

STATE OF NEW YORK

1707--A

Cal. No. 196

2023-2024 Regular Sessions

IN ASSEMBLY

January 18, 2023

Introduced by M. of A. D. ROSENTHAL, DICKENS, COLTON, WILLIAMS, SEAWRIGHT, COOK, SIMON, JACOBSON, HUNTER, DINOWITZ, ZINERMAN, WEPRIN, MEEKS, SHIMSKY, L. ROSENTHAL, BUTTENSCHON, RAMOS, LUPARDO, LEVENBERG, STIRPE, GONZALEZ-ROJAS -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on 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

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

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1 delivery in this state or a health plan subject to section three hundred
2 sixty-four-j of the social services law, including the processing and
3 payment of claims for prescription drugs, the performance of drug utili-
4 zation review, the processing of drug prior authorization requests, the
5 adjudication of appeals or grievances related to prescription drug
6 coverage, contracting with network pharmacies, and controlling the cost
7 of covered prescription drugs.

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

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

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

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

29 (ii) The superintendent shall forthwith publish the notice required by
30 paragraph one of this subsection on the department of financial services
31 website within five days of its receipt.

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

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

40 (4) Information supplied by a manufacturer pursuant to this section
41 that the manufacturer has reasonably designated as a trade secret shall
42 be considered confidential and a trade secret, shall be exempt from
43 public disclosure and copying under article six of the public officers
44 law and shall not be disclosed directly or indirectly by the superinten-
45 dent. Notwithstanding the foregoing sentence, the superintendent shall
46 be permitted to disclose information in an aggregated format if such
47 aggregate information cannot directly or indirectly be used to identify
48 trade secret information related to a specific manufacturer or the
49 manufacturer's prescription drug, including but not limited to any
50 information related to pricing for the manufacturer's prescription drug
51 that has been reasonably designated as a trade secret.

52 (5) In the event that a manufacturer of a prescription drug subject to
53 this section does not report the information required in paragraph one
54 of this subsection, the superintendent is authorized to impose any
55 penalty or remedy authorized by this chapter, after notice and a hear-
56 ing, against such manufacturer of up to five thousand dollars per day

1 for every day after the reporting period described in this section that
2 the required information is not reported.

3 § 2. This act shall take effect on the one hundred eightieth day after
4 it shall have become a law.