

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 637 Session of 2017

INTRODUCED BY WHITE, STREET, BARTOLOTTA, COSTA, FONTANA AND BREWSTER, APRIL 18, 2017

SENATOR WHITE, BANKING AND INSURANCE, AS AMENDED, DECEMBER 13, 2017

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," in health and accident insurance,
12 establishing the Pharmaceutical Transparency Commission and <--
13 providing for its powers and duties. PROVIDING FOR <--
14 PHARMACEUTICAL PRICING TRANSPARENCY.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. The act of May 17, 1921 (P.L.682, No.284), known
18 as The Insurance Company Law of 1921, is amended by adding a
19 section to read:

20 ~~Section 635.8. Pharmaceutical Transparency Commission. (a) <--~~
21 ~~The Insurance Department shall oversee the Pharmaceutical~~
22 ~~Transparency Commission, which commission is hereby established.~~
23 ~~The commission shall consist of:~~

1 ~~(1) The Insurance Commissioner.~~

2 ~~(2) The Secretary of Health.~~

3 ~~(3) The Secretary of Human Services.~~

4 ~~(4) A pharmacist designated by the Pennsylvania Pharmacists~~
5 ~~Association.~~

6 ~~(5) A consumer advocate designated by the Leukemia and~~
7 ~~Lymphoma Society.~~

8 ~~(6) A physician designated by the Pennsylvania Medical~~
9 ~~Society.~~

10 ~~(7) An insurance industry representative designated by the~~
11 ~~Pennsylvania Association of Health Underwriters.~~

12 ~~(b) The commission shall have the following powers and~~
13 ~~duties:~~

14 ~~(1) Hold quarterly meetings.~~

15 ~~(2) Review pharmaceutical retail pricing and determine~~
16 ~~whether those prices are reasonably related to the costs set~~
17 ~~forth in subsection (c) (1) (i) (A), (B), (C), (D) and (E). Prices~~
18 ~~in excess of twenty per centum (20%) of those costs shall be~~
19 ~~presumed to not be in reasonable relation to those costs. Absent~~
20 ~~a finding by the commission that such prices are nonetheless~~
21 ~~reasonable, an insurer or pharmacy benefit manager shall not be~~
22 ~~required to pay the price of any prescription medication~~
23 ~~exceeding twenty per centum (20%) of those costs.~~

24 ~~(3) Assess an annual fee on pharmaceutical manufacturers to~~
25 ~~provide for the commission's activities.~~

26 ~~(4) Determine reasonable reimbursement to hospitals, health~~
27 ~~care providers and physicians for costs associated with the~~
28 ~~dispensing of medication.~~

29 SECTION 635.8. PHARMACEUTICAL PRICING TRANSPARENCY.-- (A)
30 THE INSURANCE DEPARTMENT SHALL ANNUALLY COLLECT INFORMATION ON

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1 PHARMACEUTICAL RETAIL PRICING.

2 ~~(e)~~ (B) (1) Each manufacturer of prescription medication <--
3 shall report annually to the ~~commission~~ DEPARTMENT by March 31 <--
4 the following for each prescription medication that is delivered
5 for treatment in this Commonwealth:

6 (i) Total costs derived in the production of the
7 prescription medication, including the following:

8 (A) The total research and development costs paid by the
9 manufacturer and, separately, the total research and development
10 costs paid by any predecessor in the development of the drug.

11 (B) The total costs of clinical trials and other regulatory
12 costs paid by the manufacturer and, separately, the total costs
13 of clinical trials and other regulatory costs paid by any
14 predecessor in the development of the drug.

15 (C) The total costs for materials, manufacturing and
16 administration attributable to the drug.

17 (D) The total costs paid by any entity other than the
18 manufacturer or predecessor for research and development,
19 including any amount from Federal, State or other governmental
20 programs or any form of subsidies, grants or other support.

21 (E) Any other costs to acquire the drug, including costs for
22 the purchase of patents, licensing or acquisition of any
23 corporate entity owning any rights to the drug while in
24 development or all of such costs.

25 (F) The total marketing and advertising costs for the
26 promotion of the drug directly to consumers, including, but not
27 limited to, costs associated with direct-to-consumer coupons and
28 amount redeemed, total marketing and advertising costs for
29 promotion of the drug directly or indirectly to prescribers and
30 any other advertising for the drug.

1 (ii) A cumulative annual history of average wholesale price
2 and weighted average cost increases for the drug, expressed as
3 percentages, including the months each increase in the
4 categories of average wholesale price and weighted average cost
5 took effect.

6 (iii) The total profit attributable to the drug as
7 represented in total dollars and represented as a percentage of
8 the total company profits that were derived from the sale of the
9 drug.

10 (iv) A description of the manufacturer's patient
11 prescription assistance program, including, but not limited to,
12 the total amount of financial assistance provided, the total
13 amount of financial assistance provided to Pennsylvania
14 residents, the average amount of assistance per Pennsylvania
15 resident and for each drug and the parameters and qualifications
16 for any patient prescription assistance program.

17 (v) Total profit as represented in total dollars and a
18 percentage of total company profit derived from the sale of each
19 prescription medication.

20 (VI) THE AGGREGATE AMOUNT OF ALL REBATES THAT THE <--
21 MANUFACTURER HAS PROVIDED TO ALL PAYERS, INCLUDING, BUT NOT
22 LIMITED TO, INSURERS AND PHARMACY BENEFIT MANAGERS, FOR THE SALE
23 OF EACH DRUG WITHIN THIS COMMONWEALTH.

24 (2) In the event a company fails to report information for a
25 drug required by this section, an insurer or pharmacy benefit
26 manager shall not be required to reimburse the pharmaceutical
27 manufacturer for that drug.

28 ~~(d)~~ (C) All of the information in subsection ~~(e)~~ (B) shall <--
29 be itemized and documented by the manufacturer and audited by a
30 fully independent third-party auditor prior to filing.

1 ~~(e) (1) The commission shall submit recommendations to the~~ <--
2 ~~Insurance Department for regulations deemed necessary by the~~
3 ~~commission to administer this section.~~

4 ~~(2) The Insurance Department may promulgate regulations~~
5 ~~based on the recommendations submitted by the commission under~~
6 ~~paragraph (1).~~

7 ~~(3) The regulations promulgated under paragraph (2) shall be~~
8 ~~binding on the commission.~~

9 (D) A HEALTH INSURER SHALL INCLUDE THE AGGREGATE AMOUNT OF <--
10 REBATES IT HAS RECEIVED FROM PHARMACY BENEFIT MANAGERS OR DRUG
11 MANUFACTURERS FOR THE PRECEDING CALENDAR YEAR IN ITS ANNUAL
12 STATEMENT FILED WITH THE DEPARTMENT. THE DEPARTMENT SHALL VERIFY
13 THAT ALL SUCH REBATES ARE PASSED ON TO AN INSURER'S CUSTOMER IN
14 ANY RATE FILING WITH THE DEPARTMENT.

15 (E) PHARMACY BENEFIT MANAGER OR INSURER CONTRACTS WITH
16 PHARMACIES MAY NOT CONTAIN A PROVISION THAT PROHIBITS
17 PHARMACISTS FROM DISCLOSING INFORMATION TO A CUSTOMER THAT WOULD
18 REDUCE THE CUSTOMER'S OUT-OF-POCKET COSTS FOR PRESCRIPTION
19 DRUGS.

20 ~~(f) The commission, in conjunction with the~~ THE Insurance <--
21 ~~Department,~~ shall report annually to the General Assembly and <--
22 ~~post on the department's publicly accessible Internet website~~
23 ~~the information reported under this section. THE DEPARTMENT MAY~~ <--
24 ONLY INCLUDE IN THE PUBLIC REPORT THE AGGREGATE AMOUNT OF
25 REBATES PAID FOR EACH DRUG AND SHALL NOT DISCLOSE THE IDENTITY
26 OF ANY INDIVIDUAL PAYER.

27 (G) FOR PURPOSES OF THIS SECTION , THE TERM "MANUFACTURER"
28 DOES NOT INCLUDE A PERSON THAT ENGAGES IN A BUSINESS THAT ONLY
29 REPACKAGES OR RELABELS PRESCRIPTION DRUGS.

30 SECTION 2. THIS ACT SHALL APPLY TO ANY NEW OR RENEWED

1 CONTRACT ON OR AFTER JANUARY 1, 2018.

2 Section 2 3. This act shall take effect in 60 days.

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