

STATE OF NEW YORK

6738--A

2023-2024 Regular Sessions

IN SENATE

May 8, 2023

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- 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".

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 wholesalers, distributors, 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 inquiry in relation to its business or any matter connected therewith.
26 Every individual or entity so addressed shall reply in writing to such
27 inquiry promptly and truthfully, and such reply shall be, if required by
28 the superintendent, subscribed by such individual, or by such officer or
29 officers of the entity, or by such agent or employee of the entity as
30 the superintendent shall designate, and affirmed by them as true under
31 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-five 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 with 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;

42 (8) a set of audited financials for the prior fiscal year; and

43 (9) such other information as the superintendent shall require.

44 (c) The superintendent shall accept a registration only if the super-
45 intendent determines that all the required information has been provided
46 in a satisfactory form and has received payment of a nonrefundable
47 registration fee of five thousand dollars. Notwithstanding the require-
48 ments of this subsection the superintendent may, in his or her sole
49 discretion and upon good cause shown, reduce the registration fee for
50 any PSAO to an amount not less than one-tenth of one percent of the fees
51 earned by the PSAO from all pharmacies located in New York in the prior
52 calendar year.

53 (d) If any of the information contained in the registration shall
54 change, the PSAO shall notify the department of such change in a form
55 and manner prescribed by the superintendent for such purpose within
56 twenty-one days of the change. The requirement to update shall include

1 the filing of a new set of audited financials upon adoption. For any
2 change other than new audited financials, the filing shall not be deemed
3 complete unless accompanied by a payment of a fee of fifty dollars.

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

8 (f) Before a PSAO registration shall be renewed, the PSAO shall file
9 an application for renewal in such form as the superintendent prescribes
10 and pay a fee of five thousand dollars. Notwithstanding the requirements
11 of this subsection, the superintendent may, in his or her sole
12 discretion and upon good cause shown, reduce the registration fee for
13 any PSAO to an amount not less than one-tenth of one percent of the fees
14 earned by the PSAO from all pharmacies located in New York in the prior
15 calendar year.

16 (g) If a PSAO files a renewal application with the superintendent at
17 least one month before its expiration, then the registration sought to
18 be renewed shall continue in full force and effect either until the
19 issuance by the superintendent of the renewal registration applied for
20 or until five days after the superintendent shall have refused to issue
21 such renewal registration and given notice of such refusal to the appli-
22 cant, otherwise the PSAO registration shall expire and the registrant
23 shall have no expectation of renewal.

24 § 3005. Required disclosures by pharmacy services administrative
25 organizations. (a) (1) Each PSAO shall at the time of registration
26 pursuant to section three thousand four of this article disclose to the
27 department the extent of any ownership or control of the PSAO or by the
28 PSAO of any parent company, subsidiary, or affiliate that:

29 (A) provides pharmacy services;

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

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

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

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

45 (b) (1) Prior to entering into any contract with any pharmacy located
46 in this state, including a contract with a group of pharmacies at least
47 one of which is in this state, a PSAO shall furnish to the pharmacy a
48 written disclosure of the information required to be disclosed in
49 subsection (a) of this section. No contract with a pharmacy shall be
50 enforceable against the pharmacy by a PSAO unless such PSAO makes such
51 disclosure prior to the agreement. In addition to any other power
52 conferred by law, the superintendent may prescribe the form and manner
53 of such disclosures.

54 (2) A PSAO that owns, is owned by, in whole or in part, or controls
55 any entity that manufactures, sells, or distributes prescription drugs,
56 biologicals, or medical devices shall not, as a condition of entering

1 into a contract with a pharmacy, require that the pharmacy purchase any
2 drugs or medical devices from an entity with which the PSAO has a finan-
3 cial interest, or an entity with an ownership interest in the PSAO.

4 (3) No PSAO shall enter into a contract with a pharmacy in this state
5 unless such contract shall provide that all remittances for claims
6 submitted by a pharmacy benefit manager or third-party payer on behalf
7 of a pharmacy to the PSAO shall be passed through by the PSAO to the
8 pharmacy within a reasonable amount of time, established in the
9 contract, after receipt of the remittance by the PSAO from the pharmacy
10 benefit manager or third-party payer.

11 (c) (1) A PSAO that provides, accepts, or processes a discount,
12 concession, or product voucher, to reduce, directly or indirectly, a
13 covered individual's out-of-pocket expense for the order, dispensing,
14 substitution, sale, or purchase of a prescription drug shall make avail-
15 able to each pharmacy in this state that it contracts with or which it
16 contracted with in the prior calendar year, an annual report that
17 includes:

18 (A) an aggregated total of all such transactions, by the pharmacy; and
19 (B) an aggregated total of any payments received by the PSAO itself
20 for providing, processing, or accepting any discount, concession, or
21 product voucher on behalf of a pharmacy.

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

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

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

32 (1) the legal name of the entity;
33 (2) any trade or other names used by the entity;
34 (3) the organizational structure of the entity;
35 (4) the pharmacies located within this state and the pharmacy benefit
36 managers licensed in this state with which the entity provides services;
37 (5) the persons who exercise control of the entity;
38 (6) a primary point of contact for the entity;
39 (7) an agent for service of process;
40 (8) a set of audited financials for the prior fiscal year; and
41 (9) such other information or documents as the superintendent shall
42 require.

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

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

55 (e) Every pharmacy switch company's registration shall expire twelve
56 months after the date of issue. Every registration issued pursuant to

1 this section may be renewed for the ensuing period of twelve months upon
2 the filing of an application in conformity with this section.

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

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

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

20 (1) a list of services the switch company provides and the industries
21 to which they are provided;

22 (2) information on electronic voucher services provided by the switch
23 company, including:

24 (A) a list of manufacturers that the switch company has contracts with
25 or for which it transmits electronic vouchers;

26 (B) a list of medications and the National Drug Codes (NDCs) for which
27 the switch company may apply electronic vouchers; and

28 (C) the total amount of money collected from manufacturers related to
29 transmission of electronic vouchers; and

30 (3) the number of transactions processed in this state and the total
31 amount of revenue attributable to those transactions.

32 (b) A switch company shall disclose to each pharmacy benefit manager
33 with which it does business any instance in which an electronic voucher
34 was applied in the course of routing the claim.

35 § 3008. Registration of rebate aggregators. (a) No rebate aggregator
36 may do business in this state after September thirtieth, two thousand
37 twenty-five without first registering with the department.

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

41 (1) the legal name of the entity;

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

43 (3) the organizational structure of the entity;

44 (4) the health plans and the pharmacy benefit managers licensed in
45 this state for which the entity provides services;

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

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

48 (7) an agent for service of process;

49 (8) a set of audited financials for the prior fiscal year; and

50 (9) such other information or documents as the superintendent shall
51 require.

52 (c) The superintendent shall accept a registration only if he or she
53 deems that all the required information has been provided in a satisfac-
54 tory form and manner and has received payment of a nonrefundable regis-
55 tration fee of one thousand dollars.

1 (d) If any of the information contained in the registration shall
2 change the rebate aggregator shall notify the department of such change
3 in a form and manner prescribed by the superintendent for such purpose
4 within twenty-one days of the change. Such requirement to update shall
5 include the filing of a new set of audited financials upon adoption. For
6 any change other than new audited financials, the filing shall not be
7 deemed complete unless accompanied by a payment of a fee of fifty
8 dollars.

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

13 (f) Before a rebate aggregator's registration shall be renewed, the
14 rebate aggregator shall properly file in the office of the superinten-
15 dent an application for renewal in such form as the superintendent
16 prescribes and pay a fee of one thousand dollars.

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

25 § 3009. Required disclosures by rebate aggregators. (a) Each rebate
26 aggregator that has a contract or arrangement with a pharmacy benefit
27 manager serving a health plan shall, on an annual basis, disclose in
28 writing to the health plan the following:

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

32 (A) fees collected for aggregating rebates due to the health plan; and

33 (B) such other information as the superintendent may require by regu-
34 lation; and

35 (2) quantification of inflationary payments, credits, grants,
36 reimbursements, other financial or other reimbursements, incentives,
37 inducements, refunds or other benefits received by the rebate aggregator
38 from the drug manufacturer and retained by the rebate aggregator, wheth-
39 er referred to as a rebate, a discount, or otherwise.

40 (b) (1) Each rebate aggregator shall, at the time of registration,
41 disclose to the department the extent of any ownership or control of the
42 rebate aggregator or by the rebate aggregator of any parent company,
43 subsidiary, or other affiliated organization that provides pharmacy
44 benefit management services.

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

47 (A) any payments made to a rebate aggregator by a drug manufacturer
48 relating to a drug's utilization, including inflationary payments, cred-
49 its, grants, reimbursements, other financial or other reimbursements,
50 incentives, inducements, refunds or other benefits received by the
51 rebate aggregator, whether referred to as a rebate, a discount, or
52 otherwise;

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

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

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

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

8 § 3010. Deposit of penalties and fees. Penalties and fees collected
9 pursuant to this article shall be deposited into the pharmacy benefit
10 manager regulatory fund established pursuant to section ninety-nine-oo
11 of the state finance law.

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

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

21 § 4. This act shall take effect on the one hundred fiftieth day after
22 it shall have become a law.