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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1315 Session of 2020

INTRODUCED BY KILLION, KEARNEY, MASTRIANO, MENSCH, PITTMAN AND STEFANO, SEPTEMBER 11, 2020

REFERRED TO BANKING AND INSURANCE, SEPTEMBER 11, 2020

AN ACT

Providing for reduction in prescription drug costs; and imposing powers and duties on the Insurance Commissioner.

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

Section 1. Short title.

This act shall be known and may be cited as the Prescription Drug Cost Reduction Act.

Section 2. Purpose and findings.

(a) Purpose.--The purpose of this act is to protect the safety, health and economic well-being of the residents of this Commonwealth by safeguarding them from the negative and harmful impact of excessive and unconscionable prices for prescription drugs.

(b) Findings.--The General Assembly finds that:

(1) Access to prescription drugs is necessary for the residents of this Commonwealth to maintain or acquire good health.

(2) Excessive prices for prescription drugs threaten the

safety and well-being of the residents of this Commonwealth, and it is necessary to protect our residents from the negative impact of excessive costs.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The board of trustees of the Pennsylvania Employee Benefit Trust Fund.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Commonwealth entity." An agency of State government that purchases prescription drugs on behalf of the Commonwealth for a person whose health care is paid for by the Commonwealth, including an agent, vendor, fiscal agent, contractor or other party acting on behalf of the Commonwealth. The term does not include the medical assistance program established under Title XVIII of the Social Security Act (Public Law 74-271, 42 U.S.C. § 1395 et seq.).

"ERISA plan." A plan qualified under the Employee Retirement Income Security Act of 1974 (Public Law 93-406, 88 Stat. 829).

"Health plan." A plan, contract or certificate subject to section 602-A of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

"Participating ERISA plan." An ERISA plan that has elected to participate in the requirements and restrictions of this act as described in section 5.

"Prescription drug." A drug for which a prescription is required for dispensing the drug in this Commonwealth, as those terms are defined in or within the meaning of the act of

September 27, 1961 (P.L.1700, No.699), known as the Pharmacy Act.

"Referenced drug." A prescription drug subject to a referenced rate.

"Referenced rate." The maximum rate established by the commissioner utilizing the wholesale acquisition cost and other pricing data described in section 5.

"Wholesale acquisition cost." This term shall have the same meaning as in 42 U.S.C. § 1395w-3a.

Section 4. Payment in excess of referenced rate prohibited.

(a) General rule.--It is unlawful for a Commonwealth entity, health plan or participating ERISA plan to purchase referenced drugs to be dispensed or delivered to a consumer in this Commonwealth, whether directly or through a distributor, for a cost higher than the referenced rate as determined in section 5.

(b) Contract provision required.--A contract entered into by a Commonwealth entity, health plan or participating ERISA plan and a third party for the purchase of prescription drugs shall expressly provide that rates paid for referenced drugs shall not exceed the referenced rate.

(c) Retail pharmacy conduct.--It is unlawful for a retail pharmacy licensed in this Commonwealth to purchase for sale or distribution to a person whose health care is provided by a Commonwealth entity or health plan referenced drugs for a cost that exceeds the referenced rate.

Section 5. ERISA plan opt-in.

An ERISA plan may elect to participate in this act. An ERISA plan that desires its purchase of prescription drugs to be subject to the prohibition in section 4 shall notify the commissioner in writing by January 1 of each year.

Section 6. Referenced drugs determined.

(a) Duty of board.--As of March 1 of each calendar year, the board shall transmit to the commissioner a list of the 250 most costly prescription drugs based upon net price times utilization. For each of the prescription drugs on the list, the board shall also provide the total amount expended by the Commonwealth on each of the prescription drugs on the list for the previous calendar year.

(b) Duty of commissioner.--Utilizing the information described in subsection (a), as of April 1 of each year, the commissioner shall produce and publish a list of 250 referenced drugs that shall be subject to the referenced rate as determined under subsection (c).

(c) Determination of referenced rate.--

(1) The commissioner shall determine the referenced rate for each prescription drug by comparing the wholesale acquisition cost to the cost from the:

(i) Ontario Ministry of Health and Long-Term Care and most recently published on the Ontario Drug Benefit Formulary.

(ii) Régie de l'Assurance Maladie du Québec and most recently published on the Quebec Public Drug Programs List of Medications.

(iii) British Columbia Ministry of Health and most recently published on the BC Pharmacare Formulary.

(iv) Alberta Ministry of Health and most recently published on the Alberta Drug Benefit List.

(2) After the comparison under paragraph (1) is conducted, the referenced rate for each prescription drug shall be calculated as the lowest cost among those resources

and the wholesale acquisition cost. If a specific referenced drug is not included within resources described in paragraph (1), the commissioner shall utilize for the purpose of determining the referenced rate the ceiling price for drugs as reported by the Government of Canada Patented Medicine Prices Review Board.

(d) Analysis of cost.--The determination by the commissioner of which prescription drugs to include on the list of referenced drugs shall be based on an analysis of the savings that could be achieved by subjecting those prescription drugs to the referenced rate. In making this determination, the commissioner shall consult with the board or its designee and the State Board of Pharmacy.

(e) Regulations.--The commissioner may promulgate regulations to implement the requirements of this act.

Section 7. Registered agent and office required.

An entity that sells, distributes, delivers or offers for sale a prescription drug in this Commonwealth shall maintain a registered agent and office in this Commonwealth.

Section 8. Use of savings.

(a) General rule.--Any savings generated as a result of the requirements in section 4(a) must be used to reduce costs to consumers. A Commonwealth entity, health plan or participating ERISA plan must calculate and utilize the savings directly to reduce costs for its members.

(b) Savings report to be filed with commissioner.--No later than April 1 of each calendar year, a Commonwealth entity, health plan and participating ERISA plan subject to this act shall submit to the commissioner a report describing the savings achieved for each referenced drug for the previous calendar year

and how the savings were used to achieve the requirements of subsection (a).

Section 9. Enforcement.

Each violation of this act shall be subject to a fine of $1,000. Every individual transaction in violation of section 4 shall be deemed be a separate violation. The Attorney General is authorized to enforce the provisions of this act on behalf of a Commonwealth entity or consumer of prescription drugs.

Section 10. Prohibition on withdrawal of referenced drugs for sale.

(a) General rule.--No manufacturer or distributor of a referenced drug may withdraw the referenced drug from sale or distribution within this Commonwealth for the purpose of avoiding the impact of the rate limitations provided in section 3.

(b) Notice of withdrawal.--A manufacturer that intends to withdraw a referenced drug from sale or distribution within this Commonwealth shall provide a notice of withdrawal in writing to the commissioner and Attorney General not less than 180 days prior to the withdrawal.

(c) Penalty.--The commissioner shall assess a penalty of $500,000 on an entity, including a manufacturer or distributor of a referenced drug, that the commissioner determines has withdrawn a referenced drug from distribution or sale in the State in violation of subsection (a) or (b).

Section 11. Effective date.

This act shall take effect in 60 days.