STATE OF NEW YORK

2393--B

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

Introduced by Sens. JACKSON, HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law and the public health law, in relation to requiring certain health insurance issuers to certify that at least a majority of prescription drug rebates are provided to patients at the point of sale

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 3246 to read as follows:

§ 3246. Ensuring fairness in certain cost sharing. (a) As used in this section, the following terms shall have the following meanings:

(1) "Defined cost sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee's health plan.

(2) "Insurer" means any health insurance issuer that is subject to state law regulating insurance and offers health insurance coverage, as defined in 42 U.S.C. § 300gg-91, or any state or local governmental employer plan.

(3) "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the insurer, or other party on behalf of the insurer, in the event of an increase in the wholesale acquisition cost of a drug above a specified threshold.

(4) "Rebate" means:

(A) Negotiated price concessions including but not limited to base price concessions, whether described as a rebate or otherwise, and reasonable estimates of any price protection rebates and performance-

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

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based price concessions that may accrue directly or indirectly to the insurer during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with the dispensing or administration of a prescription drug, and

(B) Reasonable estimates of any negotiated price concessions, fees and other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the insurer and serve to reduce the insurer's liabilities for a prescription drug.

(b) An enrollee's defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least eighty-five percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Nothing shall preclude an insurer from decreasing an enrollee's defined cost sharing by an amount greater than that required under this subsection.

(c) An insurer shall submit to the superintendent by the first of January of each year a certification in a form to be established by the superintendent attesting that it has complied with the requirements of subsection (b) of this section for the prior calendar year.

(d) In complying with the provisions of this section, an insurer or its agents shall not publish or otherwise publicly reveal information regarding the actual amount of rebates an insurer receives on a product or therapeutic class of products, manufacturer, or pharmacy-specific basis. Such information shall be exempt from disclosure under section eighty-seven of the public officers law and shall not be disclosed directly or indirectly, or in a manner that would allow for the identification of an individual product, therapeutic class of products, or manufacturer, or in a manner that would have the potential to compromise the financial, competitive, or proprietary nature of such information. An insurer shall impose the confidentiality protections of this subdivision on any vendor or downstream third-party that performs health care or administrative services on behalf of the insurer that may receive or have access to rebate information.

§ 2. The insurance law is amended by adding a new section 4331 to read as follows:

§ 4331. Ensuring fairness in certain cost sharing. (a) As used in this section, the following terms shall have the following meanings:

(1) "Defined cost sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee's health plan.

(2) "Corporation" means any health insurance issuer that is subject to state law regulating insurance and offers health insurance coverage, as defined in 42 U.S.C. § 300gg-91, or any state or local governmental employer plan.

(3) "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the corporation, or other party on behalf of the corporation, in the event of an increase in the wholesale acquisition cost of a drug above a specified threshold.

(4) "Rebate" means:

(A) Negotiated price concessions including but not limited to base price concessions, whether described as a rebate or otherwise, and reasonable estimates of any price protection rebates and performance-based price concessions that may accrue directly or indirectly to the corporation during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with the dispensing or administration of a prescription drug, and

(B) Reasonable estimates of any negotiated price concessions, fees and other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the corporation and serve to reduce the corporation's liabilities for a prescription drug.

(b) An enrollee's defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least eighty-five percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Nothing shall preclude a corporation from decreasing an enrollee's defined cost sharing by an amount greater than that required under this subsection.

(c) A corporation shall submit to the superintendent by the first of January of each year a certification in a form to be established by the superintendent attesting that it has complied with the requirements of subsection (b) of this section for the prior calendar year.

(d) In complying with the provisions of this section, a corporation or its agents shall not publish or otherwise publicly reveal information regarding the actual amount of rebates a corporation receives on a product or therapeutic class of products, manufacturer, or pharmacy-specific basis. Such information shall be exempt from disclosure under section eighty-seven of the public officers law and shall not be disclosed directly or indirectly, or in a manner that would allow for the identification of an individual product, therapeutic class of products, or manufacturer, or in a manner that would have the potential to compromise the financial, competitive, or proprietary nature of such information. A corporation shall impose the confidentiality protections of this subdivision on any vendor or downstream third-party that performs health care or administrative services on behalf of the corporation that may receive or have access to rebate information.

§ 3. The public health law is amended by adding a new section 4417 to read as follows:

§ 4417. Ensuring fairness in certain cost sharing. 1. As used in this section, the following terms shall have the following meanings:

(a) "Defined cost sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee's health plan.

(b) "Organization" means any health insurance issuer that is subject to state law regulating insurance and offers health insurance coverage, as defined in 42 U.S.C. § 300gg-91, or any state or local governmental employer plan.

(c) "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the organization, or other party on behalf of the organization, in the event of an increase in the wholesale acquisition cost of a drug above a specified threshold.

(d) "Rebate" means:

(i) Negotiated price concessions including but not limited to base price concessions, whether described as a rebate or otherwise, and reasonable estimates of any price protection rebates and performance-based price concessions that may accrue directly or indirectly to the organization during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with the dispensing or administration of a prescription drug, and

(ii) Reasonable estimates of any negotiated price concessions, fees and other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the organization and serve to reduce the organization's liabilities for a prescription drug.

2. An enrollee's defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least eighty-five percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Nothing shall preclude an organization from decreasing an enrollee's defined cost sharing by an amount greater than that required under this subdivision.

3. An organization shall submit to the superintendent by the first of January of each year a certification in a form to be established by the superintendent attesting that it has complied with the requirements of subdivision two of this section for the prior calendar year.

4. In complying with the provisions of this section, an organization or its agents shall not publish or otherwise publicly reveal information regarding the actual amount of rebates an organization receives on a product or therapeutic class of products, manufacturer, or pharmacy-specific basis. Such information shall be exempt from disclosure under section eighty-seven of the public officers law and shall not be disclosed directly or indirectly, or in a manner that would allow for the identification of an individual product, therapeutic class of products, or manufacturer, or in a manner that would have the potential to compromise the financial, competitive, or proprietary nature of such information. An organization shall impose the confidentiality protections of this subdivision on any vendor or downstream third-party that performs health care or administrative services on behalf of the organization that may receive or have access to rebate information.

§ 4. This act shall take effect immediately and apply to contracts issued, renewed or amended on or after January 1, 2023.