STATE OF NEW YORK

7789

2023-2024 Regular Sessions

IN ASSEMBLY

June 15, 2023

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing the 340B prescription drug anti-discrimination act

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

Section 1. Short title. This act shall be known and may be cited as the "340B prescription drug anti-discrimination act".

§ 2. Declaration of purpose. Section 340B of the federal public health service act requires pharmaceutical manufacturers, as a condition of participation in Medicare and Medicaid, to provide discounts on outpatient drugs to certain providers that serve a high number of Medicaid patients. These cost savings enable safety-net providers to stretch scarce resources as far as possible in providing more comprehensive services to their communities.

In recent years, some pharmaceutical companies and pharmacy benefit managers have imposed certain requirements and limitations on New York 340B covered entities, thus depriving such entities of much-needed cost savings. These practices discriminate against 340B covered entities and their pharmacy partners, and by extension the patients they serve. These discriminatory practices have the effect of limiting those covered entities' ability to care for their communities fully and comprehensively.

There is a need for the state to prevent erosion of our 340B covered entities' 340B cost savings, with its concomitant impacts on patient access to health care services. This act is intended to achieve that goal by prohibiting pharmaceutical companies, among other entities, from engaging in practices that discriminate against 340B covered entities and their pharmacy partners.

§ 3. The public health law is amended by adding a new section 280-d to read as follows:

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

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§ 280-d. Prescription drug discrimination prohibited. 1. Definitions. (a) "340B program" shall mean the drug discount program authorized by section 340B of the federal public health service act (42 U.S.C. § 256b).

(b) "Covered entity" shall:

(i) have the same meaning as is set forth in section 340B(a)(4) of the federal public health service act (42 U.S.C. § 256b);

(ii) mean an entity authorized to participate in the 340B program; and

(iii) include New York state pharmacies that receive drugs purchased under a contract pharmacy arrangement with a covered entity.

(c) "Dispensing" shall include a pharmacy's entire distribution process, including the ordering, purchasing, delivering, receipt, and sale of drugs, and any other aspect of such distribution process that an entity may seek to deny, prohibit, condition, or otherwise limit.

(d) "Pharmacy" shall have the same meaning as is set forth in section sixty-eight hundred two of the education law.

2. Prohibition of discriminatory practice. No entity, including but not limited to a pharmaceutical manufacturer or pharmacy benefit manager, shall:

(a) deny, prohibit, condition, or otherwise limit the dispensing of drugs from a covered entity;

(b) deny access to drugs manufactured by a pharmaceutical manufacturer to a covered entity based on such covered entity's participation in the 340B program;

(c) impose requirements, exclusions, reimbursement terms, fees, audits, claim identification, or other conditions on a covered entity that differ from the requirements, exclusions, reimbursement terms, fees, audits, claim identification, or other conditions applied to entities that do not participate in the 340B program.

3. Enforcement. (a) Any provision of a contract that is contrary to this act shall be void and unenforceable.

(b) The commissioner shall have the authority to impose a civil monetary penalty pursuant to section twelve of this chapter on any entity that violates the provisions of this act.

(c) The commissioner shall refer any matters in which a civil monetary penalty is being imposed to the education department and the office of the attorney general for review.

§ 4. This act shall take effect immediately.