2023 -- H 5079

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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- PHARMACEUTICAL COST TRANSPARENCY

Introduced By: Representatives J. Lombardi, Hull, Ajello, Kislak, Tanzi, and Felix

Date Introduced: January 12, 2023

Referred To: House Corporations

It is enacted by the General Assembly as follows:

SECTION 1. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS" is hereby amended by adding thereto the following chapter:

CHAPTER 19.3

PHARMACEUTICAL COST TRANSPARENCY

5-19.3-1. Pharmaceutical cost transparency -- Findings.

The general assembly hereby finds and declares as follows:

(1) The costs of prescription drugs have been increasing with regularity;

(2) Containing health care costs requires containing prescription drug costs; and

(3) In order to contain prescription drug costs, it is essential to understand the drivers of those costs, as transparency is the first step toward cost containment.

5-19.3-2. Definitions.

As used in this chapter:

(1) "Board" means the state board of pharmacy created pursuant to § 5-19.1-3.

(2) "Department" means the Rhode Island department of health.

(3) "Manufacturer" means a person or entity licensed to manufacture legend drugs pursuant to § 5-19.1-12.

(4) "Prescription drug" means a drug as defined in 21 U.S.C. § 321.

5-19.3-3. Identification of high cost prescription drugs.

(a)(1) The state board of pharmacy, in collaboration with the department, shall identify annually up to fifteen (15) prescription drugs on which the state spends significant health care dollars and for which the wholesale acquisition cost has increased by fifty percent (50%) or more over the past five (5) years or by fifteen percent (15%) or more over the past twelve (12) months, creating a substantial public interest in understanding the development of the drugs' pricing. The drugs identified shall represent different drug classes.

(2) The board shall provide to the office of the attorney general the list of prescription drugs developed pursuant to this subsection and the percentage of the wholesale acquisition cost increase for each drug and shall make the information available to the public on the board's website.

(b)(1) For each prescription drug identified pursuant to subsection (a) of this section, the office of the attorney general shall require the drug's manufacturer to provide a justification for the increase in the wholesale acquisition cost of the drug in a format that the attorney general determines to be understandable and appropriate. The manufacturer shall submit to the office of the attorney general all relevant information and supporting documentation necessary to justify the manufacturer's wholesale acquisition cost increase, which may include:

(i) All factors that have contributed to the wholesale acquisition cost increase;

(ii) The percentage of the total wholesale acquisition cost increase attributable to each factor; and

(iii) An explanation of the role of each factor in contributing to the wholesale acquisition cost increase.

(2) Nothing in this section shall be construed to restrict the legal ability of a prescription drug manufacturer to change prices to the extent permitted under federal law.

(c) The attorney general, in consultation with the department, shall provide a report to the general assembly on or before December 1 of each year based on the information received from manufacturers pursuant to this section. The attorney general shall also post the report on the office of the attorney general's website.

(d) Information provided to the office of the attorney general pursuant to this section is exempt from public inspection and copying and is not a public record pursuant to chapter 2 of title 38 ("access to public records"), and shall not be released in a manner that allows for the identification of an individual drug or manufacturer or that is likely to compromise the financial, competitive, or proprietary nature of the information.

5-19.3-4. Injunctive relief.

The attorney general may bring a civil action in the superior court for Providence county for injunctive relief, costs, and attorneys' fees, and to impose on a manufacturer that fails to provide

the information required by § 5-19.3-3(b) a civil penalty of no more than ten thousand dollars ($10,000) per violation. Each unlawful failure to provide information shall constitute a separate violation.

5-19.3-5. Rulemaking.

(a) On or before January l, 2024, the insurance commissioner shall adopt rules and regulations to require all health insurers that offer health benefit plans to Rhode Island residents through HealthSource RI or any successor health benefit exchange to provide information to enrollees, potential enrollees, and health care providers about the exchange plans' prescription drug formularies.

(b) The rules shall ensure that:

(1) The formulary is posted online in a standard format established by the insurance commissioner;

(2) The formulary is updated frequently and is searchable by enrollees, potential enrollees, and health care providers; and

(3) The formulary includes information about the prescription drugs covered, applicable cost-sharing amounts, drug tiers, prior authorization, step therapy, and utilization management requirements.

5-19.3-6. Dispensing fees.

(a) The department shall use the same dispensing fee in its reimbursement formula for 340B prescription drugs as the department uses to pay for non-340B prescription drugs under the Medicaid program.

(b) Notwithstanding the provisions of subsection (a) of this section, the department is authorized to modify the dispensing fee or reimbursement formula provided to federally qualified health centers and Title X family planning clinics for dispensing 340B prescription drugs to Medicaid beneficiaries.

5-19.3-7. Drug reimbursement - Reporting.

(a) The department shall:

(1) Determine the formula used by other states' Medicaid programs to reimburse covered entities that use 340B pricing for dispensing prescription drugs to Medicaid beneficiaries;

(2) Evaluate the advantages and disadvantages of using the same dispensing fee in its reimbursement formula for 340B prescription drugs as the department uses to pay for non-340B prescription drugs under the Medicaid program; and

(3) Identify the benefits, if any, of 340B drug pricing to consumers, other payers, and the overall health care system.

(b) On or before March 15, 2024, the department shall report to the house of representatives, the senate, and the governor's office regarding its findings and recommendations, including recommended modifications to Rhode Island's 340B reimbursement formula, if any, and the financial implications of implementing any recommended modifications.

5-19.3-8. Out-of-pocket prescription drug limits – Advisory commission.

(a) The Rhode Island department of health shall convene an advisory commission to develop options for all qualified health benefit plans to be offered on the Rhode Island health benefit exchange for the 2025 plan year, including:

(1) One or more plans with a higher out-of-pocket limit on prescription drug coverage than the limit established pursuant to current law and regulations; and

(2) Two (2) or more plans with an out-of-pocket limit at or below the limit established pursuant to current law and regulations.

(b) The advisory commission shall include at least the following members:

(1) A representative of the Rhode Island health benefits exchange, appointed by the governor;

(2) A representative of each of the commercial health insurers offering plans on the Rhode Island health benefit exchange, appointed by each insurer;

(3) The insurance commissioner, or designee;

(4) A representative of the exchange advisory board established pursuant to § 42-157-7, appointed by the governor;

(4) A representative of a Rhode Island AIDS services organization, appointed by the governor;

(5) The director of the department of administration, or designee;

(6) The director of the department of health, or designee;

(7) A consumer nominated by a Rhode Island AIDS services organization and appointed by the governor;

(8) A representative of the American Cancer Society appointed by the governor; and

(9) A consumer nominated by the American Cancer Society and appointed by the governor.

(c)(1) The advisory commission shall meet at least six (6) times prior to the department submitting plan designs to the state board of pharmacy for approval.

(2) In developing the standard qualified health benefit plan designs for the 2025 plan year, the department shall present the recommendations of the advisory commission established pursuant to this section.

5-19.3-9. Reports.

(a) On or before February 15, 2024, the department shall provide to the governor, the house of representatives, and the senate:

(1) An overview of the cost-share increase trend for all qualified health benefit plans offered on the Rhode Island health benefit exchange for the 2018 through 2023 plan years that were subject to the out-of-pocket prescription drug limit established in state law or regulation;

(2) Detailed information regarding lower cost-sharing amounts for selected services that will be available in all qualified health benefit plans in the 2024 plan year due to the flexibility to increase the out-of-pocket prescription drug limits established pursuant to this chapter;

(3) A comparison of the bronze-level qualified health benefit plans offered in the 2024 plan year in which there will be flexibility in the out-of-pocket prescription drug limit established under state law and regulation;

(4) Information about the process engaged in by the advisory commission established in this chapter and the information considered to determine modifications to the cost-sharing amounts in all qualified health benefit plans for the 2024 plan year, including prior year utilization trends, feedback from consumers and health insurers, health benefit exchange outreach and education efforts, and relevant national studies;

(5) Cost-sharing information for standard qualified health benefit plans from states with federally-facilitated exchanges compared to those on the Rhode Island health benefit exchange; and

(6) An overview of the outreach and education plan for enrollees in all qualified health benefit plans offered on the Rhode Island health benefit exchange.

(b) On or before February l, 2025, the department shall report to the governor, the house of representatives, and the senate:

(1) Enrollment trends in all qualified health benefit plans offered on the Rhode Island health benefit exchange; and

(2) Recommendations from the advisory commission established pursuant to § 5-19.3-8 regarding modification of out-of-pocket prescription drug cost limits.

SECTION 2. This act shall take effect upon passage.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- PHARMACEUTICAL COST TRANSPARENCY

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This act would direct the state board of pharmacy, in collaboration with the department of health, to annually identify up to fifteen (15) prescription drugs on which the state spends significant health care dollars due to increases in costs. This list would be provided to the attorney general's office, and the attorney general's office would require the drug's manufacturers to submit relevant information and documentation to justify these cost increases. The act would also direct the department of health to use the same dispensing fee in its reimbursement formula for 340B prescription drugs as it uses to pay for non-340B prescription drugs under the Medicaid program, and to provide information to the general assembly and the governor about these programs. The act would also establish an advisory commission on out-of-pocket prescription drug costs who would study these costs and make reports and recommendations to the governor and the general assembly.

This act would take effect upon passage.

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