STATE OF NEW YORK

8992

IN SENATE

April 8, 2024

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed 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. The public health law is amended by adding a new section 280-d to read as follows:

§ 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 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).

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

(d) "Dispensing" shall include a pharmacy's entire distribution process, including, but not limited to, the ordering, purchasing, delivering, receipt, and sale of drugs.

(e) "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 pharmaceutical manufacturer, pharmacy benefit manager, wholesaler, outsourcing facility, or third-party logistics provider shall:

(a) deny, prohibit, condition, or otherwise limit the dispensing of drugs from a covered entity or contract pharmacy, other than such limitations explicitly identified or explicitly authorized either under section 340B of the federal public health service act (42 U.S.C. § 256b), or any regulations promulgated pursuant to such statute;

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

LBD11664-03-4

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

(c) impose requirements, exclusions, reimbursement terms, fees, audits, claim identification, or other conditions on a covered entity or contract pharmacy 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, other than such limitations explicitly identified or explicitly authorized either under section 340B of the federal public health service act (42 U.S.C. § 256b), or any regulations promulgated pursuant to such statute.

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.

§ 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 4. This act shall take effect immediately.