STATE OF NEW YORK

7739

IN SENATE

February 12, 2020

Introduced by Sen. MYRIE -- 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 investigating critical prescription drug pricing

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 section 344 to read as follows:

§ 344. Investigation by the superintendent with respect to critical prescription drugs. (a) Whenever it shall appear to the superintendent, either upon complaint or otherwise, that in the advertisement, purchase or sale within this state of any critical prescription drug, that the price of that critical prescription drug has increased over the course of any twelve months by more than the increase of the cost of living index for the list price of that critical prescription drug, or if it is suspected that any person, partnership, corporation, company, trust or association, or any agent or employee thereof has sold or offered for sale or is attempting to sell or is offering for sale any critical prescription drug for which the price of that drug has increased over the course of any twelve months by more than the increase of the cost of living index for the list price of that drug, or if the superintendent believes it is to the public interest to investigate, the superintendent shall require such person, partnership, corporation, company, trust or association, or any agent or employee thereof, to file with the department a statement in writing under oath or otherwise as to all the facts and circumstances concerning the price increase and for that purpose may prescribe forms upon which such statements shall be made.

(b) In addition to any other power granted by law, the superintendent, his or her deputy or other officer designated by the superintendent is empowered to subpoena witnesses, compel their attendance, examine them under oath and require the production of any books or papers which he or she deems relevant or material to the inquiry. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the attorney general.

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

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(c) No person shall be excused from attending such inquiry in pursuance to the mandates of a subpoena, or from producing a paper or book, or from being examined or required to answer a question on the ground of failure of tender or payment of a witness fee and/or mileage, unless at the time of such appearance or production, as the case may be, such witness makes demand for such payment as a condition precedent to the offering of testimony or production required by the subpoena and unless such payment is not thereupon made. The provisions for payment of witness fee and/or mileage shall not apply to any officer, director or person in the employ of any person, partnership, corporation, company, trust or association whose conduct or practices are being investigated.

(d) If a person subpoenaed to attend such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce a book or paper when ordered so to do by the officer conducting such inquiry, or if a person, partnership, corporation, company, trust or association fails to perform any act required by this section to be performed, he or she shall be guilty of a misdemeanor and shall be subject to a civil penalty as set forth in subsection (e) of this section.

(e) (1) If after an investigation authorized under this section the superintendent determines that the increase in the price of the critical prescription drug is unjustified, the superintendent may, after notice and a hearing, levy a civil penalty not to exceed the greater of:

(A) five thousand dollars for each offense;

(B) a multiple of two times the aggregate damages attributable to the offense; or

(C) a multiple of two times the aggregate economic gain attributable to the offense.

(2) If any person, partnership, corporation, company, trust or association, that fails to submit a written statement required by the superintendent under subsection (a) of this section or violates subsection (d) of this section, the superintendent may, after notice and a hearing, levy a civil penalty not to exceed to one thousand dollars per day that such failure continues.

(f) For the purposes of this section, a "critical prescription drug" shall be defined as one necessary to prevent or treat a disease or state in which death is possible or imminent.

§ 2. This act shall take effect immediately.