

[Third Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 536 and 2841**

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**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

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ADOPTED MARCH 14, 2022

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**Assemblyman Moriarty, Assemblywomen Murphy, Park, Assemblyman Wimberly, Senators Greenstein, Gill, Ruiz and Turner**

**SYNOPSIS**

Establishes new transparency standards for pharmacy benefits manager business practices.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Budget Committee on June 27, 2023, with amendments.

(Sponsorship Updated As Of: 6/30/2023)

1 AN ACT concerning pharmacy benefits managers <sup>1</sup>**[and amending**  
2 **and]**,<sup>1</sup> supplementing P.L.2015, c.179<sup>1</sup>, and amending various  
3 parts of the statutory law<sup>1</sup>.

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

7  
8 1. 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]** P.L.2015, c.179 (C.17B:27F-1 et seq.):  
11 "Anticipated loss ratio" means the ratio of the present value of  
12 the future benefits payments, including claim offsets after the point  
13 of sale, to the present value of the future premiums of a policy form  
14 over the entire period for which rates are computed to provide  
15 health insurance coverage.

16 "Average wholesale price" means the average wholesale price of  
17 a prescription drug determined by a national drug pricing publisher  
18 selected by a carrier. The average wholesale price shall be  
19 identified using the national drug code published by the National  
20 Drug Code Directory within the United States Food and Drug  
21 Administration.

22 "Brand-name drug" means a prescription drug marketed under a  
23 proprietary name or registered trademark name, including a  
24 biological product.

25 "Carrier" means an insurance company, health service  
26 corporation, hospital service corporation, medical service  
27 corporation, or health maintenance organization authorized to issue  
28 health benefits plans in this State.

29 <sup>1</sup>**["Compensation" means any direct or indirect financial benefit,**  
30 **including, but not limited to, rebates, discounts, credits, fees, grants,**  
31 **chargebacks or other payments or benefits of any kind.]<sup>1</sup>**

32 "Contracted pharmacy" means a pharmacy that participates in the  
33 network of a pharmacy benefits manager through a contract with:

- 34 a. the pharmacy benefits manager directly;  
35 b. a pharmacy services administration organization; or  
36 c. a pharmacy group purchasing organization.

37 "Cost-sharing amount" means the amount paid by a covered  
38 person as required under the covered person's health benefits plan  
39 for a prescription drug at the point of sale.

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

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

**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 AHE committee amendments adopted May 26, 2022.

<sup>2</sup>Assembly AAP committee amendments adopted June 22, 2023.

<sup>3</sup>Assembly ABU committee amendments adopted June 27, 2023.

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

2 "Health benefits plan" means a benefits plan which pays hospital  
3 or medical expense benefits for covered services, or prescription  
4 drug benefits for covered services, and is delivered or issued for  
5 delivery in this State by or through a carrier or any other sponsor.  
6 For the purposes of P.L.2015, c.179 (C.17B:27F-1), health benefits  
7 plan shall not include the following plans, policies or contracts:  
8 accident only, credit disability, long-term care, Medicare  
9 supplement coverage; TRICARE supplement coverage, coverage  
10 for Medicare services pursuant to a contract with the United States  
11 government, the State Medicaid program established pursuant to  
12 P.L.1968, c.413 (C.30:4D-1 et seq.), coverage arising out of a  
13 worker's compensation or similar law, the State Health Benefits  
14 Program, the School Employees' Health Benefits Program, or a self-  
15 insured health benefits plan governed by the provisions of the  
16 federal "Employee Retirement Income Security Act of 1974," 29  
17 U.S.C. s.1001 et seq., coverage under a policy of private passenger  
18 automobile insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1  
19 et seq.), or hospital confinement indemnity coverage.

20 <sup>1</sup>["Mail order pharmacy" means a pharmacy, the principle  
21 business of which is to receive a prescription by mail, fax or  
22 electronic submission, and to dispense medication to a covered  
23 person using the United States Postal Service or other common or  
24 contract carrier service and that provides consultation with patients  
25 electronically rather than in person.]<sup>1</sup>

26 "Maximum allowable cost" means the maximum amount a health  
27 insurer will pay for a generic drug or brand-name drug that has at  
28 least one generic alternative available.

29 "Network pharmacy" means a licensed retail pharmacy or other  
30 pharmacy provider that contracts with a pharmacy benefits manager  
31 <sup>1</sup>either directly or by and through a contract with a pharmacy  
32 services administrative organization<sup>1</sup>.

33 "Pharmacy" means any place in the State, either physical or  
34 electronic, where drugs are dispensed or pharmaceutical care is  
35 provided by a licensed pharmacist, but shall not include a medical  
36 office under the control of a licensed physician.

37 "Pharmacy benefits manager" means a corporation, business, or  
38 other entity, or unit within a corporation, business, or other entity,  
39 that, pursuant to a contract or under an employment relationship  
40 with a carrier, a self-insurance plan or other third-party payer, either  
41 directly or through an intermediary, administers prescription drug  
42 benefits on behalf of a purchaser.

43 "Pharmacy benefits manager compensation" means the  
44 difference between: (1) the <sup>1</sup>[value] amount<sup>1</sup> of payments made by  
45 a carrier of a health benefits plan to its pharmacy benefits manager;  
46 and (2) the value of payments made by the pharmacy benefits  
47 manager to dispensing pharmacists for the provision of prescription

1 drugs or pharmacy services with regard to pharmacy benefits  
2 covered by the health benefits plan.

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

9 <sup>1</sup>"Pharmacy services administrative organization" means an  
10 entity operating within the State that contracts with independent  
11 pharmacies to conduct business on their behalf with third-party  
12 payers.<sup>1</sup>

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

15 "Prescription drug benefits" means the benefits provided for  
16 prescription drugs and pharmacy services for covered services  
17 under a health benefits plan contract.

18 "Purchaser" means any sponsor of a health benefits plan who  
19 enters into an agreement with a pharmacy benefits management  
20 company for the provision of pharmacy benefits management  
21 services to covered persons.

22 (cf: P.L.2019, c.274, s.2)

23

24 2. (New section) a. A corporation, business, or other entity  
25 shall not act as a pharmacy benefits manager <sup>2</sup>without first  
26 obtaining a license from the department<sup>2</sup> <sup>1</sup>or <sup>2</sup>as a <sup>2</sup>pharmacy  
27 services administrative organization<sup>1</sup> <sup>2</sup>[in this State without first  
28 obtaining a license] without first obtaining registration<sup>2</sup> from the  
29 department. An applicant for licensure <sup>2</sup>or registration<sup>2</sup> <sup>1</sup>[as a  
30 pharmacy benefits manager]<sup>1</sup> shall provide to the department  
31 information that includes, but is not limited to, the following:

32 (1) the name of the applicant;

33 (2) the address and telephone number of the applicant;

34 (3) the name and address of the applicant's agent for service of  
35 process in the State;

36 (4) the name and address of each person <sup>1</sup>[beneficially  
37 interested] owning 10 percent or greater interest<sup>1</sup> in the applicant;  
38 <sup>1</sup>[and] <sup>1</sup>

39 (5) the name and address of each person with management or  
40 control over the applicant <sup>1</sup>; <sup>2</sup>[and]<sup>2</sup>

41 <sup>2</sup>for pharmacy benefits managers,<sup>2</sup> the information required  
42 under section 4 of P.L.1999, c.409 (C.17:48H-4)<sup>1</sup> <sup>2</sup>;

43 <sup>2</sup>for pharmacy benefits managers, all contracts and documents  
44 between pharmacies, pharmacy benefits managers, and pharmacy  
45 services administrative organizations; and

46 <sup>2</sup>for pharmacy services administrative organizations, upon the  
47 department's request, any contracts and documents between

1 pharmacies, pharmacy benefits managers, and pharmacy services  
2 administrative organizations<sup>2</sup>.

3 b. A license <sup>2</sup>or registration<sup>2</sup> issued pursuant to this section  
4 shall be valid for a period of three years and may be renewed at the  
5 end of the three-year period. The commissioner shall establish fees  
6 for a license <sup>2</sup>or registration<sup>2</sup> issued or renewed pursuant to this  
7 section.

8 c. The department may issue a <sup>1</sup>[pharmacy benefits manager]<sup>1</sup>  
9 <sup>2</sup>pharmacy benefits manager<sup>2</sup> license to an applicant only if the  
10 department is satisfied that the applicant possesses the necessary  
11 organization, expertise, and financial integrity to supply the  
12 services sought to be offered. <sup>2</sup>The department shall establish, by  
13 regulation, minimum standards for the issuance of a license to a  
14 pharmacy benefits manager. The minimum standards established  
15 pursuant to this subsection shall contain both prerequisites for the  
16 issuance of a license to a pharmacy benefits manager and  
17 requirements for maintenance of a license by a pharmacy benefits  
18 manager and shall address, without limitation:

19 (1) conflicts of interest between pharmacy benefits managers  
20 and health benefits plans;

21 (2) deceptive practices in connection with the performance of  
22 pharmacy <sup>3</sup>[benefit] benefits<sup>3</sup> management services;

23 (3) anti-competitive practices in connection with the  
24 performance of pharmacy benefits management services;

25 (4) unfair claims practices in connection with the performance  
26 of pharmacy benefits management services;

27 (5) pricing models used by pharmacy <sup>3</sup>[benefit] benefits<sup>3</sup>  
28 managers both for their services and for the payment of services to  
29 the pharmacy benefits manager;

30 (6) standards and practices used in the creation of pharmacy  
31 networks and contracting with network pharmacies and other  
32 providers, including promotion and use of independent and  
33 community pharmacies and patient access and minimizing  
34 excessive concentration and vertical integration of markets; and

35 (7) protection of consumers.<sup>2</sup>

36 d. The department may issue a <sup>1</sup>[pharmacy benefits manager]<sup>1</sup>  
37 license <sup>1</sup>to a pharmacy benefits manager <sup>2</sup>[or pharmacy services  
38 administrative organization<sup>1</sup>]<sup>2</sup> subject to restrictions or limitations,  
39 including the type of services that may be supplied or the activities  
40 in which the pharmacy benefits manager <sup>2</sup>[<sup>1</sup>or pharmacy services  
41 administrative organization<sup>1</sup>]<sup>2</sup> may engage.

42 e. A license <sup>2</sup>or registration<sup>2</sup> issued pursuant to this section  
43 shall not be transferable.

44 f. The department may suspend, revoke or place on probation a  
45 <sup>1</sup>[pharmacy benefits manager license] licensee<sup>1</sup> <sup>2</sup>or registered  
46 entity<sup>2</sup> if:

1 (1) the pharmacy benefits manager <sup>1</sup>or pharmacy services  
2 administrative organization<sup>1</sup> has engaged in fraudulent activity <sup>1</sup>or  
3 any activity<sup>1</sup> that constitutes a violation of State or federal law;

4 (2) the department has received consumer complaints that  
5 justify an action under this subsection to protect the safety and  
6 interests of consumers;

7 (3) the pharmacy benefits manager <sup>1</sup>or pharmacy services  
8 administrative organization<sup>1</sup> fails to pay the original issuance or  
9 renewal fee for the license <sup>2</sup>or registration<sup>2</sup>; or

10 (4) the pharmacy benefits manager <sup>1</sup>or pharmacy services  
11 administrative organization<sup>1</sup> fails to comply with any requirement  
12 set forth in P.L. , c. (C. ) (pending before the Legislature as  
13 this bill).

14 g. If a corporation, business, or other entity acts as a pharmacy  
15 benefits manager <sup>1</sup>or pharmacy services administrative  
16 organization<sup>1</sup> without obtaining a license <sup>2</sup>or registration<sup>2</sup> pursuant  
17 to this section, the corporation, business, or other entity shall be  
18 subject to <sup>1</sup>⌈:

19 (1) a warning notice;

20 (2) an opportunity to cure the violation within 14 days following  
21 the issuance of the notice;

22 (3) a hearing before the commissioner within 70 days following  
23 the issuance of the notice; and

24 (4) if the violation has not been cured pursuant to subsection a.  
25 of this section, a penalty of not less than \$5,000 or more than  
26 \$10,000] the provisions of section 7 of P.L.2019, c.274  
27 (C.17B:27F-10)<sup>1</sup>.

28 h. <sup>1</sup>(1)<sup>1</sup> Notwithstanding the provisions of subsection a. of this  
29 section, a pharmacy benefits manager <sup>1</sup>⌈certified or licensed] <sup>2</sup>⌈or  
30 pharmacy services administrative organization⌋<sup>2</sup> that applied for, or  
31 received, certification or licensure<sup>1</sup> as an organized delivery system  
32 prior to the effective date of P.L. , c. (C. ) (pending before  
33 the Legislature as this bill), in accordance with P.L.1999, c.409  
34 (C.17:48H-1 et seq.), may continue to operate during the pendency  
35 of its application submitted pursuant to this section, but no more  
36 than <sup>1</sup>⌈18] 24<sup>1</sup> months after the effective date of this act.

37 <sup>1</sup>(2) A corporation, business, or other entity that acts as a  
38 pharmacy benefits manager <sup>2</sup>⌈or pharmacy services administrative  
39 organization⌋<sup>2</sup>, and applies for, receives, and maintains a license as  
40 an organized delivery system, in accordance with P.L.1999, c.409  
41 (C.17:48H-1 et seq.), shall not be required to maintain that license  
42 as an organized delivery system upon the issuance of a license  
43 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
44 this bill), and during any subsequent applications for renewal of the  
45 license as a pharmacy benefits manager <sup>2</sup>⌈or pharmacy services

1 administrative organization]<sup>2</sup> pursuant to the requirements of  
2 P.L. , c. (C. ) (pending before the Legislature as this bill).

3 i. A licensee shall be subject to the following except to the  
4 extent inconsistent with this act or where the commissioner  
5 determines that any provisions are inappropriate as applied to a  
6 pharmacy benefits manager <sup>2</sup>[or pharmacy services administrative  
7 organization]<sup>2</sup>;

8 (1) the unfair trade practices provisions of N.J.S.17B:30-1 et  
9 seq.;

10 (2) the provisions of P.L.1970, c. 22 (C.17:27A-1 et seq.);

11 (3) the "Life and Health Insurers Rehabilitation and Liquidation  
12 Act," P.L.1992, c.65 (C.17B:32-31 et seq.);

13 (4) investment limitations pursuant to N.J.S.17B:20-1 et seq.;  
14 and

15 (5) the "Health Care Quality Act," P.L.1997, c.192 (C.26:2S-1  
16 et al.).<sup>1</sup>

17

18 3. (New section) a. A carrier shall:

19 (1) monitor all activities carried out on behalf of the carrier by a  
20 pharmacy benefits manager if the carrier contracts with a pharmacy  
21 benefits manager and is related to a carrier's prescription drug benefits;  
22 and

23 (2) ensure that all requirements of this section are met.

24 b. A carrier that contracts with a pharmacy benefits manager to  
25 perform any activities related to the carrier's prescription drug benefits  
26 shall ensure that, under the contract, the pharmacy benefits manager  
27 acts as the carrier's agent <sup>1</sup>[and owes a fiduciary duty to the carrier in  
28 the pharmacy benefits manager's activities related to the carrier's  
29 prescription drug benefits] in good faith and fair dealing in the  
30 performance of all of its contractual duties. All funds received by the  
31 pharmacy benefits manager in relation to providing pharmacy benefits  
32 management services shall be used or distributed only pursuant to the  
33 pharmacy benefits manager's contract with the health benefits plan or  
34 carrier or applicable law; including any administrative fee or payment  
35 to the pharmacy benefits manager expressly provided for in the  
36 contract to compensate the pharmacy benefits manager for its services.  
37 Any funds received by the pharmacy benefits manager through spread  
38 pricing shall be subject to this subsection<sup>1</sup>.

39 c. <sup>1</sup>[A carrier shall not enter into a contract or agreement, or  
40 allow a pharmacy benefits manager or any entity acting on the carrier's  
41 behalf to enter into a contract or agreement, that prohibits a pharmacy  
42 from:

43 (1) providing a covered person with the option of paying the  
44 pharmacy provider's cash price for the purchase of a prescription drug  
45 and not filing a claim with the covered person's carrier if the cash price  
46 is less than the covered person's cost-sharing amount; or

1 (2) providing information to a State or federal agency, law  
2 enforcement agency, or the department when such information is  
3 required by law **】** (1) A pharmacy benefits manager interacting with a  
4 covered person shall have the same duty to a covered person as the  
5 health benefits plan or carrier for whom it is performing pharmacy  
6 benefits management services.

7 (2) A pharmacy benefits manager shall have a duty of good faith  
8 and fair dealing with all parties, including but not limited to covered  
9 persons and pharmacies, with whom it interacts in the performance of  
10 pharmacy benefits management services<sup>1</sup>.

11 d. A carrier or pharmacy benefits manager shall not require a  
12 covered person to make a payment at the point of sale for a covered  
13 prescription drug in an amount greater than <sup>1</sup>the lesser of<sup>1</sup>:

14 (1) the applicable cost-sharing amount for the prescription drug;  
15 <sup>1</sup>**【or】**<sup>1 2</sup>or<sup>2</sup>

16 (2) <sup>1</sup>the amount a covered person would pay for the prescription  
17 medication if the covered person purchased the prescription  
18 medication without using a health benefits plan<sup>2</sup>**【**; or

19 (3)<sup>1</sup> the total amount the pharmacy will be reimbursed for the  
20 prescription drug from the pharmacy benefits manager or carrier,  
21 including the cost-sharing amount paid by a covered person <sup>1</sup>**【**,  
22 whichever is less<sup>1</sup>**】**<sup>2</sup>.

23 e. A carrier shall provide a reasonably adequate retail pharmacy  
24 network for the provision of prescription drugs for its covered persons  
25 <sup>1</sup>**【**A mail order pharmacy shall not be included in determining the  
26 adequacy of a retail pharmacy network<sup>1</sup>**】**.

27 <sup>1</sup>f. For the purposes of this section, “health benefits plan” shall  
28 include the State Health Benefits Plan, the School Employees’ Health  
29 Benefits Plan, the State Medicaid program established pursuant to  
30 P.L.1968, c.413 (C.30:4D-1 et seq.), or a self-insured health benefits  
31 plan governed by the provisions of the federal “Employee Retirement  
32 Income Security Act of 1974,” 29 U.S.C., ss.1001 et seq.<sup>1</sup>

33  
34 4. Section 2 of P.L.2015, c.179 (C.17B:27F-2) is amended to  
35 read as follows:

36 2. Upon execution or renewal of each contract, or at such a  
37 time when there is any material change in the term of the contract, a  
38 pharmacy benefits manager shall, with respect to contracts between  
39 a pharmacy benefits manager and a pharmacy services  
40 administrative organization, or between a pharmacy benefits  
41 manager and a contracted pharmacy:

42 a. (1) include in the contract the sources utilized to determine  
43 multiple source generic drug pricing, brand drug pricing, and the  
44 wholesaler in the State of New Jersey where pharmacies may  
45 acquire the product, including, but not limited to, the brand  
46 effective rate, generic effective rate, dispensing fee effective rate,

1 maximum allowable cost or any other pricing formula for pharmacy  
2 reimbursement;

3 (2) update that pricing information every seven calendar days;  
4 and

5 (3) establish a reasonable process by which contracted  
6 pharmacies have a method to access relevant maximum allowable  
7 cost pricing lists, brand effective rate, generic effective rate, and  
8 dispensing fee effective rate, or any other pricing formulas for  
9 pharmacy reimbursement **;** and**].**

10 b. Additionally, a pharmacy benefits manager shall:

11 (1) **【Maintain】** maintain a procedure to eliminate drugs from the  
12 list of drugs subject to multiple source generic drug pricing and  
13 brand drug pricing, or modify maximum allowable cost rates, brand  
14 effective rate, generic effective rate, dispensing fee effective rate or  
15 any other applicable pricing formula in a timely fashion and make  
16 that procedure easily accessible to the pharmacy services  
17 administrative organizations or the pharmacies that they are  
18 contractually obligated with to provide that information according  
19 to the requirements of this section; and

20 (2) provide <sup>1</sup>【a reasonable administrative appeal procedure,  
21 including a right to appeal in accordance with section 4 of PL.2015,  
22 c.179 (C.17B:27F-4), to allow pharmacies with which】 an internal  
23 appeal mechanism to resolve any dispute raised by a carrier or  
24 pharmacy, regardless of whether<sup>1</sup> the carrier or pharmacy benefits  
25 manager has a contract to challenge maximum allowable costs for a  
26 specified drug. <sup>1</sup>Any dispute regarding the determination of an  
27 internal appeal conducted pursuant to this subsection may be  
28 referred to arbitration. The Commissioner of Banking and  
29 Insurance shall contract with a nationally recognized, independent  
30 organization that specializes in arbitration to conduct the arbitration  
31 proceedings.<sup>1</sup>

32 (cf: P.L.2019, c.274, s.3)

33  
34 5. Section 3 of P.L.2015, c.179 (C.17B:27F-3) is amended to  
35 read as follows:

36 3. a. **【In order to place a particular prescription drug on a**  
37 **multiple source generic list, the pharmacy benefits manager shall, at**  
38 **a minimum, ensure that:】** A carrier, or a pharmacy benefits manager  
39 under contract with a carrier, shall use a single maximum allowable  
40 cost list to establish the maximum amount to be paid by a health  
41 benefits plan to a pharmacy provider for a generic drug or a brand-  
42 name drug that has at least one generic equivalent available. A  
43 carrier, or a pharmacy benefits manager under contract with a  
44 carrier, shall use the same maximum allowable cost list for each  
45 pharmacy provider.

1     b. A maximum allowable cost may be set for a prescription  
2 drug, or a prescription drug may be allowed to continue on a  
3 maximum allowable cost list, only if:

4       (1) The drug is listed as therapeutically and pharmaceutically  
5 equivalent or "A," "B," "NR," or "NA" rated in the Food and Drug  
6 Administration's most recent version of the Approved Drug  
7 Products with Therapeutic Equivalence Evaluations, commonly  
8 known as the "Orange Book;" and

9       (2) The drug is available for purchase without limitations by all  
10 pharmacies in the State from national or regional wholesalers and is  
11 not obsolete or temporarily unavailable.

12     **[b.]** c. A pharmacy benefits manager shall not penalize a  
13 pharmacist or pharmacy on audit if the pharmacist or pharmacy  
14 performs a generic substitution pursuant to the "Prescription Drug  
15 Price and Quality Stabilization Act," P.L.1977, c.240 (C.24:6E-1 et  
16 seq.).

17     d. A carrier, or a pharmacy benefits manager under contract  
18 with a carrier, shall use the average wholesale price to establish the  
19 maximum payment for a brand-name drug for which a generic  
20 equivalent is not available or a prescription drug not included on a  
21 maximum allowable cost list. In order to use the average wholesale  
22 price of a brand-name drug or prescription drug not included on a  
23 maximum allowable cost list, a carrier, or a pharmacy benefits  
24 manager under contract with a carrier, shall use only one national  
25 drug pricing source during a calendar year, unless the original drug  
26 pricing source is no longer available. A carrier, or a pharmacy  
27 benefits manager under contract with a carrier, shall use the same  
28 national drug pricing source for each pharmacy provider and  
29 identify on its publicly accessible website the name of the national  
30 drug pricing source used to determine the average wholesale price  
31 of a prescription drug not included on the maximum allowable cost  
32 list.

33     e. The amount paid by a carrier or a carrier's pharmacy benefits  
34 manager to a pharmacy provider under contract with the carrier or  
35 the carrier's pharmacy benefits manager for dispensing a  
36 prescription drug shall be the ingredient cost plus the dispensing fee  
37 less any cost-sharing amount paid by a covered person.

38     The ingredient cost shall not exceed the maximum allowable cost  
39 or average wholesale price, as applicable, and shall be disclosed by  
40 a carrier's pharmacy benefits manager to the carrier.

41     Only the pharmacy provider that dispensed the prescription drug  
42 shall retain the payment described in this subsection.

43 (cf: P.L.2015, c. 179, s.3)

44  
45     6. (New section) a. Compensation remitted by or on behalf of  
46 a pharmaceutical manufacturer, developer or labeler, directly or  
47 indirectly, to a carrier or to a pharmacy benefits manager under

1 contract with a carrier related to prescription drug benefits shall  
2 be<sup>1</sup> [

3 (1) ]<sup>1 2</sup>;

4 (1) <sup>2</sup>remitted directly to the covered person at the point of sale  
5 to reduce the out-of-pocket cost to the covered person associated  
6 with a particular prescription drug<sup>1</sup> [

7 (2) remitted to, and retained by, the carrier. Compensation  
8 remitted to the carrier shall be applied by the carrier in its plan  
9 design and in future plan years to offset the premium for covered  
10 persons]<sup>1 2</sup>; or

11 (2) remitted to, and retained by, the carrier. Compensation  
12 remitted to the carrier shall be applied by the carrier in its plan  
13 design and in future plan years to offset the premium for covered  
14 persons<sup>2</sup>.

15 b. Beginning on March 1 next following the effective date  
16 of P.L. , c. (C. ) (pending before the Legislature as this  
17 bill), and annually thereafter, a carrier shall file with the department  
18 a report explaining how the carrier has complied with the provisions  
19 of this section. The report shall be written in a manner and form  
20 determined by the department.

21 <sup>1</sup>c. Nothing in this section shall preclude a carrier or pharmacy  
22 benefits manager under contract with a carrier from implementing a  
23 program designed to lower a covered person's out-of-pocket cost or  
24 decreasing a covered person's out-of-pocket cost by an amount  
25 greater than that required under subsection a. of this section.

26 d. As used in this section, "compensation" means any direct or  
27 indirect financial benefit, including, but not limited to, rebates,  
28 discounts, credits, fees, grants, chargebacks or other payments or  
29 benefits of any kind<sup>3</sup>, that is attributed to, directly or indirectly, the  
30 utilization of a health benefits plan or enrollment in a health  
31 benefits plan, regardless of how the benefits are otherwise  
32 characterized by a pharmacy benefits manager and relevant third  
33 parties<sup>3 1</sup>.

34  
35 7. (New section) a. A carrier, or a pharmacy benefits manager  
36 under contract with a carrier, shall establish a pharmacy and  
37 therapeutics committee responsible for managing the formulary  
38 system.

39 b. A carrier, or a pharmacy benefits manager under contract  
40 with a carrier, shall not allow a person with a conflict of interest to  
41 be a member of its pharmacy and therapeutics committee. <sup>1</sup>[A  
42 person shall not serve as a member of a pharmacy and therapeutics  
43 committee if the person:

44 (1) is employed, or was employed within the preceding year, by  
45 a pharmaceutical manufacturer, developer, labeler, wholesaler, or  
46 distributor; or

1 (2) receives compensation, or received compensation within the  
2 preceding year, from a pharmaceutical manufacturer, developer,  
3 labeler, wholesaler, or distributor.】 A carrier, or a pharmacy  
4 benefits manager under contract with a carrier, shall require that its  
5 pharmacy and therapeutics committee meet the requirements for  
6 conflict of interest as set by the Centers for Medicare and Medicaid  
7 Services or meets the accreditation standards of the National  
8 Committee for Quality Assurance or another independent  
9 accrediting organization.<sup>1</sup>

10  
11 8. (New section) a. A carrier <sup>1</sup>or health benefits plan, including  
12 the State Health Benefits Program, the School Employees' Health  
13 Benefits Program, the State Medicaid program, or a self-insured health  
14 benefits plan governed by the provisions of the federal <sup>2</sup>【:Employee】  
15 “Employee<sup>2</sup> Retirement Income Security Act of 1974,” 29 U.S.C.  
16 s.1001 et seq.,<sup>1</sup> shall <sup>1</sup>【maintain and】<sup>1</sup> have the ability to access all  
17 data related to the administration and provision of prescription drug  
18 benefits administered by a pharmacy benefits manager under the  
19 health benefits plan <sup>1</sup>【of the carrier】<sup>1</sup>, including, but not limited to:

20 (1) the names, addresses, member identification numbers,  
21 protected health information and other personal information of covered  
22 persons; and

23 (2) any contracts, documentation, and records, including  
24 transaction and pricing data and post point-of-sale information, related  
25 to the dispensing of prescription drugs to covered persons under the  
26 health benefits plan.

27 b. A sale or transaction involving the transfer of any records,  
28 information or data described in subsection a. of this section must  
29 comply with the federal Health Insurance Portability and  
30 Accountability Act of 1996, Pub. L. No. 104-191, and the federal  
31 Health Information Technology for Economic and Clinical Health Act,  
32 Pub. L. No. 111-5, and any regulations adopted pursuant to those laws.

33 c. A carrier <sup>1</sup>or health benefits plan, including the State Health  
34 Benefits <sup>2</sup>【Plan】 Program<sup>2</sup>, the School Employees' Health Benefits  
35 <sup>2</sup>【Plan】 Program<sup>2</sup>, the State Medicaid program, or a self-insured  
36 health benefits plan<sup>1</sup> may audit all transaction records related to the  
37 dispensing of prescription drugs to covered persons under a health  
38 benefits plan. A carrier <sup>1</sup>or health benefits plan, including the State  
39 Health Benefits <sup>2</sup>【Plan】 Program<sup>2</sup>, the School Employees' Health  
40 Benefits <sup>2</sup>【Plan】 Program<sup>2</sup>, the State Medicaid program, or a self-  
41 insured health benefits plan<sup>1</sup> may conduct audits at a location of its  
42 choosing and with an auditor of its choosing.

43 d. A carrier shall maintain all records, information and data  
44 described in subsection a. of this section and all audit records  
45 described in subsection c. of this section for a period of no less than  
46 five years.

1 e. <sup>1</sup>(1)<sup>1</sup> Upon request, a carrier <sup>1</sup>or pharmacy benefits manager<sup>1</sup>  
2 shall provide to the department any records, contracts, documents or  
3 data held by the carrier or the carrier's pharmacy benefits manager for  
4 inspection, examination or audit purposes. <sup>2</sup>The department shall keep  
5 confidential all information submitted pursuant to this section and  
6 shall protect it from public disclosure.<sup>2</sup> <sup>1</sup>Any records, documents, or  
7 data provided to the department pursuant to this subsection shall not be  
8 considered a government record under P.L.1963, c.73 (C.47:1A-1 et  
9 seq.) or the common law concerning access to government records.

10 (2) A person who is authorized to access information submitted by  
11 a pharmacy benefits manager to the <sup>2</sup>[division] department<sup>2</sup> who  
12 <sup>2</sup>[knowingly] willfully<sup>2</sup> discloses such information to any person or  
13 entity who is not authorized to access the information shall be <sup>2</sup>[guilty  
14 of a crime of the fourth degree and shall be]<sup>2</sup> subject to a civil penalty  
15 in an amount not to exceed <sup>2</sup>[\$10,000] \$500<sup>2</sup>.

16 A civil penalty imposed under this subsection shall be collected by  
17 the <sup>2</sup>[director] commissioner<sup>2</sup> pursuant to the "Penalty Enforcement  
18 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).<sup>1</sup>

19 <sup>2</sup>f. A pharmacy benefits manager shall disclose in writing to a  
20 carrier or health benefits plan any activity, policy, practice, contract or  
21 arrangement of the pharmacy benefits manager that directly or  
22 indirectly presents any conflict of interest with the pharmacy benefits  
23 manager's relationship with or obligation to the carrier or plan.<sup>2</sup>

24  
25 9. (New section) a. If a carrier uses a pharmacy benefits  
26 manager to administer or manage the prescription drug benefits of  
27 covered persons, any pharmacy benefits manager compensation, for  
28 purposes of calculating a carrier's anticipated loss ratio or any loss  
29 ratio calculated as part of any applicable medical loss ratio filing or  
30 rate filing, shall:

31 (1) constitute an administrative cost incurred by the carrier in  
32 connection with a health benefits plan; and

33 (2) not constitute a benefit provided under a health benefits  
34 plan. A carrier shall claim only the amounts paid by the pharmacy  
35 benefits manager to a pharmacy or pharmacist as an incurred claim.

36 b. Any rate filing submitted by a carrier with respect to a health  
37 benefits plan that provides coverage for prescription drugs or  
38 pharmacy services, that is administered or managed by a pharmacy  
39 benefits manager, shall include:

40 (1) a memorandum prepared by a qualified actuary describing  
41 the calculation of the pharmacy benefits manager compensation;  
42 and

43 (2) any records and supporting information as the department  
44 reasonably determines is necessary to confirm the calculation of the  
45 pharmacy benefits manager compensation.

46 c. Upon request, a carrier shall provide any records to the  
47 department that relate to the calculation of the pharmacy benefits

1 manager <sup>1</sup>and pharmacy services administrative organization<sup>1</sup>  
2 compensation.

3 d. A pharmacy benefits manager <sup>1</sup>and pharmacy services  
4 administrative organization<sup>1</sup> shall provide any necessary  
5 documentation requested by a carrier that relates to pharmacy  
6 benefits manager compensation in order to comply with the  
7 requirements of this section.

8  
9 <sup>1</sup>10. Section 1 of P.L.2019, c.257 (C.17B:27F-6) is amended to  
10 read as follows:

11 1. a. A pharmacy benefits manager, in connection with any  
12 contract or arrangement with a private health insurer, prescription  
13 benefit plan, or the State Health Benefits Program or School  
14 Employees' Health Benefits Program, shall not require a covered  
15 person to make a payment at the point of sale for any amount for a  
16 deductible, coinsurance payment, or a copayment for a prescription  
17 drug benefit in an amount that exceeds the amount **[the covered**  
18 **person would pay for the prescription drug if the covered person**  
19 **purchased the prescription drug without using a health benefits**  
20 **plan]** permitted pursuant to subsection d. of section 3 of P.L. ,  
21 c. (C. ) (pending before the Legislature as this bill).

22 b. A pharmacy benefits manager shall not prohibit a network  
23 pharmacy from **[disclosing]**, and shall not apply a penalty or any  
24 other type of disincentive to a network pharmacy **[that discloses,]**  
25 for:

26 (1) disclosing to a covered person lower cost prescription drug  
27 options, including those that are available to the covered person if  
28 the covered person purchases the prescription drug without using  
29 health insurance coverage;

30 (2) providing a covered person with the option of paying the  
31 pharmacy provider's cash price for the purchase of a prescription  
32 drug and not filing a claim with the covered person's health benefits  
33 plan if the cash price is less than the covered person's cost-sharing  
34 amount; or

35 (3) providing information to a State or federal agency, law  
36 enforcement agency, or the department when such information is  
37 required by law.

38 c. Any provision of a contract that conflicts with the provisions  
39 of subsection b. of this section shall be void and unenforceable.

40 d. A violation of this section shall be an unlawful practice and  
41 a violation of P.L.1960, c.39 (C.56:8-1 et seq.), and shall also be  
42 subject to any enforcement action that the Commissioner of  
43 Banking and Insurance is authorized to take pursuant to section 5 of  
44 P.L.2015, c.179 (C.17B:27F-5).<sup>1</sup>

45 (cf: P.L.2019, c.257, s.1)

1       <sup>1</sup>~~10.~~ 11.<sup>1</sup> Section 6 of P.L.2019, c.274 (C.17B:27F-9) is  
2 amended to read as follows:

3       6. The licensing requirements of P.L.2015, c.179 (C.17B:27F-1 et  
4 seq.) shall apply to all pharmacy benefits managers operating in the  
5 State of New Jersey ~~], except for any].~~ Requirements imposed on  
6 carriers by the provisions of P.L.2015, c.179 (C.17B:27F-1 et seq.)  
7 shall not apply to an agreement by a pharmacy benefits manager to  
8 administer prescription drug benefits on behalf of the State Health  
9 Benefits <sup>2</sup>~~Plan~~ Program<sup>2</sup>, the School Employees Health Benefits  
10 <sup>2</sup>~~Plan~~ Program<sup>2</sup>, the State Medicaid program established pursuant to  
11 P.L.1968, c.413 (C.30:4D-1 et seq.), or a self-insured health benefits  
12 plan governed by the provisions of the federal “Employee Retirement  
13 Income Security Act of 1974,” 29 U.S.C., ss.1001 et seq.  
14 (cf: P.L.2019, c.274, s.6)

15  
16       <sup>2</sup>12. Section 7 of P.L.2019, c.274 (C.17B:27F-10) is amended to  
17 read as follows:

18       7. a. A pharmacy benefits manager that violates any provision  
19 of P.L.2015, c.179 (C.17B:27F-1 et seq.) shall be subject to a  
20 penalty in an amount not exceeding the greater of:

- 21       [a. a warning notice;  
22       b. an opportunity to cure the violation within 14 days following  
23 the issuance of the notice;  
24       c. a hearing before the commissioner within 70 days following  
25 the issuance of the notice; and  
26       d. if the violation has not been cured pursuant to subsection b.  
27 of this section,]

28       (1) a penalty of [not less than] \$5,000 [or more than] for a first  
29 violation and a penalty of \$10,000 for each subsequent violation; or  
30 (2) the aggregate gross receipts attributable to all violations.

31       b. In addition to any other penalties permitted by law, the  
32 Commissioner of Banking and Insurance may require a pharmacy  
33 benefits manager that violates the provisions of P.L.2015, c.179  
34 (C.17B:27F-1 et seq.) to make restitution and pay compensatory  
35 damages, in an amount to be determined by the commissioner, to  
36 any person injured by the violation.<sup>2</sup>

37 (cf: P.L.2019, c.274, s.7)

38  
39       <sup>2</sup>13. (New section) The Drug Affordability Council, established  
40 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
41 Senate Bill No. 1615 or Assembly Bill No. 2840 of 2022-2023), shall,  
42 in the first report issued by the council, examine the existing  
43 prescription drug rebate system and evaluate measures and reforms  
44 that could reduce the cost of prescription drugs, including, but not  
45 limited to, the elimination of rebates and the establishment of rebate  
46 transparency provisions.<sup>2</sup>

1       <sup>1</sup>~~11.~~<sup>2</sup>~~12.1~~<sup>14.</sup><sup>2</sup> This act shall take effect on the first day of the  
2       <sup>2</sup>~~seventh~~<sup>18th</sup><sup>2</sup> month next following the date of enactment, <sup>2</sup>~~and~~  
3       shall apply to contracts and agreements entered into, renewed,  
4       modified, or amended on or after the effective date,<sup>2</sup> but the  
5       Commissioner of <sup>2</sup>~~the~~<sup>2</sup> Banking and Insurance may take such  
6       anticipatory administrative action in advance thereof as shall be  
7       necessary for the implementation of the act.