CHAPTER 274

AN ACT concerning pharmacy benefits managers and amending and supplementing P.L.2015, c.179.

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

C.17B:27F-7 "Clean Claim" made by a pharmacy, actions of pharmaceutical benefits managers.

1. a. After the date of receipt of a clean claim for payment made by a pharmacy, a pharmacy benefits manager shall not retroactively reduce payment on the claim, either directly or indirectly, through aggregated effective rate, direct or indirect remuneration, quality assurance program, or otherwise,except if the claim is found not to be a clean claim during the course of a routine audit performed pursuant to an agreement between the pharmacy benefits manager and the pharmacy. When a pharmacy adjudicates a claim at the point of sale, the reimbursement amount provided to the pharmacy by the pharmacy benefits manager shall constitute a final reimbursement amount. Nothing in this section shall be construed to prohibit any retroactive increase in payment to a pharmacy pursuant to a contract between the pharmacy benefits manager, and the pharmacy services administration organization, or a pharmacy.

b. For the purpose of this section, "clean claim" means a claim that has no defect or impropriety, including a lack of any required substantiating documentation, or other circumstance requiring special treatment, including, but not limited to, those listed in subsection d. of this section, that prevents timely payment from being made on the claim.

c. A pharmacy benefit manager shall not recoup funds from a pharmacy in connection with claims for which the pharmacy has already been paid unless the recoupment is:

(1) otherwise permitted or required by law;

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

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

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

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

(2) other investigative methods indicate a pharmacy is or has been engaged in criminal wrongdoing, fraud or other intentional or willful misrepresentation.

2. Section 1 of P.L.2015, c.179 (C.17B:27F-1) is amended to read as follows:

C.17B:27F-1 Definitions relative to pharmacy benefits managers.

1. As used in this act:

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

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

a. the pharmacy benefits manager directly;

b. a pharmacy services administration organization; or

c. a pharmacy group purchasing organization.

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

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

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

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

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

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

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

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

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

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

C.17B:27F-2 Duties of pharmacy benefits manager relative to contracts.

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

a. (1) include in the contract the sources utilized to determine multiple source generic drug pricing, brand drug pricing, and the wholesaler in the State of New Jersey where pharmacies may acquire the product including, if applicable, the brand effective rate, generic effective rate, dispensing fee effective rate, maximum allowable cost or any other pricing formula for pharmacy reimbursement;

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

(3) establish a reasonable process by which contracted pharmacies have a method to access relevant maximum allowable cost pricing lists, brand effective rate, generic effective

rate, and dispensing fee effective rate, or any other pricing formulas for pharmacy reimbursement; and

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

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

C.17B:27F-4 Process for appeals, investigation and dispute.

4. All contracts between a pharmacy benefits manager and a pharmacy services administrative organization, or its contracted pharmacies, and all contracts directly between a pharmacy benefits manager and a pharmacy shall include a process to appeal, investigate, and resolve disputes regarding brand andmultiple source generic drug pricing, including, if applicable, brand effective rate, generic effective rate, dispensing fee effective rate, and any other pricing formula for pharmacy reimbursement. The contract provision establishing the process shall include the following:

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

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

c. A telephone number at which a pharmacy services administrative organization, or a pharmacy may contact the pharmacy benefits manager and speak with an individual who is involved in the appeals process; and

d. (1) If the appeal is denied, the pharmacy benefits manager shall:

(a) provide the reason for the denial to the pharmacy services administrative organization and its contracted pharmacies, and the pharmacy services administrative organization shall inform its contracted pharmacies of the availability, location and pricing of the appealed drug in the State;

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

(c) identify the national drug code of a drug product that is available for purchase by the specific contracted pharmacy appealing the claim in this State from wholesalers registered pursuant to P.L.1961, c.52 (C.24:6B-1 et seq.) at a price which is available to the specific contracted pharmacy appealing the claim and which is equal to or less than the maximum allowable cost or the brand effective rate, generic effective rate or other pricing for the appealed drug as determined by the pharmacy benefits manager; and

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

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

e. A pharmacy benefits manager shall not terminate a pharmacy licensed in the State of New Jersey solely on the basis that the pharmacy offers and provides store direct delivery and mail prescriptions to an insured as an ancillary service.

C.17B:27F-8 Commissioner review, approval.

5. The Commissioner of Banking and Insurance may review and approve the compensation program of a pharmacy benefits manager with a health benefits plan to ensure that the reimbursement for pharmacist services paid to a pharmacist or pharmacy is fair and reasonable to provide an adequate pharmacy benefits manager network for a health benefits plan.

C.17B:27F-9 Applicability of C.17B:27F-1 et seq.

6. P.L.2015, c.179 (C.17B:27F-1 et seq.) shall apply to all pharmacy benefits managers operating in the State of New Jersey, except for any agreement by a pharmacy benefits manager to administer prescription drug benefits on behalf of the State Health Benefits Plan, the School Employees Health Benefits Plan, the State Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or a self-insured health benefits plan governed by the provisions of the federal "Employee Retirement Income Security Act of 1974," 29 U.S.C. s.1001 et seq.

C.17B:27F-10 Violations, penalties.

7. A pharmacy benefits manager that violates any provision of P.L.2015, c.179 (C.17B:27F-1 et seq.) shall be subject to:

a. a warning notice;

b. an opportunity to cure the violation within 14 days following the issuance of the notice;

c. a hearing before the commissioner within 70 days following the issuance of the notice; and

d. if the violation has not been cured pursuant to subsection b. of this section, a penalty of not less than $5,000 or more than $10,000 for each violation.

8. This act shall take effect on the 90th day next following enactment, except that section 7 of P.L.2019, c.274 (C.17B:27F-10) shall take effect following the promulgation of regulations by the Department of Banking and Insurance implementing that section.

Approved December 19, 2019.