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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

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

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

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

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

~~(1) The Insurance Commissioner.~~

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

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

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

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

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

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

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

~~(1) Hold quarterly meetings.~~

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

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

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

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

PHARMACEUTICAL RETAIL PRICING.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONTRACT ON OR AFTER JANUARY 1, 2018.

Section ~~2~~ 3. This act shall take effect in 60 days. **<--**