

# 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:

1 Section 1. The insurance law is amended by adding a new section 3246  
2 to read as follows:

3 § 3246. Ensuring fairness in certain cost sharing. (a) As used in this  
4 section, the following terms shall have the following meanings:

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

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

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

16 (4) "Rebate" means:

17 (A) Negotiated price concessions including but not limited to base  
18 price concessions, whether described as a rebate or otherwise, and  
19 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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1 based price concessions that may accrue directly or indirectly to the  
2 insurer during the coverage year from a manufacturer, dispensing pharma-  
3 cy, or other party in connection with the dispensing or administration  
4 of a prescription drug, and

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

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

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

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

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

36 § 4331. Ensuring fairness in certain cost sharing. (a) As used in this  
37 section, the following terms shall have the following meanings:

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

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

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

49 (4) "Rebate" means:

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

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

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

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

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

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

32 § 4417. Ensuring fairness in certain cost sharing. 1. As used in this  
33 section, the following terms shall have the following meanings:

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

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

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

45 (d) "Rebate" means:

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

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

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

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

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

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