STATE OF NEW YORK

8384

IN SENATE

May 4, 2018

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to implementing the pharmacy benefit manager transparency act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The insurance law is amended by adding a new article 6 to read as follows:

ARTICLE 6

PHARMACY BENEFIT MANAGER TRANSPARENCY ACT

Section 601. Short title.
602. Definitions.
603. Responsibility to covered entities.
604. Pharmacy benefit manager transparency.
605. Report publication.
606. Compliance and enforcement.
607. Rulemaking authority.

§ 601. Short title. This article shall be known and may be cited as the "pharmacy benefit manager transparency act".

§ 602. Definitions. For the purposes of this article, the following definitions shall apply:

(1) "Covered entity" means a nonprofit hospital or medical service organization, insurer, health coverage plan, or health maintenance organization licensed in the state; a health program administered by the superintendent or the state in the capacity of provider of health coverage; or an employer, labor union, or other group of persons organized in the state that provides health coverage to covered individuals who are employed or reside in the state.

(2) "Covered individual" means a member, participant, enrollee, contract holder, or policy holder or beneficiary of a covered entity who is provided health coverage by the covered entity. This includes a dependent or other person provided health coverage through a policy, contract, or plan for a covered individual.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(3) "Pharmacy benefit manager" means an entity that contracts with or is employed by a health benefit plan, state agency, insurer, managed care organization, or other third-party payor for the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals.

(4) "Wholesale acquisition cost" means the list price for a prescription drug, excluding any discounts, rebates, or reductions in price, as reported in the most recent editions of the wholesale price guides or other publications of drug pricing data a manufacturer provides to wholesalers or distributors in the United States, as specified in 42 U.S.C. 23 § 1395w-3a(c)(6)(B).

§ 603. Responsibility to covered entities. (1) A pharmacy benefit manager shall exercise good faith and fair dealing in the performance of its contractual obligations to a covered entity, and shall perform its duties with care, skill, prudence, diligence, and professionalism.

(2) A pharmacy benefit manager shall notify a covered entity in writing of any activity, policy, practice, ownership interest, or affiliation of the pharmacy benefit manager that presents a conflict of interest that interferes with the requirements imposed by this article.

§ 604. Pharmacy benefit manager transparency. (1) Each pharmacy benefit manager under contract with a covered entity shall submit to the covered entity and to the superintendent no later than February first of each year the following information for the immediately preceding calendar year relative to such contract:

(a) The wholesale acquisition cost for each drug on its formulary and the total number of prescriptions that were dispensed.

(b) The amount of rebates, discounts, and price concessions that the pharmacy benefit manager received for each drug on its formulary. The amount of rebates shall include any utilization discounts the pharmacy benefit manager receives from a manufacturer.

(c) The amount of rebates, discounts, and price concessions described in paragraph (b) of this subsection that were passed through to a covered entity, and the amount that were retained by the pharmacy benefit manager, for each drug on its formulary.

(d) The amount of any fee, administrative or otherwise, received from a manufacturer.

(e) The nature, type, and amount of all other payments that the pharmacy benefit manager receives, directly or indirectly, from a manufacturer in connection with a drug switch program, a formulary management program, a mail service pharmacy, educational support, data sales related to a covered individual, or any other function.

(f) The amount of any reimbursements the pharmacy benefit manager pays to contracting pharmacies, and the negotiated price covered entities pay the pharmacy benefit manager, for each drug on its formulary.

(g) Any other information as deemed necessary by the superintendent.

(2) The information disclosed pursuant to subsection one of this section shall include all retail, mail order, specialty, and compounded prescription products.

(3) Information submitted under this section shall be confidential and shall not be disclosed to any person by the superintendent or the covered entity receiving the information. Such information shall not be deemed a public record of the superintendent.

§ 605. Report publication. (1) In order to allow patients and employers to compare the ability of pharmacy benefit managers to negotiate rebates, discounts, and price concessions and the amount of such rebates, discounts, and price concessions that are passed through to

plan sponsors, and to allow covered entities to evaluate the nature of the relationship between pharmacy benefit managers and manufacturers and the effectiveness of pharmacy benefit managers in reducing costs for covered entities and their beneficiaries, no later than February first of each year, the superintendent shall issue a report to be published on the superintendent's website aggregating the information received by all pharmacy benefit managers under this section for the preceding year.

(2) The superintendent shall ensure that the information described in subsection one of this section is reported in a manner that prevents the disclosure of the identity of a specific pharmacy benefit manager, a covered entity, prices charged for prescription drugs or any associated rebates, discounts or price concessions with respect to an individual drug or an individual plan, or any information that identifies a product or manufacturer.

(3) On or before February first of each year the superintendent shall analyze the information submitted by pharmacy benefit managers pursuant to this article and produce an additional report to be published on the superintendent's website on the impact of pharmacy benefit managers on the cost, administration, and availability of prescription drugs.

(4) The superintendent shall submit the report and any recommendations for proposed legislation or further action by the state pursuant to the report's findings to the temporary president of the senate, the speaker of the assembly and the governor on or before February first of each year.

§ 606. Compliance and enforcement. (1) All contracts for pharmacy benefit management entered into in this state or by a covered entity in this state shall comply with the requirements of this article.

(2) The superintendent is responsible for the enforcement of this article and may reasonably examine and investigate to ensure compliance with the provisions herein.

(3) The superintendent shall adopt procedures for investigating complaints of noncompliance with this article. If the superintendent finds a pharmacy benefit manager has failed to comply with any of the provisions of this article, the superintendent may, after notice and opportunity for a hearing, impose one or more sanctions as deemed appropriate or necessary to bring non-complying entities into full compliance, including, but not limited to:

(a) revoking or suspending a license issued to a pharmacy benefit manager, or denying an application for a renewal of a license;

(b) imposing a period of probation best adapted to protect the public health and safety and for any rehabilitation;

(c) imposing an administrative fine not to exceed two hundred fifty dollars for each violation or instance of noncompliance;

(d) assessing costs to be paid by the pharmacy benefit manager; or

(e) imposing restrictions on the scope of operation of the pharmacy benefit manager in the state.

(4) In addition to sanctions for noncompliance as described in subsection three of this section, if a pharmacy benefit manager fails to submit to the superintendent the information required under section six hundred four of this article by the specified date, the superintendent may impose against the pharmacy benefit manager an administrative penalty of not more than two hundred fifty dollars for each day of such failure.

(5) Any money collected, as administrative penalties or otherwise, pursuant to this section must be used by the superintendent to cover the costs of implementation and enforcement of this article.

§ 607. Rulemaking authority. The superintendent shall promulgate and adopt rules and regulations to effectuate the purposes and provisions of this article. The rules and regulations shall be subject to review in accordance with general rules of administrative rulemaking and review of regulations in this state.

§ 2. This act shall take effect immediately.