

STATE OF NEW YORK

7304--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 17, 2023

Introduced by M. of A. McDONALD, WEPRIN -- read once and referred to the Committee on Insurance -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to prescription drug supply chain transparency; and to amend the state finance law, in relation to deposits into the pharmacy benefit manager regulatory fund

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

1 Section 1. This act shall be known and may be cited as the
2 "prescription drug supply chain transparency act of 2023".

3 § 2. The insurance law is amended by adding a new article 30 to read
4 as follows:

ARTICLE 30

PRESCRIPTION DRUG SUPPLY CHAIN TRANSPARENCY

Section 3001. Definitions.

8 3002. Electronic filing requirement.

9 3003. Special reports and other powers.

10 3004. Registration of pharmacy services administrative organiza-
11 tions.

12 3005. Required disclosures by pharmacy services administrative
13 organizations.

14 3006. Registration of pharmacy switch companies.

15 3007. Required disclosures by pharmacy switch companies.

16 3008. Registration of rebate aggregators.

17 3009. Required disclosures by rebate aggregators.

18 3010. Deposit of penalties and fees.

19 § 3001. Definitions. (a) For the purposes of this article, the defi-
20 initions contained in section two hundred eighty-a of the public health
21 law shall apply to this article as if specifically set forth herein.

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

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1 (b) For the purposes of this article, the following words or phrases
2 shall have the following meanings, unless the context otherwise
3 requires:

4 (1) "Manufacturer" means an entity engaged in the manufacture of
5 prescription drugs sold in this state.

6 (2) "Pharmacy services administrative organization" or "PSAO" means an
7 entity that is operating in this state and that contracts with a pharma-
8 cy for the purpose of conducting business on the pharmacy's behalf with
9 health plans or pharmacy benefit managers.

10 (3) "Rebate aggregator" means an entity that provides formulary rebate
11 administrative services for pharmacy benefit managers or otherwise nego-
12 tiates rebates with manufacturers on behalf of pharmacy benefit manag-
13 ers.

14 (4) "Switch company" means an entity that acts as an intermediary
15 between a pharmacy and a pharmacy benefit manager or health plan for the
16 purpose of routing insurance claims data to or from a pharmacy.

17 § 3002. Electronic filing requirement. Notwithstanding any law to the
18 contrary, any filing or submission required under this article shall be
19 made electronically unless the entity required to make such filing or
20 submission demonstrates undue hardship, impracticability or good cause
21 as required by section three hundred sixteen of this chapter.

22 § 3003. Special reports and other powers. (a) The superintendent may
23 address to any entity required to register or report information under
24 this article, or its officers, or any agent or employee thereof any
25 written inquiry in relation to matters connected to the requirements
26 outlined in this article. Every individual or entity so addressed shall
27 reply in writing to such inquiry promptly and truthfully, and such reply
28 shall be, if required by the superintendent, subscribed by such individ-
29 ual, or by such officer or officers of the entity, or by such agent or
30 employee of the entity as the superintendent shall designate, and
31 affirmed by them as true under the penalties of perjury.

32 (b) In the event any individual or entity does not submit a good faith
33 response to an inquiry from the superintendent pursuant to subsection
34 (a) of this section within a time period specified by the superintendent
35 of not less than fifteen business days, the superintendent is authorized
36 to levy a civil penalty, after notice and hearing, against such person
37 not to exceed one thousand dollars per day for each day beyond the date
38 specified by the superintendent for response to the inquiry.

39 (c) In addition to all other powers granted by law, the superintendent
40 is hereby empowered to order any person or entity required to register
41 or report information under this article to cease and desist from
42 violations of this article and, following issuance of such an order, may
43 bring and maintain an action in any court of competent jurisdiction for
44 an injunction or other appropriate relief to enjoin threatened or exist-
45 ing violations of this article, or of the superintendent's orders or
46 regulations. Such action may specifically seek restitution on behalf of
47 persons aggrieved by a violation of this article or orders or regu-
48 lations of the superintendent.

49 (d) In addition to all other powers granted by law, whenever it shall
50 appear to the superintendent, either upon complaint or otherwise, that
51 in the course of its business within or from this state that any entity
52 shall have employed, or employs, or is about to employ any business
53 practice or shall have performed, or is performing, or is about to
54 perform any act in violation of this article or orders or regulations of
55 the superintendent, or the superintendent believes it to be in the
56 public interest that an investigation be made, the superintendent may,

1 in the superintendent's discretion, either require or permit such entity
2 or any agent or employee thereof, to file with the department a state-
3 ment in writing under oath or otherwise as to all the facts and circum-
4 stances concerning the subject matter that the superintendent believes
5 is in the public interest to investigate and for such purpose may
6 prescribe forms upon which such statements shall be made. The super-
7 intendent may also require such other data and information as the super-
8 intendent may deem relevant and may make such special and independent
9 investigations as the superintendent may deem necessary in connection
10 with the matter. It shall be the duty of all public officers, their
11 deputies, assistants, subordinates, clerks or employees and all other
12 persons to render and furnish to the superintendent, when requested in
13 connection with an investigation under this subsection, all information
14 and assistance in their possession or within their power.

15 (e) Any entity who violates an order under subsection (c) or (d) of
16 this section shall be subject to a civil penalty, after notice and a
17 hearing, of not more than ten thousand dollars per act in violation, in
18 addition to any other penalty provided by law.

19 (f) Any communications or documents sent or received in connection
20 with an investigation under this article and any materials referring to
21 such information in the possession of the superintendent shall be confi-
22 dential and not subject to disclosure. Notwithstanding the foregoing,
23 the superintendent may release such confidential communications or docu-
24 ments to the extent necessary to address criminal or other unlawful
25 behavior. This subsection shall not apply to information, documents and
26 materials in the possession and under the control of an entity other
27 than the superintendent.

28 § 3004. Registration of pharmacy services administrative organiza-
29 tions. (a) No PSAO shall operate in this state after March thirty-first,
30 two thousand twenty-four without first registering with the department.

31 (b) A PSAO seeking registration shall file, in a form and manner
32 determined by the superintendent, information that includes at a mini-
33 mum:

34 (1) the legal name of the entity;

35 (2) any trade or other names used by the entity;

36 (3) the organizational structure of the entity;

37 (4) the pharmacies located within this state to which the entity
38 provides services;

39 (5) the persons who exercise control of the entity;

40 (6) a primary point of contact for the entity;

41 (7) an agent for service of process; and

42 (8) the most recent set of audited financials for the PSAO.

43 (c) The superintendent shall accept a registration only if the super-
44 intendent determines that all the required information has been provided
45 in a satisfactory form and has received payment of a nonrefundable
46 registration fee of five hundred dollars.

47 (d) If any of the information contained in the registration, except
48 for the information contained in paragraph four of subsection (b) of
49 this section, shall change, the PSAO shall notify the department of such
50 change in a form and manner prescribed by the superintendent for such
51 purpose within thirty days of the change. The requirement to update
52 shall include the filing of a new set of audited financials upon
53 adoption. For any change other than new audited financials, the filing
54 shall not be deemed complete unless accompanied by a payment of a fee of
55 fifty dollars.

1 (e) Every PSAO registration issued pursuant to this section shall
2 expire twelve months after the date of issue. A PSAO may renew its
3 registration for another twelve months upon the filing of an application
4 in conformity with this section.

5 (f) Before a PSAO registration shall be renewed, the PSAO shall file
6 an application for renewal in such form as the superintendent prescribes
7 and pay a fee of five hundred dollars.

8 (g) If a PSAO files a renewal application with the superintendent at
9 least one month before its expiration, then the registration sought to
10 be renewed shall continue in full force and effect either until the
11 issuance by the superintendent of the renewal registration applied for
12 or until five days after the superintendent shall have refused to issue
13 such renewal registration and given notice of such refusal to the appli-
14 cant, otherwise the PSAO registration shall expire and the registrant
15 shall have no expectation of renewal.

16 § 3005. Required disclosures by pharmacy services administrative
17 organizations. (a) (1) Each PSAO shall at the time of registration
18 pursuant to section three thousand four of this article disclose to the
19 department the extent of any ownership or control of the PSAO or by the
20 PSAO of any parent company, subsidiary, or affiliate that:

21 (A) provides pharmacy services;

22 (B) provides prescription drug or device services; or

23 (C) manufactures, sells, or distributes prescription drugs, biolog-
24 icals, or medical devices.

25 (2) A PSAO shall furnish a copy of the disclosure made at the time of
26 registration to all pharmacies located in this state with which it has a
27 contract in place at the time of the registration. A PSAO shall not
28 collect any fee for any services provided to a pharmacy for any period
29 beginning five days after the filing of a registration with the depart-
30 ment until such disclosure is sent to the pharmacy.

31 (3) Not later than April first, two thousand twenty-five, the depart-
32 ment shall publish all disclosures received under this section on a
33 publicly accessible online database, which shall be searchable at least
34 by PSAO name. All disclosures shall be posted not later than ten busi-
35 ness days after a registration is accepted and shall remain on the data-
36 base for the duration of the registration of the PSAO.

37 (b) (1) Prior to entering into any contract with any pharmacy located
38 in this state, including a contract with a group of pharmacies at least
39 one of which is in this state, a PSAO shall furnish to the pharmacy a
40 written disclosure of the information required to be disclosed in
41 subsection (a) of this section. No contract with a pharmacy shall be
42 enforceable against the pharmacy by a PSAO unless such PSAO makes such
43 disclosure prior to the agreement. In addition to any other power
44 conferred by law, the superintendent may prescribe the form and manner
45 of such disclosures.

46 (2) A PSAO that owns, is owned by, in whole or in part, or controls
47 any entity that manufactures, sells, or distributes prescription drugs,
48 biologicals, or medical devices shall not, as a condition of entering
49 into a contract with a pharmacy, require that the pharmacy purchase any
50 drugs or medical devices from an entity with which the PSAO has a finan-
51 cial interest, or an entity with an ownership interest in the PSAO.

52 (3) No PSAO shall enter into a contract with a pharmacy in this state
53 unless such contract shall provide that all remittances for claims
54 submitted by a pharmacy benefit manager or third-party payer on behalf
55 of a pharmacy to the PSAO shall be passed through by the PSAO to the
56 pharmacy within a reasonable amount of time, established in the

1 contract, after receipt of the remittance by the PSAO from the pharmacy
2 benefit manager or third-party payer.

3 (c) (1) If a PSAO provides, accepts, or processes a discount, conces-
4 sion, or product voucher, to reduce, directly or indirectly, a covered
5 individual's out-of-pocket expense for the order, dispensing, substi-
6 tution, sale, or purchase of a prescription drug shall make available to
7 each pharmacy in this state that it contracts with or which it
8 contracted with in the prior calendar year, an annual report that
9 includes:

10 (A) an aggregated total of all such transactions, by the pharmacy; and

11 (B) an aggregated total of any payments received by the PSAO itself
12 for providing, processing, or accepting any discount, concession, or
13 product voucher on behalf of a pharmacy.

14 (2) A PSAO that does not provide, accept, or process a discount,
15 concession, or product voucher to reduce, directly or indirectly, a
16 covered individual's out-of-pocket expense for the order, dispensing,
17 substitution, sale, or purchase of a prescription drug may indicate "not
18 applicable" when filing for registration and will subsequently be exempt
19 from providing such reports.

20 (3) A pharmacy in this state that is a party to a contract with a PSAO
21 shall have a right to an accounting of the funds received by the PSAO
22 for goods or services provided by the pharmacy to patients and custom-
23 ers.

24 § 3006. Registration of pharmacy switch companies. (a) No switch
25 company may do business in this state after June thirtieth, two thousand
26 twenty-four without first registering with the department.

27 (b) A switch company seeking registration shall file with the depart-
28 ment, in a form and manner determined by the superintendent, information
29 including but not limited to:

30 (1) the legal name of the entity;

31 (2) any trade or other names used by the entity;

32 (3) the organizational structure of the entity;

33 (4) the pharmacies located within this state and the pharmacy benefit
34 managers licensed in this state to which the entity provides services;

35 (5) the persons who exercise control of the entity;

36 (6) a primary point of contact for the entity;

37 (7) an agent for service of process; and

38 (8) the most recent set of audited financials for the pharmacy switch
39 company.

40 (c) The superintendent shall accept a registration only if he or she
41 deems that all the required information has been provided in a satisfac-
42 tory form and manner and has received payment of a nonrefundable regis-
43 tration fee of five hundred dollars.

44 (d) If any of the information contained in the registration shall
45 change, the switch company shall notify the department of the change in
46 a form and manner prescribed by the superintendent for such purpose
47 within thirty days of the change. Such requirement to update shall
48 include the filing of a new set of audited financials upon adoption. For
49 any change other than new audited financials, the filing shall not be
50 deemed complete unless accompanied by a payment of a fee of fifty
51 dollars.

52 (e) Every pharmacy switch company's registration shall expire twelve
53 months after the date of issue. Every registration issued pursuant to
54 this section may be renewed for the ensuing period of twelve months upon
55 the filing of an application in conformity with this section.

1 (f) Before a pharmacy switch company's registration shall be renewed,
2 the pharmacy switch company shall properly file in the office of the
3 superintendent an application for renewal in such form as the super-
4 intendent prescribes and pay a fee of five hundred dollars.

5 (g) If an application for a renewal registration shall have been filed
6 with the superintendent at least one month before its expiration, then
7 the registration sought to be renewed shall continue in full force and
8 effect either until the issuance by the superintendent of the renewal
9 registration applied for or until five days after the superintendent
10 shall have refused to issue such renewal registration and given notice
11 of such refusal to the applicant, otherwise the registration shall
12 expire and the registrant shall have no expectation of renewal.

13 § 3007. Required disclosures by pharmacy switch companies. Each switch
14 company shall annually disclose to the department, in a form and manner
15 prescribed by the superintendent, such information as the superintendent
16 deems necessary for the proper supervision of the industry. Such infor-
17 mation shall include:

18 (a) a list of services the switch company provides and the industries
19 to which they are provided;

20 (b) information on electronic voucher services provided by the switch
21 company, including:

22 (1) a list of manufacturers that the switch company has contracts with
23 or for which it transmits electronic vouchers;

24 (2) a list of medications and the National Drug Codes (NDCs) for which
25 the switch company may apply electronic vouchers; and

26 (3) the total amount of money collected from manufacturers related to
27 transmission of electronic vouchers; and

28 (c) the number of transactions processed in this state and the total
29 amount of revenue attributable to those transactions.

30 § 3008. Registration of rebate aggregators. (a) No rebate aggregator
31 may do business in this state after September thirtieth, two thousand
32 twenty-four without first registering with the department.

33 (b) A rebate aggregator seeking registration shall file, in a form and
34 manner determined by the superintendent, information including but not
35 limited to:

36 (1) the legal name of the entity;

37 (2) any trade or other names used by the entity;

38 (3) the organizational structure of the entity;

39 (4) the health plans and the pharmacy benefit managers licensed in
40 this state to which the entity provides services;

41 (5) the persons who exercise control of the entity;

42 (6) a primary point of contact for the entity;

43 (7) an agent for service of process; and

44 (8) the most recent set of audited financials for the rebate aggrega-
45 tor.

46 (c) The superintendent shall accept a registration only if he or she
47 deems that all the required information has been provided in a satisfac-
48 tory form and manner and has received payment of a nonrefundable regis-
49 tration fee of five hundred dollars.

50 (d) If any of the information contained in the registration shall
51 change, the rebate aggregator shall notify the department of such change
52 in a form and manner prescribed by the superintendent for such purpose
53 within thirty days of the change. Such requirement to update shall
54 include the filing of a new set of audited financials upon adoption. For
55 any change other than new audited financials, the filing shall not be

1 deemed complete unless accompanied by a payment of a fee of fifty
2 dollars.

3 (e) Every rebate aggregator's registration shall expire twelve months
4 after the date of issue. Every registration issued pursuant to this
5 section may be renewed for the ensuing period of twelve months upon the
6 filing of an application in conformity with this section.

7 (f) Before a rebate aggregator's registration shall be renewed, the
8 rebate aggregator shall properly file in the office of the superinten-
9 dent an application for renewal in such form as the superintendent
10 prescribes and pay a fee of five hundred dollars.

11 (g) If an application for a renewal registration shall have been filed
12 with the superintendent at least one month before its expiration, then
13 the registration sought to be renewed shall continue in full force and
14 effect either until the issuance by the superintendent of the renewal
15 registration applied for or until five days after the superintendent
16 shall have refused to issue such renewal registration and given notice
17 of such refusal to the applicant, otherwise the registration shall
18 expire and the registrant shall have no expectation of renewal.

19 § 3009. Required disclosures by rebate aggregators. (a) Each rebate
20 aggregator that has a contract or arrangement with a pharmacy benefit
21 manager serving a health plan shall, on an annual basis, disclose in
22 writing to the health plan the following:

23 (1) fee structure provisions of any contract or arrangement between
24 the rebate aggregator and pharmacy benefit manager or drug manufacturer,
25 including:

26 (A) fees collected for aggregating rebates due to the health plan; and
27 (B) such other information as the superintendent may require by regu-
28 lation; and

29 (2) quantification of inflationary payments, credits, grants,
30 reimbursements, other financial or other reimbursements, incentives,
31 inducements, refunds or other benefits received by the rebate aggregator
32 from the drug manufacturer and retained by the rebate aggregator, wheth-
33 er referred to as a rebate, a discount, or otherwise.

34 (b) (1) Each rebate aggregator shall, at the time of registration,
35 disclose to the department the extent of any ownership or control of the
36 rebate aggregator or by the rebate aggregator of any parent company,
37 subsidiary, or other affiliated organization that provides pharmacy
38 benefit management services.

39 (2) Each rebate aggregator shall on an annual basis disclose to the
40 department the information requested by the superintendent, including:

41 (A) any payments made to a rebate aggregator by a drug manufacturer
42 relating to a drug's utilization, including inflationary payments, cred-
43 its, grants, reimbursements, other financial or other reimbursements,
44 incentives, inducements, refunds or other benefits received by the
45 rebate aggregator, whether referred to as a rebate, a discount, or
46 otherwise;

47 (B) any payments made, including those described in subparagraph (A)
48 of this paragraph and subsequently retained by a rebate aggregator;

49 (C) any fees charged by the rebate aggregator to the pharmacy benefit
50 manager or drug manufacturer relating to a drug's utilization;

51 (D) any payments made to a rebate aggregator from a program adminis-
52 tered by a drug manufacturer for the purpose of assisting patients with
53 the cost of prescription drugs, including copayment assistance programs,
54 discount cards, and coupons; and

1 (E) the terms and conditions of any contract or arrangement between
2 the rebate aggregator and a pharmacy benefit manager or drug manufactur-
3 er.

4 § 3010. Deposit of penalties and fees. Penalties and fees collected
5 pursuant to this article shall be deposited into the pharmacy benefit
6 manager regulatory fund established pursuant to section ninety-nine-oo
7 of the state finance law.

8 § 3. Subdivision 3 of section 99-oo of the state finance law, as added
9 by chapter 128 of the laws of 2022, is amended to read as follows:

10 3. Such fund shall consist of money received by the state as fees
11 under [~~article~~] articles twenty-nine and thirty of the insurance law or
12 penalties ordered under [~~article~~] articles twenty-nine and thirty of the
13 insurance law and all other monies appropriated, credited, or trans-
14 ferred thereto from any other fund or source pursuant to law. All monies
15 shall remain in such fund unless and until directed by statute or appro-
16 priation.

17 § 4. This act shall take effect immediately.