HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 540

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; ENACTING NEW SECTIONS OF THE NEW MEXICO INSURANCE CODE TO PROHIBIT DISCRIMINATION AGAINST ENTITIES PARTICIPATING IN THE FEDERAL 340B DRUG PRICING PROGRAM; ENSURING THAT ENTITIES PARTICIPATING IN THE FEDERAL 340B DRUG PRICING PROGRAM HAVE ACCESS TO DISCOUNTED DRUGS; AMENDING A SECTION OF THE PHARMACY BENEFITS MANAGER REGULATION ACT TO REQUIRE REPORTING; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in Sections 1 through 3 of this 2023 act:

A. "340B drug" means a drug that is purchased at a

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discount in accordance with the 340B program requirements;

B. "340B program" means the federal drug pricing program created pursuant to 42 U.S.C. Section 256b;

C. "covered entity" means an entity participating in the 340B program, including its pharmacy or a pharmacy contracting with the participating entity; and

D. "pharmacy benefits manager" means an entity that provides pharmacy benefits management services."

SECTION 2. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] PROHIBITION ON DISCRIMINATION AGAINST A COVERED ENTITY.--A pharmacy benefits manager or a third party shall not discriminate against a covered entity on the basis of its participation in the 340B program by:

A. reimbursing a covered entity for a 340B drug at a rate lower than that paid for the same drug to pharmacies, similar in prescription volume, that are non-covered entities;

B. assessing a fee, chargeback or other adjustment to the covered entity that is not assessed to non-covered entities;

C. imposing a provision that prevents or interferes with a person's choice to receive 340B drugs from a covered entity; or

D. imposing terms or conditions that differ from terms or conditions imposed on a non-covered entity, including:

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(1) restricting or requiring participation in a pharmacy network;

(2) requiring more frequent auditing or a broader scope of audit for inventory management systems using generally accepted accounting principles;

(3) requiring a covered entity to reverse, resubmit or clarify a claim after the initial adjudication, unless these actions are in the normal course of pharmacy business and not related to the 340B program; or

(4) requiring identification, billing modifier, attestation or other indication that a claim is for a 340B drug, unless required by medicaid, or charging an additional fee or provision that prevents or interferes with an individual's choice to receive a 340B drug from a covered entity."

SECTION 3. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] ENSURING A COVERED ENTITY'S ACCESS TO 340B DRUGS.--

A. A drug manufacturer shall not prohibit a pharmacy from contracting with a covered entity by denying the pharmacy access to 340B drugs that it manufactures.

B. A covered entity may arrange for distribution of 340B drugs, including the ordering, shipment, receipt and storage, by a pharmacy on the covered entity's behalf.

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C. A pharmacy benefits manager, drug manufacturer, wholesaler, supplier or other entity shall not encumber the distribution of 340B drugs to a pharmacy contracting with a covered entity."

SECTION 4. Section 59A-61-5 NMSA 1978 (being Laws 2014, Chapter 14, Section 5, as amended) is amended to read:

"59A-61-5. PHARMACY BENEFITS MANAGER CONTRACTS--CERTAIN PRACTICES PROHIBITED--CERTAIN DISCLOSURES REQUIRED UPON REQUEST.--

A. A pharmacy benefits manager shall not require that a pharmacy participate in one contract in order to participate in another contract.

B. A pharmacy benefits manager shall provide to a pharmacy by electronic mail, facsimile or certified mail, at least thirty calendar days prior to its execution, a contract written in plain English.

C. A contract between a pharmacy benefits manager and a pharmacy shall identify the industry standard reimbursement practice that the pharmacy benefits manager will use to determine a reimbursement amount, unless the contract is modified in writing to specify another industry standard practice.

D. The provisions of the Pharmacy Benefits Manager Regulation Act shall not be waived, voided or nullified by contract.

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E. A pharmacy benefits manager shall not:

(1) cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal or offer that is untrue, deceptive or misleading;

(2) require pharmacy validation and revalidation standards inconsistent with, more stringent than or in addition to federal and state requirements for licensure and operation as a pharmacy in this state;

(3) prohibit a pharmacy or pharmacist from:

(a) mailing or delivering drugs to a patient as an ancillary service;

(b) providing a patient information regarding the patient's total cost for pharmacist services for a prescription drug; or

(c) discussing information regarding the total cost for pharmacist services for a prescription drug or from selling a more affordable alternative to the insured if a more affordable alternative is available;

(4) require or prefer a generic drug over its generic therapeutic equivalent;

(5) prohibit, restrict or limit disclosure of information by a pharmacist or pharmacy to the superintendent; or

(6) prohibit, restrict or limit pharmacies or pharmacists from providing to state or federal government

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officials general information for public policy purposes.

F. A pharmacy benefits manager or health benefit plan shall not impose a fee on a pharmacy for scores or metrics or both scores and metrics. Nothing in this subsection prohibits a pharmacy benefits manager or health benefit plan from offering incentives to a pharmacy based on a score or metric; provided that the incentive is equally available to all in-network pharmacies.

G. Within seven business days of a request by the superintendent or a contracted pharmacy or pharmacist, a pharmacy benefits manager or pharmacy services administrative organization shall provide as appropriate:

(1) a contract;

(2) an agreement;

(3) a claim appeal document;

(4) a disputed claim transaction document or price list; or

(5) any other information specified by law.

H. In a time and manner required by rules promulgated by the superintendent, a pharmacy benefits manager shall issue to the superintendent [~~a network adequacy report describing the pharmacy benefits manager network and the pharmacy benefits manager network's accessibility to insureds statewide~~]:

(1) a network adequacy report;

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(2) an annual report for each preceding calendar year that includes:

(a) the separately listed aggregate dollar amounts of remuneration received from pharmaceutical manufacturers, including rebates, fees and price protection payments; and

(b) an accounting of how much of the remuneration received from pharmaceutical manufacturers was passed to insurers and insureds, retained as revenue, retained to cover administrative service costs and retained for other purposes by pharmacy benefits managers; and

(3) a quarterly spread pricing report for each insurer that includes the individual and aggregate dollar amount of payments:

(a) received by the pharmacy benefits manager from each insurer for pharmacy products and services; and

(b) paid by pharmacy benefits managers for pharmacy products and services.

I. No later than May 1 of each year, the superintendent shall publish the aggregate data from all reports for that year required to be reported by pharmacy benefits managers pursuant to Paragraphs (1) and (2) of Subsection H of this section.

J. The superintendent shall maintain the

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confidentiality of the quarterly spread pricing reports, required pursuant to Paragraph (3) of Subsection H of this section, pursuant to the provisions of the Uniform Trade Secrets Act.

[~~I.~~] K. Pursuant to the provisions of Section 59A-4-3 NMSA 1978, the superintendent, or the superintendent's designee, may examine the books, documents, policies, procedures and records of a pharmacy benefits manager to determine compliance with applicable law. The pharmacy benefits manager shall pay the costs of the examination. At the request of a person who provides information in response to a complaint, investigation or examination, the superintendent may deem the information confidential."

SECTION 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.