# CORRECTIONS

## (a)

## THE COMMISSIONER

### Tenure; Teachers and Other Certified Professional Educators

### Readoption with Amendments: N.J.A.C. 10A:15

Proposed: July 3, 2017, at 49 N.J.R. 1816(a).
Adopted: November 24, 2017, by Gary M. Lanigan, Commissioner, Department of Corrections.
Filed: November 27, 2017, as R.2018 d.001, **without change**.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Dates: November 27, 2017, Readoption; January 2, 2018, Amendments.
Expiration Date: November 27, 2024.

**Summary** of Public Comment and Agency Response:
**No comments were received.**

**Federal Standards Statement**

The rules readopted with amendments are promulgated under the authority of the rulemaking requirements of the Department of Corrections as established at N.J.S.A. 30:1B-6 and 30:1B-10. The rules readopted with amendments are not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10A:15.

**Full text** of the adopted amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

10A:15-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Director, Office of Educational Services" means the Director of Educational Services in the New Jersey Department of Corrections who supervises the educational programs and library services in all adult correctional facilities operated by the Department (see N.J.S.A. 18A:7B-8).

. . .

SUBCHAPTER 2. TENURE

10A:15-2.2 Eligibility

(a) Those individuals who meet the requirements set forth at N.J.A.C. 10A:15-1.2 shall be eligible for tenure as follows:

1. For teaching staff hired prior to August 6, 2012, after the expiration of continuous employment for three consecutive years in tenure eligible assignments with satisfactory evaluations within the scope of a specific standard certificate; and

2. For teaching staff hired on or after August 6, 2012, in accordance with N.J.S.A. 18A:6-117 and 118 and 18A:28-5, after the expiration of continuous employment for four years and one day, consecutively in tenure eligible assignments with satisfactory evaluations within the scope of a specific standard certificate.

(b)-(c) (No change.)

10A:15-2.3 Appropriate performance assessments

(a)-(b) (No change.)

(c) For the purposes of evaluation of tenured teachers and other tenured certified professional educators, the annual performance assessment shall consist of a minimum of:

1. Two observations;

2.-3. (No change.)

(d)-(f) (No change.)

# INSURANCE

## (b)

## DEPARTMENT OF BANKING AND INSURANCE
## OFFICE OF CONSUMER PROTECTION SERVICES

### Pharmacy Benefits Managers

### Adopted New Rules: N.J.A.C. 11:4-62

Proposed: August 21, 2017, at 49 N.J.R. 2726(a).
Adopted: November 29, 2017, by Richard J. Badolato, Commissioner, Department of Banking and Insurance.
Filed: November 29, 2017, as R.2018 d.007, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17B:27F-1 et seq.

Effective Date: January 2, 2018.
Expiration Date: September 28, 2018.

**Summary** of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) timely received written comments from the following:

1. Joint comment from the Garden State Pharmacy Owners, the New Jersey Pharmacists Association, and the Independent Pharmacy Alliance; and

2. The New Jersey Association of Health Plans.

COMMENT: One commenter supported the rules, which the commenter stated will provide pharmacists with drug pricing transparency that will help them serve their patients.

RESPONSE: The Department appreciates the support of its rulemaking.

COMMENT: One commenter requested clarification of the procedures to eliminate drugs required by the statute and as set forth in N.J.A.C. 11:4-62.3(b). The commenter believed that the statute contemplates that a pharmacy benefits manager (PBM) maintain a procedure that requires prompt elimination of drugs from the list subject to multiple source generic pricing upon appropriate notice from any network pharmacy. While the commenter had no concern with the 15-day time period set forth in the rule, it expressed concern that the rule could be construed to require the PBM to undertake continuous surveillance of all drug costs, which the commenter believed would be costly and burdensome. The commenter believed that the statute permits, and the rule should provide, flexibility for the PBM to create its own procedure. The commenter further stated that such a procedure for change could be triggered by a network pharmacy pricing inquiry, a complaint, or a maximum allowable cost (MAC) appeal, which clearly substantiates that the MAC pricing utilized by the PBM is lower than the purchase price available by contracted pharmacies in the State. In order to effectuate this suggestion, the commenter suggested that N.J.A.C. 11:4-62.3(b) be revised upon adoption to add the following: "The procedure may be triggered by a network pharmacy pricing inquiry, complaint, or MAC appeal which clearly substantiates that the maximum allowable cost (MAC) pricing utilized by the PBM is lower than the purchase price available by contracted pharmacies in the State of New Jersey."

RESPONSE: Upon review of the comment, the Department has determined that no change is required. The Department believes that the rule provides flexibility in that the rule does not prescribe the events that trigger a pharmacy benefits manager's obligation to eliminate drugs from a list of drugs subject to multiple source generic drug pricing or to modify the maximum allowable cost rates. The rule merely reflects the statutory requirement that a PBM maintain such a procedure.

**Federal Standards Statement**

The adopted new rules are not subject to any Federal requirements or standards.

**Full text** of the adopted new rules follows (addition to proposal indicated in boldface with asterisks ***thus***, deletion from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 62. PHARMACY BENEFITS MANAGERS

11:4-62.1 Purpose and scope

(a) This subchapter sets forth the requirements for contracts between a pharmacy benefits manager and a contracted pharmacy pursuant to N.J.S.A. 17B:27F-1 et seq., and requires pharmacy benefits managers to certify that new or existing contracts, upon renewal, comply with the requirements set forth in N.J.S.A. 17B:27F-1 et seq., and this subchapter.

(b) This subchapter shall apply to all contracts between a pharmacy benefits manager and a contracted pharmacy pursuant to N.J.S.A. 17B:27F-1 et seq.

11:4-62.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"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.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

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

1. The pharmacy benefits manager directly;

2. A pharmacy services administration organization; or

3. 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.

"Department" means the New Jersey Department of Banking and Insurance.

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

"Health benefits plan" means a benefits plan that 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, including, but not limited to, a carrier, self-insured employers that self-fund their employee benefits plans, or unions. For the purposes of this chapter, health benefits plan shall not include the following plans, policies, or contracts: accident only, credit disability, long-term care, Medicare supplement coverage, CHAMPUS supplement coverage, coverage for Medicare services pursuant to a contract with the United States government, coverage arising out of a worker's compensation or similar law, coverage under a policy of private passenger automobile insurance issued pursuant to N.J.S.A. 39:6A-1 et seq., or hospital confinement indemnity coverage.

"Multiple source generic drug" means a prescription drug that is: (1) listed as therapeutically and pharmaceutically equivalent or "A," "B," "NR," or "NA" rated in the Food and Drug Administration's most recent version of the Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the "Orange Book"; and (2) is available for purchase without limitations by all pharmacies in the State from national or regional wholesalers and is not obsolete or temporarily unavailable.

"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 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.

"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.

"Prescription" means a prescription as defined in N.J.S.A. 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.

11:4-62.3 Pharmacy benefits manager contracts

(a) Upon execution or renewal of each contract, a pharmacy benefits manager shall, with respect to contracts between a pharmacy benefits manager and a contracted pharmacy:

1. Include in the contract the sources utilized to determine multiple source generic drug pricing, including, if applicable, the maximum allowable cost or any successive pricing formula, of the pharmacy benefits manager;

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 and any successive pricing formulas in a timely manner. Examples of such a process include: providing online access to the maximum allowable cost pricing, the sources thereof and the date of the last update of such pricing; providing such information through e-mail to contracted pharmacies; or, by similar means.

(b) A pharmacy benefits manager shall maintain a procedure to eliminate drugs from the list of drugs subject to multiple source generic drug pricing or modify maximum allowable cost rates in a timely fashion, but in no event any later than 15 days from the date of any change.

(c) In order to place a particular prescription drug on a multiple source generic list, the pharmacy benefits manager shall, at a minimum, ensure that:

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

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

(d) A pharmacy benefits manager shall not penalize a pharmacist or pharmacy on audit if the pharmacist or pharmacy performs a generic substitution pursuant to the "Prescription Drug Price and Quality Stabilization Act," N.J.S.A. 24:6E-1 et seq.

11:4-62.4 Appeals

(a) All contracts between a pharmacy benefits manager and a contracted pharmacy shall include a process to appeal, investigate, and resolve disputes regarding multiple source generic drug pricing. The contract provision establishing the process shall include the following:

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

2. 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; and

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

(b) In addition to (a) above, the contract shall also provide that:

1. If the appeal is denied, the pharmacy benefits manager shall provide the reason for the denial and identify the national drug code of a drug product that is available for purchase by contracted pharmacies in this State from wholesalers registered pursuant to N.J.S.A. 24:6B-1 et seq., at a price which is equal to or less than the maximum allowable cost for the appealed drug as determined by the pharmacy benefits manager; and

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.

11:4-62.5 Certification of compliance

(a) All pharmacy benefits managers shall file a certification with the Department in the form of N.J.A.C. 11:4-62 Appendix Exhibit A, which is incorporated herein by reference, attesting that all pharmacy benefits contracts executed or renewed between the pharmacy benefits manager and all contracted pharmacies located in this State comply with the requirements set forth in N.J.S.A. 17B:27F-1 et seq., and this subchapter. Such certification shall be filed with the Department no later

than *|(30 days after the effective date of this subchapter)|* ***February 1, 2018***, or within 30 days of commencing business as a pharmacy benefits manager, with respect to any existing and future contracts. Certifications shall be mailed to:

New Jersey Department of Banking and Insurance
Office of Life and Health
20 West State St.
PO Box 325
Trenton, NJ 08625-0325

(b) For purposes of this section, if no renewal date is specified in the contract between a pharmacy benefits manager and a contracted pharmacy, such contract shall be deemed to renew at such time that there is change in any substantive term of the contract.

11:4-62.6 Penalties

(a) Failure to comply with the terms of this subchapter shall result in the imposition of penalties as authorized by law.

(b) A pharmacy benefits manager that fails to file a certificate of compliance as required by N.J.A.C. 11:4-62.5 may, after notice and opportunity for a hearing, be subject to a penalty of up to $1,000 for each violation.

(c) A pharmacy benefits manager that fails to comply with the requirements of N.J.S.A. 17B:27F-1 et seq., or N.J.A.C. 11:4-62.3 and 62.4 may, after notice and opportunity for a hearing, be subject to a penalty of not less than $5,000 or more than $10,000 for each violation.

(d) Penalties shall be imposed in accordance with the procedures set forth in N.J.A.C. 11:17D.

**APPENDIX**

**EXHIBIT A**

CERTIFICATION OF COMPLIANCE

I, _____(Name of Individual Acting on Behalf of the Pharmacy Benefits Manager)____, hereby certify that with respect to all pharmacy benefits contracts executed or renewed between _____(Name of Pharmacy Benefits Manager)_____ and a contracted pharmacy located in this State, such contracts comply with the requirements set forth in N.J.S.A. 17B:27F-1 et seq. and N.J.A.C. 11:4-62. I further certify that I am authorized to make this certification on behalf of between _____(Name of Pharmacy Benefits Manager)._____

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____
Signature

_____
Print Name

_____
Title

_____
Date

# LABOR AND WORKFORCE DEVELOPMENT

## (a)

## WORKFORCE DEVELOPMENT

## New Jersey Innovation and Research Fellowship Program Rules

## Adopted New Rules: N.J.A.C. 12:23-14

Proposed: September 5, 2017, at 49 N.J.R. 2883(a).
Adopted: November 27, 2017, by Aaron R. Fichtner, Ph.D., Commissioner, Department of Labor and Workforce Development.
Filed: November 27, 2017, as R.2018 d.002, **without change**.

Authority: N.J.S.A. 34:1-20 and 34:1A-3(c); and P.L. 2015, c. 235, Section 3.

Effective Date: January 2, 2018.
Expiration Date: May 25, 2024.

**Summary** of Hearing Officer's Recommendations and Agency's Responses:

A public hearing on the proposed new subchapter was held on October 9, 2017, at the Department of Labor and Workforce Development, John Fitch Plaza, Trenton, New Jersey. David Fish, Executive Director, Legal and Regulatory Services, was available to preside at the hearing and to receive testimony. There were no attendees at the public hearing and the Department received no written comments. The hearing officer recommended that the Department proceed with the adoption of the new rules without change.

**Summary** of Public Comment and Agency Response:

**No comments were received.**

**Federal Standards Statement**

The adopted new rules do not exceed standards or requirements imposed by Federal law as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking. As a result, a Federal standards analysis is not required.

**Full text** of the adopted new rules follows:

SUBCHAPTER 14. NEW JERSEY INNOVATION AND RESEARCH FELLOWSHIP PROGRAM

12:23-14.1 Purpose

Pursuant to P.L. 2015, c. 235, the purpose of this subchapter is to establish the New Jersey Innovation and Research Fellowship Program (IRFP), including defining the scope of the IRFP and establishing criteria and procedures for submission of applications to receive grant monies under the IRFP.

12:23-14.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development.

"Department" means the Department of Labor and Workforce Development.

12:23-14.3 Scope and eligibility

(a) The Department will award IRFP grants to certain employers in the field of technology research in order to fund fellowships, with each fellowship lasting no fewer than two and no more than three years.

(b) In order to be eligible for a grant under the IRFP, both the applicant employer and the ultimate recipient of the IRFP grant funds (that is, the applicant fellow), shall meet the criteria set forth within this section.

(c) In order to be eligible for a grant under the IRFP, an applicant employer shall satisfy the following criteria:

1. Its primary business is the provision of a scientific process, product, or service and the applicant employer owns, has filed for, or has a license to use, protected, proprietary intellectual property;

2. Its principal place of business is in New Jersey;

3. It is organized as a C Corp or LLC with a business plan; and

4. It is not a home-based operation.

(d) In order to be eligible for a grant under the IRFP, the applicant fellow shall satisfy the following criteria:

1. He or she must be prepared to receive a Ph.D. degree within 12 months or have just received a Ph.D. degree within the past 12 months;

2. He or she must be in good standing with the conferring university; and

3. He or she must be a United States citizen, be a legal permanent resident, or possess all of the following: a valid immigrant visa, a valid employment authorization document, and an I-485 application pending with the United States Citizenship and Immigration Service.

(c) The IRFP grant monies shall be used by the grantee employer solely for salary to the fellow, with the limited exception that a small