

ASSEMBLY, No. 4676

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED MARCH 16, 2017

Sponsored by:

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

SYNOPSIS

“Prescription Drug Patient Protection Act;” requires pharmacy benefits managers to obtain certificate of authority from DOBI to operate in the State.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning pharmacy benefits managers and amending
2 P.L.1999, c.409 and supplementing P.L.2015, c.179 (C.17B:27F-
3 1 et seq.).

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

7
8 1. (New section) This act shall be known and may be cited as
9 the “Prescription Drug Patient Protection Act.”

10
11 2. (New section) a. After the effective date of this act, no
12 person, corporation, partnership or other entity shall operate as a
13 pharmacy benefits manager in this State except in accordance with
14 the provisions of this act.

15 b. (1) A pharmacy benefits manager operating in this State on
16 the effective date of this act shall submit an application, as provided
17 in section 3 of this act, to the Commissioner of Banking and
18 Insurance for a certificate of authority to operate as a pharmacy
19 benefits manager no later than nine months after the effective date
20 of this act.

21 (2) The pharmacy benefits manager may continue to operate
22 during the pendency of its application, but in no event more than 18
23 months after the effective date of this act unless the commissioner
24 has approved the application.

25 (3) If the commissioner denies the application, the applicant
26 shall then be treated as a pharmacy benefits manager whose
27 certificate has been revoked pursuant to paragraph (2) of subsection
28 c. of section 3 of this act.

29 (4) Nothing in this act shall operate to impair any contract
30 which was entered into by a pharmacy benefits manager before the
31 effective date of this act.

32 c. A pharmacy benefits manager that seeks to commence
33 operations in this State after the effective date of this act shall
34 submit an application, as provided in section 3 of this act, to the
35 Commissioner of Banking and Insurance for a certificate of
36 authority to operate as a pharmacy benefits manager.

37
38 3. (New section) a. A pharmacy benefits manager shall submit
39 an application for a certificate of authority on a form and in a
40 manner to be prescribed by the commissioner by regulation. The
41 application shall be signed under oath by the chief executive officer
42 of the pharmacy benefits manager or by a legal representative of the
43 pharmacy benefits manager, and shall include the following:

44 (1) the name, address, telephone number, and normal business
45 hours of the pharmacy benefits manager;

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.

1 (2) the name, address, and telephone number of a person who is
2 employed by, or otherwise represents, the pharmacy benefits
3 manager and who is available to answer questions concerning the
4 application that may be posed by representatives of the Department
5 of Banking and Insurance;

6 (3) the proposed plan of operation for the pharmacy benefits
7 manager, including the manner in which pharmacy benefits
8 management services will be provided;

9 (4) a copy of the most recent financial statement audited by an
10 independent certified public accountant; and

11 (5) such other information as the commissioner may require to
12 ensure that the pharmacy benefits manager can and will comply
13 with the provisions of this act.

14 If there is a material change in any of the information included in
15 the application for a certificate of authority subsequent to its initial
16 submission, including a change subsequent to the issuance or
17 renewal of the certificate, the pharmacy benefits manager shall
18 inform the commissioner of the change on a form and in a manner
19 to be prescribed by the commissioner by regulation.

20 b. The commissioner shall issue a certificate of authority to
21 operate in this State to a pharmacy benefits manager if, in the
22 determination of the commissioner, the application demonstrates
23 that the pharmacy benefits manager:

24 (1) will provide pharmacy benefits management services in
25 compliance with the provisions of this act and P.L.2015, c.179;

26 (2) will provide a complaint resolution mechanism that includes
27 reasonable procedures for the resolution of complaints by
28 pharmacists, prescribers, and covered persons;

29 (3) is financially sound and may reasonably be expected to meet
30 its obligations to purchasers and covered persons;

31 (4) has a procedure to establish and maintain a uniform system
32 of cost accounting approved by the commissioner and a uniform
33 system of reporting and auditing, which meet the requirements of
34 the commissioner; and

35 (5) has adopted procedures to ensure compliance with all State
36 and federal laws governing the confidentiality of its records with
37 respect to pharmacists, prescribers, and covered persons.

38 c. (1) If the commissioner rejects an application by a
39 pharmacy benefits manager for a certificate of authority, the
40 commissioner shall specify in what respect the application fails to
41 comply with the requirements for certification.

42 (2) If the commissioner revokes a certificate of authority for a
43 pharmacy benefits manager, the pharmacy benefits manager shall
44 proceed, immediately following the effective date of the order of
45 revocation, to pay all outstanding pharmacy benefits claims of
46 covered persons and shall conduct no further business except as
47 may be essential to the orderly conclusion of the affairs of the
48 pharmacy benefits manager. The commissioner may permit such

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1 further operation of the pharmacy benefits manager as the
2 commissioner may find to be in the best interest of the purchaser
3 and covered persons.

4 d. A certificate of authority issued pursuant to this act shall be
5 valid for three years from the date of issuance by the commissioner,
6 and shall be renewed every three years thereafter.

7 e. The commissioner shall establish fees for an application for
8 a certificate of authority and for a renewal of a certificate of
9 authority, the amounts of which shall be no greater than is
10 reasonably necessary to enable the Department of Banking and
11 Insurance to carry out the provisions of this act.

12 f. The provisions of this act shall not apply to a pharmacy
13 benefits manager that is an affiliate of a carrier and provides
14 pharmacy benefits management services solely to that carrier.

15

16 4. Section 1 of P.L.1999, c.409 (C.17:48H-1) is amended to
17 read as follows:

18 1. As used in this act:

19 "Affiliate" means a person that directly, or indirectly through one
20 or more intermediaries, controls, or is controlled by, or is under
21 common control with, the organized delivery system.

22 "Capitation" means a fixed per member, per month, payment or
23 percentage of premium payment for which the provider assumes the
24 risk for the cost of contracted services without regard to the type,
25 value or frequency of the services provided.

26 "Carrier" means an insurer authorized to transact the business of
27 health insurance as defined at N.J.S.17B:17-4, a hospital service
28 corporation authorized to transact business in accordance with
29 P.L.1938, c.366 (C.17:48-1 et seq.), a medical service corporation
30 authorized to transact business in accordance with P.L.1940, c.74
31 (C.17:48A-1 et seq.), a health service corporation authorized to
32 transact business in accordance with P.L.1985, c.236 (C.17:48E-1 et
33 seq.) or a health maintenance organization authorized to transact
34 business pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.).

35 "Certified organized delivery system" means an organized
36 delivery system that is compensated on a basis which does not
37 entail the assumption of financial risk by the organized delivery
38 system and that is certified in accordance with this act.

39 "Comprehensive health care services" means the basic benefits
40 provided under a health benefits plan, including medical and
41 surgical services provided by licensed health care providers who
42 may include, but are not limited to, family physicians, internists,
43 cardiologists, psychiatrists, rheumatologists, dermatologists,
44 orthopedists, obstetricians, gynecologists, neurologists,
45 endocrinologists, radiologists, nephrologists, emergency services
46 physicians, ophthalmologists, pediatricians, pathologists, general
47 surgeons, osteopathic physicians, physical therapists and
48 chiropractors. Basic benefits may also include inpatient or

1 outpatient services rendered at a licensed hospital, covered services
2 performed at an ambulatory surgical facility and ambulance
3 services.

4 "Financial risk" means exposure to financial loss that is
5 attributable to the liability of an organized delivery system for the
6 payment of claims or other losses arising from covered benefits for
7 treatment or services other than those performed directly by the
8 person or organized delivery system liable for payment, including a
9 loss sharing arrangement. A payment method wherein a provider
10 accepts reimbursement in the form of a capitation payment for
11 which it undertakes to provide health care services on a prepayment
12 basis shall not be considered financial risk.

13 "Health benefits plan" means a benefits plan which pays or
14 provides hospital and medical expense benefits for covered
15 services, and is delivered or issued for delivery in this State by or
16 through a carrier. Health benefits plan includes, but is not limited
17 to, Medicare supplement coverage and risk contracts to the extent
18 not otherwise prohibited by federal law. For the purposes of this
19 act, health benefits plan shall not include the following plans,
20 policies or contracts: accident only, credit, disability, long-term
21 care, **【CHAMPUS】** TRICARE supplement coverage, coverage
22 arising out of a workers' compensation or similar law, automobile
23 medical payment insurance, personal injury protection insurance
24 issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.) or hospital
25 confinement indemnity coverage.

26 "Licensed organized delivery system" means an organized
27 delivery system that is compensated on a basis which entails the
28 assumption of financial risk by the organized delivery system and
29 that is licensed in accordance with this act.

30 "Limited health care services" means a health service or benefit
31 which a carrier has elected to subcontract for as a separate service,
32 which may include, but shall not be limited to, substance abuse
33 services, vision care services, mental health services, podiatric care
34 services, chiropractic services, pharmaceutical services or
35 rehabilitation services. Limited health care services shall not
36 include **【pharmaceutical services,】** case management services or
37 employee assistance plan services.

38 "Organized delivery system" or "system" means an organization
39 with defined governance that:

40 a. is organized for the purpose of and has the capability of
41 contracting with a carrier to provide, or arrange to provide, under its
42 own management substantially all or a substantial portion of the
43 comprehensive health care services or benefits under the carrier's
44 benefits plan on behalf of the carrier, which may or may not include
45 the payment of hospital and ancillary benefits; or

46 b. is organized for the purpose of acting on behalf of a carrier
47 to provide, or arrange to provide, limited health care services that
48 the carrier elects to subcontract for as a separate category of

1 benefits and services apart from its delivery of benefits under its
2 comprehensive benefits plan, which limited services are provided
3 on a separate contractual basis and under different terms and
4 conditions than those governing the delivery of benefits and
5 services under the carrier's comprehensive benefits plan.

6 An organized delivery system shall not include an entity
7 otherwise authorized or licensed in this State to provide
8 comprehensive or limited health care services on a prepayment or
9 other basis in connection with a health benefits plan or a carrier.

10 "Provider" means a physician, health care professional, health
11 care facility, or any other person who is licensed or otherwise
12 authorized to provide health care services or other benefits in the
13 state or jurisdiction in which they are furnished.

14 (cf: P.L.1999, c.409, s.1)

15

16 5. (New section) The Commissioner of Banking and Insurance
17 shall adopt, pursuant to the "Administrative Procedure Act,"
18 P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations,
19 including any penalty provisions the commissioner deems to be
20 necessary, to effectuate the purposes of this act.

21

22 6. This act shall take effect on the 90th day next following
23 enactment.

24

25 STATEMENT

26

27 This bill, entitled the "Prescription Drug Patient Protection Act,"
28 requires pharmacy benefits managers to obtain, in accordance with
29 the bill's provisions, a certificate of authority from the
30 Commissioner of Banking and Insurance in order to operate in this
31 State.

32 The bill requires a pharmacy benefits manager operating in this
33 State on the bill's effective date to submit an application for a
34 certificate of authority, within nine months of that date, on a form
35 and in a manner to be prescribed by the Commissioner of Banking
36 and Insurance by regulation. A pharmacy benefits manager that
37 seeks to commence operations in this State after the bill's effective
38 date must also submit an application.

39 The application shall be signed under oath by the chief executive
40 officer of the pharmacy benefits manager or by a legal
41 representative of the pharmacy benefits manager, and must include
42 contact information for the pharmacy benefits manager, the
43 proposed plan of operation, and an audited financial statement.

44 The bill requires the commissioner to issue a certificate of
45 authority to a pharmacy benefits manager if, in the determination of
46 the commissioner, the application demonstrates that the pharmacy
47 benefits manager:

1 (1) will provide pharmacy benefits management services in
2 compliance with the provisions of the bill and P.L.2015, c.179;

3 (2) will provide a complaint resolution mechanism that includes
4 reasonable procedures for the resolution of complaints by
5 pharmacists, prescribers, and covered persons;

6 (3) is financially sound and may reasonably be expected to meet
7 its obligations to purchasers and covered persons;

8 (4) has a procedure to establish and maintain a uniform system
9 of cost accounting approved by the commissioner and a uniform
10 system of reporting and auditing, which meet the requirements of
11 the commissioner; and

12 (5) has adopted procedures to ensure compliance with all State
13 and federal laws governing the confidentiality of its records with
14 respect to pharmacists, prescribers, and covered persons.

15 If the commissioner rejects an application by a pharmacy
16 benefits manager for a certificate of authority, the commissioner
17 shall specify in what respect the application fails to comply with the
18 requirements for certification.

19 If the commissioner revokes a certificate of authority for a
20 pharmacy benefits manager, the pharmacy benefits manager shall
21 proceed, immediately following the effective date of the order of
22 revocation, to pay all outstanding pharmacy benefits claims of
23 covered persons and shall conduct no further business except as
24 may be essential to the orderly conclusion of the affairs of the
25 pharmacy benefits manager. The commissioner may permit such
26 further operation of the pharmacy benefits manager as the
27 commissioner may find to be in the best interest of the purchaser of
28 pharmacy benefits management services and covered persons.

29 A certificate of authority issued pursuant to the bill shall be valid
30 for three years from the date of issuance by the commissioner, and
31 shall be renewed every three years thereafter.

32 The commissioner shall establish fees for an application for a
33 certificate of authority and for a renewal of a certificate of
34 authority, the amounts of which shall be no greater than is
35 reasonably necessary to enable the Department of Banking and
36 Insurance to carry out the provisions of the bill.

37 The provisions of this bill shall not apply to a pharmacy benefits
38 manager that is an affiliate of a carrier and provides pharmacy
39 benefits management services solely to that carrier.

40 The bill also amends the statutes governing organized delivery
41 systems, which are regulated by the Department of Banking and
42 Insurance. By defining "limited health care services" to include
43 pharmaceutical services, instead of excluding them, the bill is
44 intended to allow the department to regulate pharmacy benefit
45 managers that fall under the category of organized delivery systems
46 because they provide limited health care services.