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COHEN/GREENSTEIN BILL TO REGULATE PHARMACY BENEFITS MANAGEMENT COMPANIES ADVANCES

(TRENTON) – Legislation Assembly members Neil M. Cohen and Linda R. Greenstein sponsored to regulate pharmacy benefits management (PBM) companies – corporations that manage prescription drug benefit programs for sponsors of health care plans in New Jersey – was released today by the Assembly Financial Institutions and Insurance Committee.

PBMs contract with various organizations and employers in the state, including managed care organizations, self-insured employers, insurance companies, and Medicaid- and Medicare-managed care plans. A largely unregulated industry, PBMs currently manage approximately 70 percent of the more than three billion prescriptions dispensed annually in the United States.

Concern over the operation of PBMs in New Jersey was first raised during the 2005 Governor’s race. In January 2006, the Assembly Financial Institutions and Insurance Committee held a hearing on the operation of PBMs, taking testimony from various groups associated with PBMs, including pharmacists, representatives of national PBMs, and consumer organizations.

“PBMs remain the only unregulated industry directly involved in the delivery and cost of prescription drug benefits to New Jerseyans,” said Cohen (D-Union), chairman of the panel. “With their ability to control approved drug lists and unilaterally switch or swap drugs for prescribed treatments without medical authorization, PBMs require regulation to ensure patient safety.”

The Cohen/Greenstein legislation (A-1578) would provide for the regulation of PBMs managing prescription drug benefits in the state.

Under the bill, PBMs managing prescription drug benefits for New Jersey health care providers would have to apply for a renewable three-year certification from the New Jersey Department of Banking and Insurance (DOBI), which would oversee their regulation.

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The legislation would define the business activities that a DOBI-certified PBM may conduct in the state, as well as the disclosures a PBM would be required to make to individuals whose pharmacy benefits they manage. PBMs would be required to reveal rebates and discounts to clients as they relate to health benefits plans that have purchased PBM services. PBMs also would be required to establish a complaint resolution mechanism to resolve grievances submitted by pharmacists, health care prescribers and covered individuals.

According to the sponsors, the manner in which many PBMs currently do business suggests the need for government oversight and regulation.

One of the ways PBMs operate is by creating formularies – lists of approved drugs that can be utilized by insurance companies and their clients – that allow PBMs to realize cost savings for their contracted clients. This is done by encouraging the usage of certain drugs – usually a generic brand – over others by restricting use of certain prescription drugs not included in the formulary or by substituting prescribed medication with medication contained within the formulary. Currently, this is done with no notification or oversight by doctors or pharmacists, who traditionally have a hand in shaping and creating formularies for insurance companies.

The bill would require PBMs to make additional disclosures to health care practitioners, like doctors, nurses and pharmacists, covered persons, and purchasing agents if the PBM seeks to substitute a prescribed drug. It also would create guidelines and procedures under which a prescribed drug may be substituted for another.

“We need to make sure PBMs operating in New Jersey provide high quality pharmaceuticals to patients without endangering their safety,” said Greenstein (D-Middlesex). “At the same time, we must demand PBMs pass cost savings onto patients and consumers instead of quietly enriching themselves under the guise of making prescription drugs more affordable.”

Questions raised in lawsuits around the country allege PBMs steer preference for drugs to their own mail order companies and to favorite pharmaceutical companies who give the PBMs higher rebates that are not always passed onto the customers.

Over 30 states have filed suits against PBMs for questionable business practices. The suits allege that some PBMs are not acting to maximize the savings to their clients or are refusing to take into consideration the health needs of the subscribers who are obtaining prescription drugs through their services.

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Many of these lawsuits have been settled, resulting in multi-million dollar fines and injunctions. In one instance, one of the three largest national PBMs settled a lawsuit with the federal government, paying \$137.5 million in fines and receiving a five-year injunction against certain predatory business practices.

The measure would create protections against predatory pricing by prohibiting PBMs or their agents from establishing pricing schemes that would price the reimbursement of pharmaceuticals to a retail pharmacy at a rate below the actual cost of the drugs. The state Department of Health and Senior Services would conduct annual surveys to determine the cost of pharmaceuticals and set the rate of reimbursement.

The Commissioner of DOBI would be authorized to deny, suspend, or revoke the certification of any PBM in New Jersey and would be responsible for assessing fines of up to \$10,000 a day to any PBM operating in violation of this measure. In the event DOBI fails to respond to an enforcement complaint within 30 days, the party making the complaint would have the option of seeking remuneration in New Jersey Superior Court.

“Imposing regulations on PBMs will give New Jersey residents a much needed layer of oversight and security,” said Greenstein. “Sick individuals have enough to worry about without wondering whether they can afford their prescribed treatment.”

“PBMs should not be allowed to use their bottom line to unilaterally dictate an individual’s drug therapy,” said Cohen. “Those decisions should be left to be decided between medical professionals and their patients.”

The Assembly Financial Institutions and Insurance Committee released the measure by a vote of 6-0. It now heads to the Assembly Appropriations Committee for further consideration.