"[CHAPTER 431R]
PRESCRIPTION DRUG BENEFITS

Section

Cross References

Pharmacy benefit managers, prohibited marketing practices regarding health information, see §487J-7.

" **[§431R-1] Definitions.** As used in this chapter, unless the context indicates otherwise:

"Beneficiary of a prescription drug benefit plan" or "beneficiary" means a person who is a member, subscriber, enrollee, or dependent of a member, subscriber, or enrollee of or otherwise covered under a prescription drug benefit plan.

"Pharmacy benefit manager" means any person, business, or entity that performs pharmacy benefit management, including but not limited to a person or entity under contract with a pharmacy benefit manager to perform pharmacy benefit management on behalf of a managed care company, nonprofit hospital or medical service organization, insurance company, third-party payor, or health program administered by the State.

"Pharmacy benefit manager's retail pharmacy network" means a retail pharmacy located and licensed in the State and contracted by the pharmacy benefit manager to sell prescription drugs to beneficiaries of a prescription drug benefit plan administered by the manager.

"Prescription drug benefit plan" means an accident and sickness insurance plan or health benefits plan that includes coverage for prescription drugs. For the purposes of this definition, a "health benefits plan" has the same meaning as in section 87A-1.

"Prescription drug benefit plan provider" means a person who provides prescription drug coverage as part of an accident and health or sickness insurance contract or other type of health insurance or benefits plan that is offered by the person and is subject to regulation under article 10A of chapter 431, chapter 432, or chapter 432D.

"Retail community pharmacy" means a pharmacy, permitted by the board of pharmacy pursuant to section 461-14, that is open to the public, dispenses prescription drugs to the general public, and makes available face-to-face consultations between licensed pharmacists and the general public to whom prescription drugs are dispensed. [L 2013, c 226, pt of §2]

" **[§431R-2] Retail community pharmacies; retail pharmacy network; contractual agreements.** (a) An otherwise qualified retail community pharmacy registered to do business in this State that requests to enter into a contractual retail pharmacy network agreement accepting the standard terms, conditions,

formularies, or requirements relating to dispensing fees, payments, reimbursement amounts, or other pharmacy services shall be considered part of a pharmacy benefit manager's retail pharmacy network for purposes of a beneficiary's right to choose where to purchase covered prescription drugs under section 431R-3.

(b) It shall be a violation of this section for a prescription drug benefit plan, health benefits plan under chapter 87A, or pharmacy benefit manager to refuse to accept an otherwise qualified retail community pharmacy as part of a pharmacy benefit manager's retail pharmacy network.

(c) A contractual retail pharmacy network agreement entered into under this section shall be renewed annually, unless agreed to by the parties. If a prescription drug benefit plan, health benefits plan under chapter 87A, or pharmacy benefit manager who has entered into a contractual retail pharmacy network agreement with a retail community pharmacy considers such retail community pharmacy no longer otherwise qualified, the prescription drug benefit plan, health benefits plan under chapter 87A, or pharmacy benefit manager may appeal the retail community pharmacy's qualifications with the insurance commissioner.

(d) The insurance commissioner shall determine the standards and requirements necessary for a retail community pharmacy to be deemed "otherwise qualified" for purposes of this section. [L 2013, c 226, pt of §2]

" **[§431R-3] Prescription drugs; beneficiary choice; mail order opt out.** (a) If a retail community pharmacy enters into a contractual retail pharmacy network agreement pursuant to section 431R-2, a prescription drug benefit plan, health benefits plan under chapter 87A, or pharmacy benefit manager shall permit each beneficiary, at the beneficiary's option, to fill any covered prescription that may be obtained by mail order at any retail community pharmacy of the beneficiary's choice within the pharmacy benefit manager's retail pharmacy network.

(b) A prescription drug benefit plan, health benefits plan under chapter 87A, or pharmacy benefit manager who has entered into a contractual retail pharmacy network agreement with a retail community pharmacy shall not:

(1) Require a beneficiary to exclusively obtain any prescription from a mail order pharmacy;

(2) Impose upon a beneficiary utilizing the retail community pharmacy a copayment, fee, or other condition not imposed upon beneficiaries electing to utilize a mail order pharmacy;

(3) Subject any prescription dispensed by a retail community pharmacy to a beneficiary to a minimum or maximum quantity limit, length of script, restriction on refills, or requirement to obtain refills not imposed upon a mail order pharmacy;
(4) Require a beneficiary in whole or in part to pay for any prescription dispensed by a retail community pharmacy and seek reimbursement if the beneficiary is not required to pay for and seek reimbursement in the same manner for a prescription dispensed by a mail order pharmacy;
(5) Subject a beneficiary to any administrative requirement to use a retail community pharmacy that is not imposed upon the use of a mail order pharmacy; or
(6) Impose any other term, condition, or requirement pertaining to the use of the services of a retail community pharmacy that materially and unreasonably interferes with or impairs the right of a beneficiary to obtain prescriptions from a retail community pharmacy of the beneficiary's choice. [L 2013, c 226, pt of §2]

" **[§431R-4] Report to insurance commissioner.** (a) No later than March 31 of each calendar year, each prescription drug benefit plan, health benefits plan under chapter 87A, and pharmacy benefit manager shall file with the insurance commissioner, in such form and detail as the insurance commissioner shall prescribe, a report for the preceding calendar year stating that the pharmacy benefit manager or prescription drug benefit plan is in compliance with this chapter. The report shall fully disclose the amount, terms, and conditions relating to copayments, reimbursement options, and other payments associated with a prescription drug benefit plan.

(b) The insurance commissioner shall review and examine records supporting the accuracy and completeness of the report and, no later than ninety days after the receipt of the report, shall make available to a purchaser of a prescription drug benefit plan and to any retail community pharmacy participating in a retail pharmacy network under section 431R-2 that provides benefits to beneficiaries of a prescription drug benefit plan a summary of the amount, terms, and conditions relating to copayments, reimbursement options, and other payments associated with a prescription drug benefit plan. [L 2013, c 226, pt of §2]

" **§431R-5 Violations; penalties.** (a) The insurance commissioner may assess a fine of up to $10,000 for each violation by a pharmacy benefit manager or prescription drug benefit plan provider who is in violation of section 431R-2 or 431R-3. In addition, the insurance commissioner may order the pharmacy benefit manager to take specific affirmative corrective action or make restitution.

(b) Failure of a pharmacy benefit manager to comply with a previously agreed upon contractual retail pharmacy network agreement pursuant to section 431R-2 or 431R-3 shall be an unfair or deceptive act or practice as provided in section 431:13-102.

(c) A pharmacy benefit manager or prescription drug benefit plan provider may appeal any decision made by the insurance commissioner in accordance with chapter 91.

(d) Every person and its officers, employees, and representatives subject to investigation or examination by the commissioner under this chapter shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in the person's possession or control relating to the subject of the investigation or examination and shall otherwise facilitate the investigation or examination.

(e) Every person and its officers, employees, and representatives subject to investigation or examination by the commissioner under this chapter shall issue a written response no later than fifteen working days after receiving a written inquiry from the commissioner regarding a claim or complaint. The response shall be more than an acknowledgment that the commissioner's communication has been received and shall adequately address the concerns stated in the communication. [L 2013, c 226, pt of §2; am L 2016, c 141, §15]

" **[§431R-6] Application.** If this chapter or any provision of this chapter conflicts at any time with any federal law, then the federal law shall prevail and this chapter or the relevant provisions of this chapter shall become ineffective and invalid. The ineffectiveness or invalidity of this chapter or any of its provisions shall not affect any other provisions or applications of this chapter, which shall be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable. [L 2013, c 226, pt of §2]

" **[§431R-7] Rules.** The insurance commissioner may adopt rules pursuant to chapter 91 to implement the requirements of this chapter. [L 2013, c 226, pt of §2]