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:

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

§ 111-a. Notification of prescription drug price increases by manufacturers. (a) This section shall apply to a manufacturer of a prescription drug that is purchased or reimbursed in this state by any of the following:

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

(2) A pharmacy benefit manager, including an entity that directly or through an intermediary, manages the prescription drug coverage provided by a health insurer under a contract or policy delivered or issued for delivery in this state or a health plan subject to section three hundred 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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payment of claims for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to prescription drug coverage, contracting with network pharmacies, and controlling the cost of covered prescription drugs.

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

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

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

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

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

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

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

(4) Information supplied by a manufacturer pursuant to this section that the manufacturer has designated as a trade secret shall be considered confidential and a trade secret and shall not be disclosed directly or indirectly by the superintendent. Notwithstanding the foregoing sentence, the superintendent shall be permitted to disclose information in an aggregated format if such aggregate information cannot directly or indirectly be used to identify trade secret information related to a specific manufacturer or the manufacturer's prescription drug, including but not limited to any information related to pricing for the manufacturer's prescription drug that has been designated as a trade secret.

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

§ 2. This act shall take effect immediately.