

17B:27F-6, 45:14-67.3 & 45:14-67.4, 26:2S-10.9**LEGISLATIVE HISTORY CHECKLIST**

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LAWS OF: 2019 **CHAPTER:** 257**NJSA:** 17B:27F-6, 45:14-67.3 & 45:14-67.4, 26:2S-10.9 (Prohibits pharmacy benefits managers and carriers from engaging in "clawback" and "gag clause" practices; requires certain disclosures by pharmacists; requires Director of Division of Consumer Affairs to conduct public information campaign.)**BILL NO:** S2690/2727 (Substituted for A3993/2214 (ACS/3R))**SPONSOR(S)** M. Teresa Ruiz and others**DATE INTRODUCED:** 6/11/2018**COMMITTEE:** **ASSEMBLY:** Financial Institutions & Insurance**SENATE:** Commerce**AMENDED DURING PASSAGE:** Yes**DATE OF PASSAGE:** **ASSEMBLY:** 6/20/2019**SENATE:** 6/20/2019**DATE OF APPROVAL:** 8/23/2019**FOLLOWING ARE ATTACHED IF AVAILABLE:****FINAL TEXT OF BILL**

(Senate Committee Substitute (Second Reprint) for Senate enacted) Yes

S2690/2727**INTRODUCED BILL S2690:** (Sponsor's statement begins on page 2) Yes**INTRODUCED BILL S2727:** (Sponsor's statement begins on page 3) Yes**COMMITTEE STATEMENT:** **ASSEMBLY:** No**SENATE:** Yes(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)**FLOOR AMENDMENT STATEMENT:** Yes 1/31/2019
5/23/2019**LEGISLATIVE FISCAL ESTIMATE:** No**A3993/2214****INTRODUCED BILL A3993:** (Sponsor's statement begins on page 2) Yes**INTRODUCED BILL A2214:** (Sponsor's statement begins on page 2) Yes**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes**SENATE:** No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:

Yes 1/31/2019
 3/25/2019
 5/23/2019

LEGISLATIVE FISCAL ESTIMATE:

No

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes

FOLLOWING WERE PRINTED:

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No

RWH/CL

§1 - C.17B:27F-6
§§2,4 -
C.45:14-67.3 &
45:14-67.4
§3 - C.26:2S-10.9
§5 - Note

P.L. 2019, CHAPTER 257, *approved August 23, 2019*
Senate Committee Substitute (*Second Reprint*) for Senate, Nos. 2690 and 2727

1 **AN ACT** concerning pharmacy benefits managers and pharmacies
2 and supplementing P.L.2015, c.179 (C.17B:27F-1 et seq.),
3 P.L.2003, c.280 (C.45:14-40 et seq.), and Title 26 of the Revised
4 Statutes.

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

8
9 1. a. A pharmacy benefits manager, in connection with any
10 contract or arrangement with a private health insurer, prescription
11 benefit plan, or the State Health Benefits Program or School
12 Employees' Health Benefits Program, shall not ²**[charge]** require² a
13 covered person ²to make a payment at the point of sale for any
14 amount for a deductible, coinsurance payment, or² a copayment for
15 a prescription drug benefit in an amount that exceeds the ²**[cost of**
16 the prescription drug that the pharmacy would charge to persons
17 who do not purchase the prescription drug through their health
18 insurance coverage] amount the covered person would pay for the
19 prescription drug if the covered person purchased the prescription
20 drug without using a health benefits plan².

21 b. A pharmacy benefits manager shall not prohibit a network
22 pharmacy from disclosing ², and shall not apply a penalty or any
23 other type of disincentive to a network pharmacy that discloses,² to
24 a covered person lower cost prescription drug options, including
25 those that are available to the covered person if the covered person
26 purchases the prescription drug without using health insurance
27 coverage.

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

30 d. A violation of this section shall be an unlawful practice and
31 a violation of P.L.1960, c.39 (C.56:8-1 et seq.) ², and shall also be
32 subject to any enforcement action that the Commissioner of
33 Banking and Insurance is authorized to take pursuant to section 5 of
34 P.L.2015, c.179 (C.17B:27F-5)².

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:

¹ Senate floor amendments adopted January 31, 2019.

² Assembly floor amendments adopted May 23, 2019.

2. Notwithstanding any law or contract to the contrary, a pharmacist at a pharmacy practice site shall inform each patient, at the time of taking an order from a patient for home delivery or at the time of dispensing a prescription drug to the patient at the practice site:

a. of the lowest cost option for the prescription drug; and

b. whether there is an alternative drug that is less expensive and interchangeable with the prescription drug, and if needed, that the consumer can discuss with the prescribing health care provider whether the alternative drug would be appropriate for the consumer.

¹3. a. When a carrier provides coverage for a prescription drug under a covered person's health insurance policy or health benefits plan, and the covered person elects not to use that coverage to purchase the prescription drug but instead purchases the prescription drug at a lesser cost than the covered person's copayment for that prescription drug if the covered person purchased the prescription drug using that coverage, then the carrier shall apply the amount of the lesser cost actually paid toward any individual or family out-of-pocket limits for that covered person's policy for that policy period, provided the covered person provides the carrier with a sales receipt that documents the amount the covered person paid for the prescription drug.

b. A carrier shall provide an annual notice to covered persons regarding the right of covered persons to have the costs that they actually paid applied to out-of-pocket limits for the policy under the circumstances set forth in subsection a. of this section.¹

¹3. a. A carrier that provides benefits for prescription drugs shall not ²[charge] require² a covered person ²to make a payment at the point of sale for any amount for a deductible, coinsurance payment, or² a copayment for a prescription drug benefit in an amount that exceeds the ²[cost of the prescription drug that the pharmacy would charge to persons who do not purchase the prescription drug through their health insurance coverage] amount the covered person would pay for the prescription drug if the covered person purchased the prescription drug without using a health benefits plan².

b. A carrier shall not prohibit a network pharmacy from disclosing ², and shall not apply a penalty or any other type of disincentive to a network pharmacy that discloses,² to a covered person lower cost prescription drug options, including those that are available to the covered person if the covered person purchases the prescription drug without using health insurance coverage.

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

1 d. A violation of this section shall be an unlawful practice and
2 a violation of P.L.1960, c.39 (C.56:8-1 et seq.)², and shall also be
3 subject to any enforcement action that the Commissioner of
4 Banking and Insurance is authorized to take pursuant to section 5 of
5 P.L.2015, c.179 (C.17B:27F-5)².¹
6

7 4. The ²**Commissioner** Director² of ²**Health** the Division
8 of Consumer Affairs in the Department of Law and Public Safety²
9 shall develop a public information campaign to educate consumers
10 in this State about their right to ¹**]:**

11 (1)¹ ask a pharmacist about the lowest cost option for any
12 prescription drug ¹**];** and

13 (2) have their costs actually paid applied to out-of-pocket limits
14 for the policy under the circumstances set forth in subsection a. of
15 section 3 of this act¹.

16 As part of the information campaign, the ²**commissioner**
17 director² shall develop a method that informs consumers about
18 these rights, in a highly visible location near the point of purchase
19 for prescription drugs. The ²**commissioner** director² shall
20 integrate the consumer notification with other consumer
21 informational requirements for pharmacists.
22

23 5. This act shall take effect on the 90th day next following
24 enactment.
25
26
27

28

29 Prohibits pharmacy benefits managers and carriers from
30 engaging in “clawback” and “gag clause” practices; requires certain
31 disclosures by pharmacists; requires Director of Division of
32 Consumer Affairs to conduct public information campaign.

SENATE, No. 2690

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 11, 2018

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

Senator JAMES BEACH

District 6 (Burlington and Camden)

Co-Sponsored by:

Senators Diegnan and Turner

SYNOPSIS

Prohibits pharmacy benefits managers from collecting “clawback” copayments; requires certain language prohibiting “gag clauses” in contracts with pharmacists; provides certain penalties.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/28/2018)

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

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

7 1. a. A pharmacy benefits manager, in connection with any
8 contract or arrangement with a private health insurer, prescription
9 benefit plan, or the State Health Benefits Program or School
10 Employees' Health Benefits Program, shall not charge a covered
11 person a copayment for a prescription drug benefit in an amount
12 that exceeds the cost of the prescription drug that the pharmacy
13 would charge to persons who do not purchase the prescription drug
14 through their health insurance coverage.

15 b. A pharmacy benefits manager shall include in any contract
16 between the pharmacy benefits manager and a pharmacy, language
17 that permits the pharmacy to disclose to a covered person lower cost
18 prescription drug options, including those that are available to the
19 covered person if the covered person purchases the prescription
20 drug without using health insurance coverage.

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

23 d. A violation of this section shall be an unlawful practice and
24 a violation of the New Jersey consumer fraud act, P.L.1960, c.39
25 (C.56:8-1 et seq.).
26

27 2. This act shall take effect on the 90th day next following
28 enactment.
29
30

31 STATEMENT
32

33 This bill addresses "clawback schemes" by prohibiting a
34 pharmacy benefits manager, in connection with any contract or
35 arrangement with a private health insurer, prescription benefit plan,
36 or the State Health Benefits Program or School Employees' Health
37 Benefits Program, from charging a covered person a copayment for
38 a prescription drug benefit in an amount that exceeds the cost of the
39 prescription drug that the pharmacy would charge to persons who
40 do not purchase the drug through their health insurance coverage.

41 The bill also addresses "gag clauses" by requiring a pharmacy
42 benefits manager to include in any contract between the pharmacy
43 benefits manager and a pharmacy, language that permits the
44 pharmacy to disclose to a covered person lower cost prescription
45 drug options, including those that are available to the covered
46 person if the covered person purchases the prescription drug
47 without using health insurance coverage.

S2690 CRYAN, BEACH

3

1 The bill makes a provision of a contract that conflicts with the
2 bill's prohibitions on "gag clauses" void and unenforceable. The
3 bill also provides that a violation of any provision of the bill is a
4 violation of New Jersey's consumer fraud act.

SENATE, No. 2727

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 14, 2018

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Prohibits pharmacy benefits managers from engaging in “clawback” and “gag clause” practices; requires certain price disclosures by pharmacists; requires Commissioner of Health to conduct public information campaign.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2018)

1 AN ACT concerning pharmacy benefits managers and pharmacies
2 and supplementing P.L.2015, c.179 (C.17B:27F-1 et seq.),
3 P.L.2003, c.280 (C.45:14-40 et seq.), and Title 26 of the Revised
4 Statutes.

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

8
9 1. a. A pharmacy benefits manager, in connection with any
10 contract or arrangement with a private health insurer, prescription
11 benefit plan, or the State Health Benefits Program or School
12 Employees' Health Benefits Program, shall not charge a covered
13 person a copayment for a prescription drug benefit in an amount
14 that exceeds the cost of the prescription drug that the pharmacy
15 would charge to persons who do not purchase the prescription drug
16 through their health insurance coverage.

17 b. A pharmacy benefits manager shall include, in any contract
18 between the pharmacy benefits manager and a pharmacy, language
19 that permits the pharmacy to disclose to a covered person lower cost
20 prescription drug options, including those that are available to the
21 covered person if the covered person purchases the prescription
22 drug without using health insurance coverage.

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

25 d. A violation of this section shall be an unlawful practice and
26 a violation of P.L.1960, c.39 (C.56:8-1 et seq.).

27
28 2. Notwithstanding any law or contract to the contrary, a
29 pharmacist at a pharmacy practice site shall inform each patient, at
30 the time of taking an order from a patient for home delivery or at
31 the time of dispensing a prescription drug to the patient at the
32 practice site, of the lowest cost option for the prescription drug.

33
34 3. a. The Commissioner of Health shall develop a public
35 information campaign to educate consumers in this State about the
36 lowest cost options for prescription drugs. As part of the
37 information campaign, the commissioner shall develop a poster that
38 informs consumers about their right to ask a pharmacist about the
39 lowest cost option for any prescription drug.

40 b. A pharmacist at a pharmacy practice site shall display the
41 poster required by subsection a. of this section in a highly visible
42 location near the point of purchase for prescription drugs.

43
44 4. This act shall take effect on the 90th day next following
45 enactment.

STATEMENT

This bill addresses “clawback schemes” by prohibiting a pharmacy benefits manager, in connection with any contract or arrangement with a private health insurer, prescription benefit plan, or the State Health Benefits Program or School Employees’ Health Benefits Program, from charging a covered person a copayment for a prescription drug benefit in an amount that exceeds the cost of the prescription drug that the pharmacy would charge to persons who do not purchase the drug through their health insurance coverage.

The bill also addresses “gag clauses” by requiring a pharmacy benefits manager to include, in any contract between the pharmacy benefits manager and a pharmacy, language that permits the pharmacy to disclose to a covered person lower cost prescription drug options, including those that are available to the covered person if the covered person purchases the prescription drug without using health insurance coverage.

The bill makes a provision of a contract that conflicts with the bill’s prohibitions on “gag clauses” void and unenforceable. The bill also provides that a violation of any provision of the bill is a violation of New Jersey’s consumer fraud act.

The bill also provides that a pharmacist at a pharmacy practice site shall inform each patient of the lowest cost option for the prescription drug, at the time of taking an order from the patient for home delivery or at the time of dispensing a prescription drug to the patient at the practice site.

Finally, the bill requires the Commissioner of Health to develop a public information campaign to educate consumers in this State about the lowest cost options for prescription drugs. As part of the information campaign, the commissioner shall develop a poster that informs consumers about their right to ask a pharmacist about the lowest cost option for any prescription drug. The bill further requires pharmacists to display the poster required in a highly visible location near the point of purchase for prescription drugs at the pharmacy practice site.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2690 and 2727**

STATE OF NEW JERSEY

DATED: JANUARY 17, 2019

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill Nos. 2690 and 2727.

This bill, a committee substitute for Senate Bill Nos. 2690 and 2727, addresses “clawback schemes” by prohibiting a pharmacy benefits manager, in connection with any contract or arrangement with a private health insurer, prescription benefit plan, or the State Health Benefits Program or School Employees’ Health Benefits Program, from charging a covered person a copayment for a prescription drug benefit in an amount that exceeds the cost of the prescription drug that the pharmacy would charge to persons who do not purchase the drug through their health insurance coverage.

The substitute also addresses “gag clauses” by requiring a pharmacy benefits manager to not prohibit a network pharmacy from disclosing to a covered person lower cost prescription drug options, including those that are available to the covered person if the covered person purchases the prescription drug without using health insurance coverage.

The bill makes a provision of a contract that conflicts with the bill’s prohibitions on “gag clauses” void and unenforceable. The bill also provides that a violation of any provision of the bill is a violation of New Jersey’s consumer fraud act.

The bill also provides that a pharmacist at a pharmacy practice site shall inform each patient, at the time of taking an order from the patient for home delivery or at the time of dispensing a prescription drug to the patient at the practice site:

- (1) of the lowest cost option for the prescription drug; and
- (2) whether there is an alternative drug that is less expensive and interchangeable with the prescription drug, and if needed, that the consumer can discuss with the prescribing health care provider whether the alternative drug would be appropriate for the consumer.

The bill provides that when a carrier provides coverage for a prescription drug under a covered person’s health insurance policy or health benefits plan, and the covered person elects not to use that coverage to purchase the prescription drug but instead purchases the prescription drug at a lesser cost than the covered person’s copayment for that prescription drug if the covered person purchased the

prescription drug using that coverage, then the carrier must apply the amount of the lesser cost actually paid toward any individual or family out-of-pocket limits for that covered person's policy for that policy period, provided the covered person provides the carrier with a sales receipt that documents the amount the covered person paid for the prescription drug.

The bill requires carriers to provide an annual notice to covered persons regarding the right of covered persons to have the costs that they actually paid applied to out-of-pocket limits for the policy.

Finally, the bill requires the Commissioner of Health to develop a public information campaign to educate consumers in this State about the lowest cost options for prescription drugs. As part of the information campaign, the commissioner must develop a method that informs consumers about these rights, in a highly visible location near the point of purchase for prescription drugs. The bill requires the commissioner to integrate the consumer notification with other consumer informational requirements for pharmacists.

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2690 and 2727

with Senate Floor Amendments
(Proposed by Senator RUIZ)

ADOPTED: JANUARY 31, 2019

These Senate amendments prohibit health insurance carriers from charging a covered person a copayment for a prescription drug benefit in an amount that exceeds the cost of the prescription drug that the pharmacy would charge to persons who do not purchase the prescription drug through their health insurance coverage.

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2690 and 2727**

with Assembly Floor Amendments
(Proposed by Assemblyman McKEON)

ADOPTED: MAY 23, 2019

These amendments revise the prohibition in the committee substitute against pharmacy benefit managers regarding charges to covered persons, so that pharmacy benefits managers shall not require a covered person to make a payment at the point of sale for any amount for a deductible, coinsurance payment, or a copayment for a prescription drug benefit in an amount that exceeds the amount the covered person would pay for the prescription drug without using a health benefits plan.

The amendments also provide that a pharmacy benefits manager shall not apply a penalty or any other type of disincentive to a network pharmacy that discloses to a covered person lower cost prescription drug options.

The amendments also clarify that a violation by a pharmacy benefits manager of certain of the bill's provisions shall be subject to any enforcement action that the Commissioner of Banking and Insurance is authorized to take pursuant to section 5 of P.L.2015, c.179 (C.17B:27F-5), in addition to constituting a violation of P.L.1960, c.39 (C.56:8-1 et seq.).

The amendments also apply these same provisions to health insurance carriers.

These amendments provide that the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, instead of the Commissioner of Health, shall develop a public information campaign to educate consumers about their rights under the bill, which includes notification of consumer rights near the point of purchase for prescription drugs.

ASSEMBLY, No. 3993

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 17, 2018

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

Prohibits pharmacy benefits managers from collecting “clawback” copayments; requires certain language prohibiting “gag clauses” in contracts with pharmacists; provides certain penalties.

CURRENT VERSION OF TEXT

As introduced.



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

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

7 1. a. A pharmacy benefits manager, in connection with any
8 contract or arrangement with a private health insurer, prescription
9 benefit plan, or the State Health Benefits Program or School
10 Employees' Health Benefits Program, shall not charge a covered
11 person a copayment for a prescription drug benefit in an amount
12 that exceeds the cost of the prescription drug that the pharmacy
13 would charge to persons who do not purchase the prescription drug
14 through their health insurance coverage.

15 b. A pharmacy benefits manager shall include in any contract
16 between the pharmacy benefits manager and a pharmacy, language
17 that permits the pharmacy to disclose to a covered person lower cost
18 prescription drug options, including those that are available to the
19 covered person if the covered person purchases the prescription
20 drug without using health insurance coverage.

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

23 d. A violation of this section shall be an unlawful practice and
24 a violation of the New Jersey consumer fraud act, P.L.1960, c.39
25 (C.56:8-1 et seq.).
26

27 2. This act shall take effect on the 90th day next following
28 enactment.
29
30

31 STATEMENT 32

33 This bill addresses "clawback schemes" by prohibiting a
34 pharmacy benefits manager, in connection with any contract or
35 arrangement with a private health insurer, prescription benefit plan,
36 or the State Health Benefits Program or School Employees' Health
37 Benefits Program, from charging a covered person a copayment for
38 a prescription drug benefit in an amount that exceeds the cost of the
39 prescription drug that the pharmacy would charge to persons who
40 do not purchase the drug through their health insurance coverage.

41 The bill also addresses "gag clauses" by requiring a pharmacy
42 benefits manager to include in any contract between the pharmacy
43 benefits manager and a pharmacy, language that permits the
44 pharmacy to disclose to a covered person lower cost prescription
45 drug options, including those that are available to the covered
46 person if the covered person purchases the prescription drug
47 without using health insurance coverage.

1 The bill makes a provision of a contract that conflicts with the
2 bill's prohibitions on "gag clauses" void and unenforceable. The
3 bill also provides that a violation of any provision of the bill is a
4 violation of New Jersey's consumer fraud act.

ASSEMBLY, No. 2214

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Assemblyman BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

Assemblyman R. BRUCE LAND

District 1 (Atlantic, Cape May and Cumberland)

Co-Sponsored by:

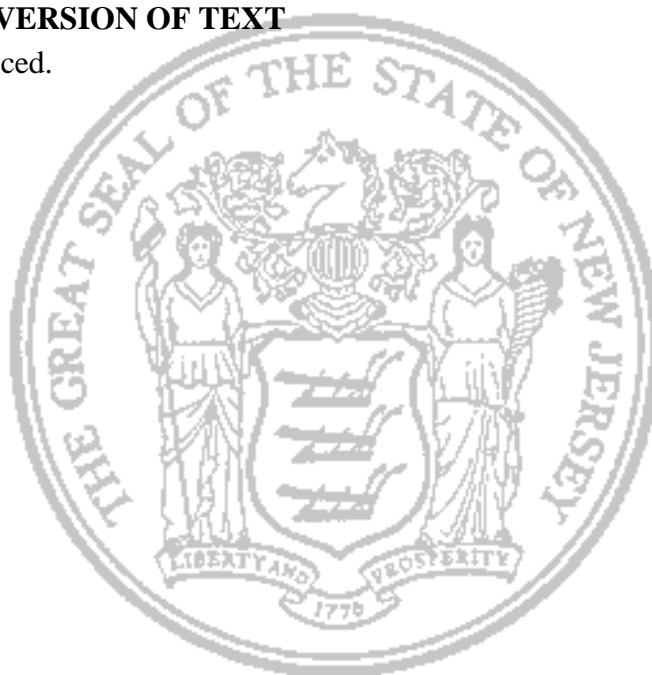
Assemblyman A.M.Bucco and Assemblywoman Murphy

SYNOPSIS

Prohibits pharmacy benefits managers from collecting copayments in excess of certain amounts - “clawbacks”; requires certain language prohibiting “gag clauses” in contracts with pharmacists.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/12/2018)

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

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

7 1. a. A pharmacy benefits manager, in connection with any
8 contract or arrangement with a private health insurer, prescription
9 benefit plan, or the State Health Benefits Program or School
10 Employees' Health Benefits Program, shall not charge a covered
11 person a copayment for a prescription drug benefit in an amount
12 that exceeds the cost of the prescription drug that the pharmacy
13 would charge to persons who do not purchase the prescription drug
14 through their health insurance coverage.

15 b. A pharmacy benefits manager shall include in any contract
16 between the pharmacy benefits manager and a pharmacy, language
17 that permits the pharmacy to disclose to a covered person lower cost
18 prescription drug options, including those that are available to the
19 covered person if the covered person purchases the prescription
20 drug without using health insurance coverage.
21

22 2. This act shall take effect on the 90th day next following
23 enactment.
24
25

26 STATEMENT 27

28 This bill addresses "clawback schemes" by prohibiting a
29 pharmacy benefits manager, in connection with any contract or
30 arrangement with a private health insurer, prescription benefit plan,
31 or the State Health Benefits Program or School Employees' Health
32 Benefits Program, from charging a covered person a copayment for
33 a prescription drug benefit in an amount that exceeds the cost of the
34 prescription drug that the pharmacy would charge to persons who
35 do not purchase the drug through their health insurance coverage.
36 The bill also requires a pharmacy benefits manager to include in
37 any contract between the pharmacy benefits manager and a
38 pharmacy, language that permits the pharmacy to disclose to a
39 covered person lower cost prescription drug options, including
40 those that are available to the covered person if the covered person
41 purchases the prescription drug without using health insurance
42 coverage.

43 The sponsor became aware of "clawback schemes," as well as
44 "gag clauses" that prevent pharmacists from telling their consumers
45 about lower price options, from a national media news (NBC News)
46 article. The sponsor considers this bill to be an important consumer
47 protection measure, especially in light of the switch by the State
48 Health Benefits Program to OptumRx as its pharmacy benefits

1 manager as of January 1, 2018, and that OptumRx is currently the
2 subject of two class action lawsuits.

3 According to the NBC News article, as of September, 2017, a
4 total of 11 states have enacted laws to prohibit clawback practices
5 or the use of gag clauses by pharmacy benefits managers.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3993 and 2214

STATE OF NEW JERSEY

DATED: JUNE 11, 2018

The Assembly Financial Institutions and Insurance Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3993 and 2214.

This bill, the Assembly Committee Substitute for Assembly Bill Nos. 3993 and 2214, addresses “clawback schemes” by prohibiting a pharmacy benefits manager, in connection with any contract or arrangement with a private health insurer, prescription benefit plan, or the State Health Benefits Program or School Employees’ Health Benefits Program, from charging a covered person a copayment for a prescription drug benefit in an amount that exceeds the cost of the prescription drug that the pharmacy would charge to persons who do not purchase the drug through their health insurance coverage.

The bill also addresses “gag clauses” by preventing a pharmacy benefits manager from prohibiting a pharmacy from disclosing to a covered person lower cost prescription drug options, including those that are available to the covered person if the covered person purchases the prescription drug without using health insurance coverage.

The bill makes any provision of a contract that conflicts with the bill’s provisions void and unenforceable. The bill also provides that a violation of any provision of the bill is a violation of New Jersey’s consumer fraud act.

STATEMENT TO

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3993 and 2214**

with Assembly Floor Amendments
(Proposed by Assemblyman MCKEON)

ADOPTED: JANUARY 31, 2019

These amendments require pharmacists at a pharmacy practice site to inform each patient, at the time of taking an order from a patient for home delivery or at the time of dispensing a prescription drug to the patient at the practice site of the lowest cost option for the prescription drug, and whether there is an alternative drug that is less expensive and interchangeable with the prescription drug, and if needed, that the consumer can discuss with the prescribing health care provider whether the alternative drug would be appropriate for the consumer.

The amendments prohibit health insurance carriers from charging a covered person a copayment for a prescription drug benefit in an amount that exceeds the cost of the prescription drug that the pharmacy would charge to persons who do not purchase the prescription drug through their health insurance coverage.

The amendments also require the Commissioner of Health to develop a public information campaign to educate consumers in this State about their right to ask a pharmacist about the lowest cost option for any prescription drug.

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 3993 and 2214**

with Assembly Floor Amendments
(Proposed by Assemblyman MCKEON)

ADOPTED: MARCH 25, 2019

These amendments revise the prohibition in the committee substitute against pharmacy benefit managers regarding charges to covered persons, so that pharmacy benefits managers shall not require a covered person to make a payment at the point of sale for any amount for a deductible, coinsurance payment, or a copayment for a prescription drug benefit in an amount that exceeds the amount the covered person would pay for the prescription drug without using a health benefits plan.

The amendments also provide that a pharmacy benefits manager shall not apply a penalty or any other type of disincentive to a network pharmacy that discloses to a covered person lower cost prescription drug options.

The amendments also clarify that a violation by a pharmacy benefits manager of certain of the bill's provisions shall be subject to any enforcement action that the Commissioner of Banking and Insurance is authorized to take pursuant to section 5 of P.L.2015, c.179 (C.17B:27F-5), in addition to constituting a violation of P.L.1960, c.39 (C.56:8-1 et seq.).

The amendments also apply these same provisions to health insurance carriers.

STATEMENT TO

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 3993**

with Assembly Floor Amendments
(Proposed by Assemblyman MCKEON)

ADOPTED: MAY 23, 2019

These amendments provide that the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, instead of the Commissioner of Health, shall develop a public information campaign to educate consumers about their rights under the bill, which includes notification of consumer rights near the point of purchase for prescription drugs.

Governor Murphy Takes Action on Legislation

08/23/2019

Governor Murphy Takes Action on Legislation

TRENTON – Today, Governor Phil Murphy signed the following bills and resolutions into law:

A3118 (Burzichelli, Schepisi, Jasey/Bucco, Thompson) - Establishes licensure for master hearth specialists.

A4420 (Holley/Scutari) - Modifies certain fees charged by check casher licensees.

A4482 (Verrelli, Murphy, Downey/Greenstein) - Establishes "Task Force on the Prevention of Sexual Violence Against Persons with Developmental Disabilities" in DHS.

A5293 (Pinkin, Zwicker, Lopez, McKeon/Smith, Bateman, Greenstein) - Makes various changes to laws governing remediation of contaminated sites.

A5390 (Tucker, Mukherji, Timberlake/Gopal, Oroho) - Provides in-State tuition at public institutions of higher education to individuals living in NJ who are entitled to educational assistance under US Department of Veterans Affairs' Vocational Rehabilitations and Employment Program.

S499 (Vitale, Madden/Downey, Houghtaling, Zwicker) - Provides for improved system for eligibility determination for Medicaid and NJ FamilyCare.

[Copy of Statement on S499](#)

S785 (Sarlo, Lagana/Calabrese, Mukherji) - Requires Police Training Commission to develop supplemental training course for certain county corrections officers.

S1014 (Rice/Wimberly, Mukherji) - Changes composition of State Employment and Training Commission.

S1126 (Bucco, Doherty, Bucco/Coughlin, Webber) - Requires public school districts to provide instruction on "New Jersey Safe Haven Infant Protection Act" as part of New Jersey Student Learning Standards.

S1403 (Diegnan, Singleton/DeAngelo, Mazzeo, Sumter) - Permits service credit transferred from another State-administered retirement system to apply toward creditable service requirement for retirement in SPRS.

S1887 (Singleton, Greenstein/DeAngelo, Wirths, Space) - Directs Commissioner of Labor and Workforce Development to establish pilot program to assist certain unemployed and underemployed individuals to complete industry-valued Credentials in 12 months.

S1948 (Vitale/Quijano, Holley, Lopez) - Makes Supplemental Nutrition Assistance Program Employment and Training Provider Demonstration Project permanent and renames program.

S2507 (Singleton, Pou/Danielsen, DeCroce) - Prohibits sale or lease of access to certain dental provider network contracts.

S2538 (Singleton, Pennacchio/Kean, Murphy, DeCroce, Armato) - Makes New Jersey National Guard members with NGB-22 form eligible for certain veterans' benefits.

S2660 (Gopal, Sarlo/Downey, Houghtaling, Schaer) - Establishes grant program and tuition reimbursement program for certain teachers of science, technology, engineering, and mathematics; appropriates \$5 million to DOE.

[Copy of Statement on S2660](#)

S2690 (Ruiz, Cryan, Beach, Turner, Andrzejczak/McKeon, Dancer, Land) - Prohibits pharmacy benefits managers and carriers from engaging in "clawback" and "gag clause" practices; requires certain disclosures by pharmacists; requires Director of Division of Consumer Affairs to conduct public information campaign.

S2691 (Kean, Cunningham/Quijano, Vainieri Huttie, Reynolds-Jackson) - Makes supplemental appropriation of \$100,000 to Commission on Human Trafficking.

[Copy of Statement on S2691](#)

S3100 (Weinberg, Addiego/Benson, Vainieri Huttie, Mukherji) - Revises definition of hemophilia and expands hemophilia treatment program.

SJR73 (Singleton/Murphy, Verrelli, Dancer) - Urges U.S. Congress to pass "Military Hunger Prevention Act."

Governor Murphy conditionally vetoed the following bills:

A3717 (Mukherji, Downey, Houghtaling/Greenstein, Gopal) - 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.

[Copy of Statement on A3717](#)

A5363 (Burzichelli, Benson, Murphy/Gopal) - Requires carriers that offer health benefits plans to provide new or existing subscribers with notification of certain hospital and health system contract expirations.

[Copy of Statement on A5363](#)

S834 (Scutari, Greenstein/Jones, Pintor Marin) - Prohibits resale of non-prescription diabetes test devices by pharmacists.

[Copy of Statement on S834](#)

S2804 (Ruiz, Turner/Lopez, McKnight, Verrelli) - Requires young children entering public schools or Head Start Programs for first time to have comprehensive eye examination completed.

[Copy of Statement on S2804](#)

S3075 (Weinberg, Ruiz/Lampitt, Mukherji, Vainieri Huttie) - Requires DOH to regulate and license embryo storage facilities.

[Copy of Statement on S3075](#)

S3309 (Vitale, Greenstein/Greenwald, Pintor Marin, Reynolds-Jackson) - Establishes New Jersey Violence Intervention Program to fund violence reduction initiatives.

[Copy of Statement on S3309](#)

S3330 (Addiego, Singleton/Jones, Vainieri Huttie, Lampitt, Murphy) - Establishes pilot program in DCF to study impact of child care services provided by community providers operating in public school facilities; requires community providers to meet certain criteria.

[Copy of Statement on S3330](#)

S3661 (Singleton, Oroho/Jasey, Wirths, Webber) - Clarifies assessment payment and election participation requirements in planned real estate developments.

[Copy of Statement on S3661](#)

Governor Murphy absolute vetoed the following bills and resolutions:

A4135 (Land, Taliaferro/Sweeney, Andrzejczak) - Concerns use of digital parking meters to monitor parking compliance; establishes fund to encourage designated drivers.

[Copy of Statement on A4135](#)

AJR158 (Houghtaling, Downey, Mosquera/Gopal) - Establishes New Jersey Task Force on Medicaid Financial

Resource Limits.

[Copy of Statement on AJR158](#)

S1364 (Andrzejczak/Land, Milam) - Provides funding from the General Fund to the Greater Wildwoods Tourism Improvement and Development Authority; appropriates \$4 million.

[Copy of Statement on S1364](#)