**. For the purposes of this act, health benefits plan shall not  
31 include the following plans, policies or contracts: accident only,  
32 credit disability, long-term care, Medicare supplement coverage;  
33 **【CHAMPUS】** TRICARE supplement coverage, coverage for  
34 Medicare services pursuant to a contract with the United States  
35 government, <sup>5</sup>the State Medicaid program established pursuant to  
36 P.L.1968, c.413 (C.30:4D-1 et seq.),<sup>5</sup> coverage arising out of a  
37 worker's compensation or similar law, the State Health Benefits  
38 <sup>4</sup>**【Plan】** Program<sup>4</sup>, the School Employees' Health Benefits <sup>4</sup>【Plan】  
39 Program<sup>4</sup>, or a self-insured health benefits plan governed by the  
40 provisions of the federal "Employee Retirement Income Security  
41 Act of 1974," 29 U.S.C. s.1001 et seq., coverage under a policy of  
42 private passenger automobile insurance issued pursuant to  
43 P.L.1972, c.70 (C.39:6A-1 et seq.), or hospital confinement  
44 indemnity coverage.

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

1 "Pharmacy benefits manager" means a corporation, business, or  
2 other entity, or unit within a corporation, business, or other entity,  
3 that administers prescription drug benefits on behalf of a purchaser.

4 "Pharmacy benefits management services" means the provision  
5 of any of the following services on behalf of a purchaser: the  
6 procurement of prescription drugs at a negotiated rate for  
7 dispensation within this State; the processing of prescription drug  
8 claims; or the administration of payments related to prescription  
9 drug claims.

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

12 "Prescription drug benefits" means the benefits provided for  
13 prescription drugs and pharmacy services for covered services  
14 under a health benefits plan contract.

15 "Purchaser" means any sponsor of a health benefits plan who  
16 enters into an agreement with a pharmacy benefits management  
17 company for the provision of pharmacy benefits management  
18 services to covered persons.<sup>3</sup>

19 (cf: P.L.2015, c.179, s.1)

20  
21 <sup>3</sup>[<sup>1</sup>2.] 3.<sup>3</sup> Section 2 of P.L.2015, c.179 (C.17B:27F-2) is  
22 amended to read as follows:

23 2. Upon execution or renewal of each contract, or at such a  
24 time when there is any <sup>2</sup>material<sup>2</sup> change in the term of the contract,  
25 a pharmacy benefits manager shall, with respect to contracts  
26 between a pharmacy benefits manager and a <sup>2</sup>pharmacy services  
27 administrative organization, or between a pharmacy benefits  
28 manager and a<sup>2</sup> contracted pharmacy:

29 a. (1) include in the contract the sources utilized to determine  
30 multiple source generic drug pricing, <sup>2</sup>brand drug pricing, and<sup>2</sup> the  
31 <sup>2</sup>[outlet] wholesaler<sup>2</sup> in the State of New Jersey where pharmacies  
32 may acquire the product <sup>2</sup>[and brand effective rate, generic  
33 effective rate, and professional fee.]<sup>2</sup> including, if applicable, the  
34 <sup>2</sup>brand effective rate, generic effective rate, dispensing fee effective  
35 rate,<sup>2</sup> maximum allowable cost or any <sup>2</sup>[successive] other<sup>2</sup> pricing  
36 formula <sup>2</sup>[, or other pricing methodology utilized by the pharmacy  
37 benefits manager as a benchmark]<sup>2</sup> for pharmacy reimbursement  
38 <sup>2</sup>[of the pharmacy benefits manager]<sup>2</sup>;

39 (2) update that pricing information every seven calendar days;  
40 and

41 (3) establish a reasonable process by which contracted  
42 pharmacies have a method to access relevant maximum allowable  
43 cost pricing lists, brand effective rate, generic effective rate,  
44 <sup>2</sup>[professional fee,] <sup>3</sup>and dispensing fee effective rate,<sup>3</sup> or<sup>2</sup> any  
45 <sup>2</sup>[successive] other<sup>2</sup> pricing formulas <sup>2</sup>[and any other pricing  
46 methodology utilized by the pharmacy benefits manager as a  
47 benchmark]<sup>2</sup> for pharmacy reimbursement <sup>2</sup>[and any successive  
48 pricing formulas in a timely manner]<sup>2</sup>; and

1       b. Maintain a procedure to eliminate drugs from the list of  
2 drugs subject to multiple source generic drug pricing <sup>2</sup>and brand  
3 drug pricing.<sup>2</sup> or modify maximum allowable cost rates <sup>2</sup>, brand  
4 effective rate, generic effective rate, dispensing fee effective rate or  
5 any other applicable pricing formula<sup>2</sup> in a timely fashion and make  
6 that procedure easily accessible to <sup>2</sup>the pharmacy services  
7 administrative organizations or the<sup>2</sup> pharmacies<sup>1</sup> <sup>2</sup>that they are  
8 contractually obligated with to provide that information according  
9 to the requirements of this section<sup>2</sup>.

10 (cf: P.L.2015, c.179, s.2)

11

12       <sup>3</sup>**[1 3.] 4.**<sup>3</sup> Section 4 of P.L.2015, c.179 (C.17B:27F-4) is  
13 amended to read as follows:

14       4. All contracts between a pharmacy benefits manager and a  
15 <sup>2</sup>**[contracted]** pharmacy services administrative organization, or its  
16 contracted pharmacies, and all contracts directly between a pharmacy  
17 benefits manager and a<sup>2</sup> pharmacy shall include a process to appeal,  
18 investigate, and resolve disputes regarding <sup>2</sup>brand and<sup>2</sup> multiple  
19 source generic drug pricing, <sup>2</sup>including, if applicable,<sup>2</sup> brand  
20 effective rate, generic effective rate, <sup>2</sup>[professional fees, State  
21 Health Benefits Program plans] dispensing fee effective rate,<sup>2</sup> and  
22 any other pricing <sup>2</sup>**[methodology utilized by the pharmacy benefits**  
23 **manager as a benchmark]** formula<sup>2</sup> for pharmacy reimbursement.  
24 The contract provision establishing the process shall include the  
25 following:

26       a. The right to appeal shall be limited to 14 calendar days  
27 following the initial claim;

28       b. The appeal shall be investigated and resolved by the  
29 pharmacy benefits manager through an internal process within 14  
30 calendar days of receipt of the appeal by the pharmacy benefits  
31 manager;

32       c. A telephone number at which a <sup>2</sup>pharmacy services  
33 administrative organization, or a pharmacy<sup>2</sup> may contact the  
34 pharmacy benefits manager and speak with an individual who is  
35 involved in the appeals process; and

36       d. (1) If the appeal is denied, the pharmacy benefits manager  
37 shall<sup>2</sup>:

38       (a)<sup>2</sup> provide the reason for the denial **[and]**  
39 <sup>2</sup>to the pharmacy services administrative organization and its contra  
40 cted pharmacies<sup>2</sup>, <sup>2</sup>and the pharmacy services administrative  
41 organization shall inform its contracted pharmacies of the  
42 availability, location and pricing of the appealed drug in the State;

43       (b) provide the reason for the denial directly to a pharmacy, if it  
44 contracts directly with a pharmacy benefits manager;

45       (c)<sup>2</sup> identify the national drug code of a drug product that is  
46 available for purchase by **[contracted pharmacies]** the specific  
47 contracted pharmacy appealing the claim in this State from

1 wholesalers registered pursuant to P.L.1961, c.52 (C.24:6B-1 et  
2 seq.) <sup>2</sup>and the outlet in the State of New Jersey where pharmacies  
3 may acquire the product<sup>2</sup> at a price which is available to the  
4 specific contracted pharmacy appealing the claim and which is  
5 equal to or less than the maximum allowable cost or the brand  
6 effective rate, generic effective rate <sup>2</sup>and professional fee or other  
7 pricing<sup>2</sup> for the appealed drug as determined by the pharmacy  
8 benefits manager; <sup>2</sup>and

9 (d) provide the name of wholesalers registered under P.L.1961,  
10 c.52 (C.24:6B-1 et seq.) from which the appealing pharmacy can  
11 obtain the brand or multiple source generic drug at or below the  
12 brand effective rate, generic effective rate, dispensing fee effective  
13 rate, maximum allowable cost or any other pricing formula for  
14 pharmacy reimbursement;<sup>2</sup>

15 (2) If the appeal is approved, the pharmacy benefits manager  
16 shall make the price correction, permit the reporting pharmacy to  
17 reverse and rebill the appealed claim, and make the price correction  
18 effective for all similarly situated pharmacies from the date of the  
19 approved appeal.

20 e. A pharmacy <sup>2</sup>benefits manager shall not terminate a  
21 pharmacy<sup>2</sup> licensed in the State of New Jersey <sup>2</sup>shall be permitted  
22 to make product deliveries solely on the basis that the pharmacy  
23 offers and provides store direct delivery<sup>2</sup> and mail prescriptions to  
24 <sup>2</sup>patients without contractual restrictions by a pharmacy benefits  
25 manager an insured as an ancillary service<sup>2, 1</sup>

26 (cf: P.L.2015, c.179, s.4)

27  
28 <sup>3</sup>14. (New section) A pharmacy benefits manager or third-party  
29 payer shall not require pharmacy accreditation standards or  
30 recertification requirements to participate in a network which are  
31 inconsistent with, more stringent than, or in addition to, the federal and  
32 State requirements for <sup>2</sup>licensure as<sup>2</sup> a pharmacy in this State.<sup>1</sup><sup>3</sup>

33  
34 <sup>1</sup>5. (New section) The Commissioner of Banking and Insurance  
35 may review and approve the compensation program of a pharmacy  
36 benefits manager with a health benefits plan to ensure that the  
37 reimbursement for pharmacist services paid to a pharmacist or  
38 pharmacy is fair and reasonable to provide an adequate pharmacy  
39 benefits manager network for a health benefits plan.<sup>1</sup>

40  
41 <sup>1</sup>6. (New section) P.L.2015, c.179 (C.17B:27F-1 et seq.) shall  
42 apply to all pharmacy benefits managers operating in the State of  
43 New Jersey <sup>2</sup>and shall apply to plans offered through the State  
44 Health Benefits Program<sup>2 3</sup>, except for any agreement by a  
45 pharmacy benefits manager to administer prescription drug benefits  
46 on behalf of the State Health Benefits Plan, the School Employees  
47 Health Benefits Plan, <sup>5</sup>the State Medicaid program established

1 pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.),<sup>5</sup> or a self-insured  
2 health benefits plan governed by the provisions of the federal  
3 "Employee Retirement Income Security Act of 1974," 29 U.S.C.  
4 s.1001 et seq<sup>3</sup> .<sup>1</sup>

5  
6 <sup>1</sup>7. (New section) A pharmacy benefits manager that violates any  
7 provision of P.L.2015, c.179 (C.17B:27F-1 et seq.) shall be subject  
8 to<sup>2</sup>:

9 a.<sup>2</sup> a <sup>2</sup>[penalty, after] warning<sup>2</sup> notice <sup>2</sup>[and];

10 b. an<sup>2</sup> opportunity <sup>2</sup>[for] to cure the violation within 14 days  
11 following the issuance of the notice;

12 c.<sup>2</sup> a hearing <sup>2</sup>[, for each day during which the violation  
13 continues,] before the commissioner within 70 days following the  
14 issuance of the notice; and

15 d. if the violation has not been cured pursuant to subsection b.  
16 of this section, a penalty<sup>2</sup> of not less than \$5,000 or more than  
17 \$10,000 for each violation.<sup>1</sup>

18  
19 <sup>1</sup>[2.] 8.<sup>1</sup> This act shall take effect <sup>2</sup>[immediately] on the 90th  
20 day next following enactment, except that section 7 of P.L. \_\_\_\_\_, c.  
21 (C. \_\_\_\_\_) (pending before the Legislature as this bill) shall take effect  
22 following the promulgation of regulations by the Department of  
23 Banking and Insurance implementing that section<sup>2</sup>.