

[First Reprint]

ASSEMBLY, No. 3717

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MARCH 22, 2018

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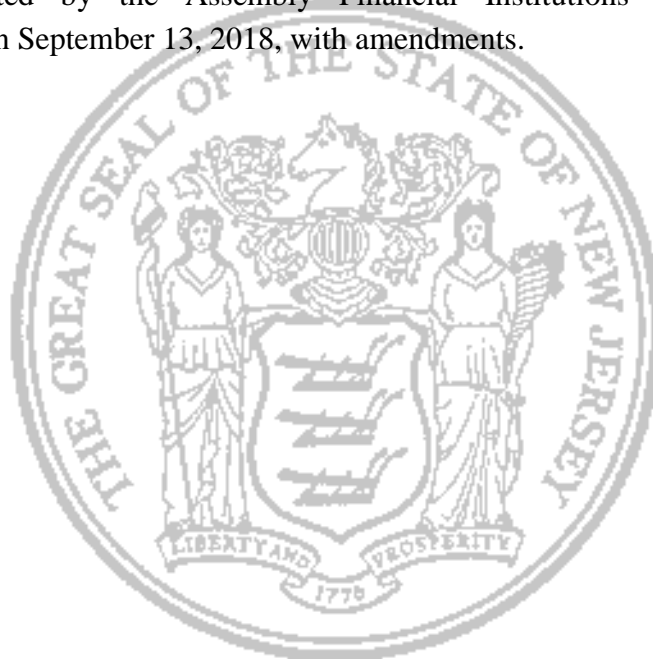
District 11 (Monmouth)

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 reported by the Assembly Financial Institutions and Insurance Committee on September 13, 2018, with amendments.



1 AN ACT concerning pharmacy benefits managers ¹and amending¹
2 and supplementing P.L.2015, c.179 ¹[(C.17B:27F-1 et seq.)].¹

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 for
8 payment made by a pharmacy, a pharmacy benefits manager shall
9 not retroactively reduce payment on the claim, either directly or
10 indirectly, through aggregated effective rate ¹, direct or indirect
11 remuneration, quality assurance program,¹ 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. ¹[(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.¹

21 b. For the purpose of this section, “clean claim” means a claim
22 that has no defect or impropriety, including a lack of any required
23 substantiating documentation, or particular circumstance requiring
24 special treatment that prevents timely payment from being made on
25 the claim.

26
27 ¹2. Section 2 of P.L.2015, c.179 (C.17B:27F-2) is amended to
28 read as follows:

29 2. Upon execution or renewal of each contract, or at such a
30 time when there is any change in the term of the contract, a
31 pharmacy benefits manager shall, with respect to contracts between
32 a pharmacy benefits manager and a contracted pharmacy:

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

41 (2) update that pricing information every seven calendar days;
42 and

43 (3) establish a reasonable process by which contracted

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:

¹Assembly AFI committee amendments adopted September 13, 2018.

1 pharmacies have a method to access relevant maximum allowable
2 cost pricing lists, brand effective rate, generic effective rate,
3 professional fee, any successive pricing formulas and any other
4 pricing methodology utilized by the pharmacy benefits manager as
5 a benchmark for pharmacy reimbursement and any successive
6 pricing formulas in a timely manner; and

7 b. Maintain a procedure to eliminate drugs from the list of
8 drugs subject to multiple source generic drug pricing or modify
9 maximum allowable cost rates in a timely fashion and make that
10 procedure easily accessible to pharmacies¹.

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

12

13 ¹3. Section 4 of P.L.2015, c.179 (C.17B:27F-4) is amended to
14 read as follows:

15 4. All contracts between a pharmacy benefits manager and a
16 contracted pharmacy shall include a process to appeal, investigate,
17 and resolve disputes regarding multiple source generic drug pricing,
18 brand effective rate, generic effective rate, professional fees, State
19 Health Benefits Program plans and any other pricing methodology
20 utilized by the pharmacy benefits manager as a benchmark for
21 pharmacy reimbursement. The contract provision establishing the
22 process shall include the following:

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

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

29 c. A telephone number at which a pharmacy may contact the
30 pharmacy benefits manager and speak with an individual who is
31 involved in the appeals process; and

32 d. (1) If the appeal is denied, the pharmacy benefits manager
33 shall provide the reason for the denial **【and】**, identify the national
34 drug code of a drug product that is available for purchase by
35 **【contracted pharmacies】** the specific contracted pharmacy
36 appealing the claim in this State from wholesalers registered
37 pursuant to P.L.1961, c.52 (C.24:6B-1 et seq.) and the outlet in the
38 State of New Jersey where pharmacies may acquire the product at a
39 price which is available to the specific contracted pharmacy
40 appealing the claim and which is equal to or less than the maximum
41 allowable cost or the brand effective rate, generic effective rate and
42 professional fee for the appealed drug as determined by the
43 pharmacy benefits manager;

44 (2) If the appeal is approved, the pharmacy benefits manager
45 shall make the price correction, permit the reporting pharmacy to
46 reverse and rebill the appealed claim, and make the price correction
47 effective for all similarly situated pharmacies from the date of the
48 approved appeal.

1 e. A pharmacy licensed in the State of New Jersey shall be
2 permitted to make product deliveries and mail prescriptions to
3 patients without contractual restrictions by a pharmacy benefits
4 manager.¹

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

6
7 ^{14.} (New section) A pharmacy benefits manager or third-party
8 payer shall not require pharmacy accreditation standards or
9 recertification requirements to participate in a network which are
10 inconsistent with, more stringent than, or in addition to, the federal
11 and State requirements for licensure as a pharmacy in this State.¹

12
13 ^{15.} (New section) The Commissioner of Banking and Insurance
14 may review and approve the compensation program of a pharmacy
15 benefits manager with a health benefits plan to ensure that the
16 reimbursement for pharmacist services paid to a pharmacist or
17 pharmacy is fair and reasonable to provide an adequate pharmacy
18 benefits manager network for a health benefits plan.¹

19
20 ^{16.} (New section) P.L.2015, c.179 (C.17B:27F-1 et seq.) shall
21 apply to all pharmacy benefits managers operating in the State of
22 New Jersey and shall apply to plans offered through the State
23 Health Benefits Program.¹

24
25 ^{17.} (New section) A pharmacy benefits manager that violates
26 any provision of P.L.2015, c.179 (C.17B:27F-1 et seq.) shall be
27 subject to a penalty, after notice and opportunity for a hearing, for
28 each day during which the violation continues, of not less than
29 \$5,000 or more than \$10,000 for each violation.¹

30
31 ^{1[2.] 8.}¹ This act shall take effect immediately.