

# STATE OF NEW YORK

7499--B

Cal. No. 1338

2021-2022 Regular Sessions

## IN SENATE

November 3, 2021

Introduced by Sens. SALAZAR, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

AN ACT to amend the insurance law, in relation to requiring certain manufacturers of prescription drugs to notify the superintendant of any proposed increase of the wholesale acquisition cost of such prescription drugs

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

1 Section 1. The insurance law is amended by adding a new section 111-a  
2 to read as follows:

3 § 111-a. Notification of prescription drug price increases by manufac-  
4 turers. (a) This section shall apply to a manufacturer of a prescription  
5 drug that is purchased or reimbursed in this state by any of the follow-  
6 ing:

7 (1) An insurance company authorized in this state to write accident  
8 and health insurance, a company organized pursuant to article forty-  
9 three of this chapter, a municipal cooperative health benefit plan  
10 established pursuant to article forty-seven of this chapter, an organ-  
11 ization certified pursuant to article forty-four of the public health  
12 law, an institution of higher education certified pursuant to section  
13 one thousand one hundred twenty-four of this chapter, or the New York  
14 state health insurance plan established pursuant to article eleven of  
15 the civil service law; or

16 (2) A pharmacy benefit manager, including an entity that directly or  
17 through an intermediary, manages the prescription drug coverage provided  
18 by a health insurer under a contract or policy delivered or issued for  
19 delivery in this state or a health plan subject to section three hundred  
20 sixty-four-j of the social services law, including the processing and

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

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1 payment of claims for prescription drugs, the performance of drug utili-  
2 zation review, the processing of drug prior authorization requests, the  
3 adjudication of appeals or grievances related to prescription drug  
4 coverage, contracting with network pharmacies, and controlling the cost  
5 of covered prescription drugs.

6 (b) (1) A manufacturer of a prescription drug with a wholesale acqui-  
7 sition cost of more than forty dollars for a course of therapy shall  
8 notify the superintendent, his or her deputy or other officer designated  
9 by the superintendent, if the increase in the wholesale acquisition cost  
10 of such prescription drug is more than ten percent, including the  
11 proposed increase and the cumulative increases that occurred within the  
12 previous twenty-four months. For purposes of this section, a "course of  
13 therapy" is defined as either of the following:

14 (i) the recommended daily dosage units of a prescription drug pursuant  
15 to its prescribing label as approved by the federal Food and Drug Admin-  
16 istration for thirty days; or

17 (ii) the recommended daily dosage units of a prescription drug pursu-  
18 ant to its prescribing label as approved by the federal Food and Drug  
19 Administration for a normal course of treatment that is less than thirty  
20 days.

21 (2) (i) The notice required by paragraph (1) of this subsection shall  
22 be provided in writing to the superintendent at least sixty days prior  
23 to the planned effective date of the increase and shall include the  
24 proposed increase and the cumulative increases that occurred within the  
25 previous twenty-four months.

26 (ii) The superintendent shall forthwith publish the notice required by  
27 paragraph (a) of this subdivision on the department of financial  
28 services website within five days of its receipt.

29 (3) (i) The notice required by paragraph (1) of this subsection shall  
30 include the date of the increase, the current wholesale acquisition cost  
31 of the prescription drug, and the dollar amount of the future increase  
32 in the wholesale acquisition cost of the prescription drug.

33 (ii) The notice required by paragraph (1) of this subsection shall  
34 include a statement regarding whether a change or improvement in the  
35 drug necessitates the price increase. If so, the manufacturer shall  
36 describe the change or improvement.

37 (4) Information supplied by a manufacturer pursuant to this section  
38 that the manufacturer has designated as a trade secret shall be consid-  
39 ered confidential and a trade secret and shall not be disclosed directly  
40 or indirectly by the superintendent. Notwithstanding the foregoing  
41 sentence, the superintendent shall be permitted to disclose information  
42 in an aggregated format if such aggregate information cannot directly or  
43 indirectly be used to identify trade secret information related to a  
44 specific manufacturer or the manufacturer's prescription drug, including  
45 but not limited to any information related to pricing for the manufac-  
46 turer's prescription drug that has been designated as a trade secret.

47 (5) In the event that a manufacturer of a prescription drug subject to  
48 this section does not report the information required in paragraph (1)  
49 of this subsection, the superintendent is authorized to impose any  
50 penalty or remedy authorized by this chapter, after notice and a hear-  
51 ing, against such manufacturer of up to five thousand dollars per day  
52 for every day after the reporting period described in this section that  
53 the required information is not reported.

54 § 2. This act shall take effect immediately.