PLEASE NOTE: Legislative Information ***cannot*** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Improve Price Transparency of Prescription Drugs Sold in Maine

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA §1913, first ¶, as repealed and replaced by PL 2011, c. 443, §4, is amended to read:

Beginning April 1, 2011, a person may not act as a pharmacy benefits manager in this State without first paying the registration fee required under section 601, subsection 28 and meeting the requirements of section 4348, subsection 1.

Sec. 2. 24-A MRSA c. 56-C is enacted to read:

CHAPTER 56-C

PHARMACY BENEFITS MANAGERS

§ 4347. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administrative fees. "Administrative fees" means fees or payments from pharmaceutical manufacturers to, or otherwise retained by, a pharmacy benefits manager or its designee pursuant to a contract between a pharmacy benefits manager or affiliate and the manufacturer in connection with the pharmacy benefits manager's administering, invoicing, allocating and collecting rebates.

2. Aggregate retained rebate percentage. "Aggregate retained rebate percentage" means the percentage of all rebates received from all pharmaceutical manufacturers or other entities by a pharmacy benefits manager for prescription drug purchases that are not passed on to the pharmacy benefits manager's carrier clients. Without disclosing any identifying information regarding any health plan prescription drug or therapeutic class, the percentage is calculated for each carrier for rebates in the prior calendar year as the sum total dollar amount of rebates received from all pharmaceutical manufacturers for all prescription drug purchases by enrollees of a carrier that were not passed on to the carrier divided by the sum total dollar amount of all rebates received from all pharmaceutical manufacturers for enrollees of a carrier.

3. Carrier. "Carrier" has the same meaning as in section 4301-A, subsection 3.

4. Carrier administrative fees. "Carrier administrative fees" means fees or payments from a carrier or designee of the carrier to, or otherwise retained by, a pharmacy benefits manager or its designee pursuant to a contract between a pharmacy benefits manager or affiliate and the carrier or designee of the carrier in connection with the pharmacy benefits manager's managing or administering the pharmacy benefit and administering, invoicing, allocating and collecting rebates.

5. Enrollee. "Enrollee" has the same meaning as in section 4301-A, subsection 5.

6. Health plan. "Health plan" has the same meaning as in section 4301-A, subsection 7.

7. Pharmacy. "Pharmacy" means a business, either physical or electronic, that dispenses medications to the public, that is licensed as a pharmacy by the State and that has entered into a contract with a pharmacy benefits manager or carrier.

8. Pharmacy benefits manager. "Pharmacy benefits manager" has the same meaning as in section 1913, subsection 1, paragraph A.

9. Rebates. "Rebates" means all rebates, discounts and other price concessions, based on utilization or price of a prescription drug and paid by the manufacturer or a party other than an enrollee, directly or indirectly, to the pharmacy benefits manager after a claim has been adjudicated at a pharmacy.

§ 4348. Required information for registered pharmacy benefits managers

A person may not act as a pharmacy benefits manager in this State without first registering with the superintendent as required in section 1913 and meeting the requirements of this section.

1. Registrant information. Upon registration, a pharmacy benefits manager shall file with the superintendent at least the following information:

A. The name of the pharmacy benefits manager;

B. The address and contact telephone number for the pharmacy benefits manager;

C. The name and address of the pharmacy benefits manager agent for service of process in the State;

D. The name and address of each person beneficially interested in the pharmacy benefits manager;

E. The name and address of each person with management or control over the pharmacy benefits manager;

F. In the case of an applicant that is a partnership or other unincorporated association, limited liability company or corporation that has 5 or more partners, members or stockholders:

(1) The legal structure of the applicant and the total number of partners, members or stockholders;

(2) The name, address, usual occupation and professional qualifications of the 5 partners, members or stockholders with the 5 largest ownership interests in the applicant; and

(3) The name, address, usual occupation and professional qualifications of the other partners, members or stockholders upon the request of the superintendent;

G. A signed statement indicating that the applicant has not been convicted of a felony and has not violated any applicable requirements of this Title, or, if the applicant cannot provide such statement, a signed statement describing any relevant conviction or violation; and

H. Other relevant information as determined by the superintendent.

2. Annual transparency report. Beginning June 1, 2020, and annually thereafter, each registered pharmacy benefits manager shall submit a transparency report containing information from the prior calendar year to the superintendent. The transparency report must contain the following information:

A. The aggregate amount of all rebates that the pharmacy benefits manager received from all pharmaceutical manufacturers for all carrier clients and for each carrier client;

B. The aggregate administrative fees and carrier administrative fees that the pharmacy benefits manager received from all pharmaceutical manufacturers for all carrier clients and for each carrier client;

C. The aggregate retained rebates that the pharmacy benefits manager received from all pharmaceutical manufacturers and did not pass on to carriers;

D. The aggregate retained rebate percentage;

E. The aggregate administrative fees that the pharmacy benefits manager received from all pharmaceutical manufacturers and did not pass on to carriers; and

F. The highest, lowest and mean aggregate retained rebate percentage for all carrier clients and the rebate percentage identified for each carrier client.

3. Publication of transparency report. The superintendent shall publish in a timely manner the information provided by a pharmacy benefits manager pursuant to subsection 2 on the bureau's publicly accessible website as long as the information is provided in a manner that does not disclose the identity of a specific health plan, the prices charged for specific drugs or classes of drugs or the amount of any rebates provided for specific drugs or classes of drugs. For each of a pharmacy benefits manager's contracts or other relationships with a carrier, a pharmacy benefits manager shall publish on a publicly accessible website the formulary used by that carrier and shall ensure that the formulary is updated in a timely manner to account for changes to the formulary.

4. Confidential or proprietary information. The superintendent and a pharmacy benefits manager may not publish or otherwise disclose any confidential, proprietary information, including, but not limited to, any information that would identify a specific health plan, the prices charged for specific drugs or classes of drugs or the amount of any rebates provided for specific drugs or classes of drugs. Any such information is designated as confidential and is not a public record under Title 1, chapter 13, subchapter 1.

§ 4349. Excess payments at point of sale prohibited

A carrier or pharmacy benefits manager shall certify to the superintendent on an annual basis in the manner determined by the superintendent that each health plan offered in this State by the carrier passes on at least 50% of any prescription drug savings and rebates negotiated by the carrier's pharmacy benefits manager for the benefit of enrollees in the health plan.

§ 4350. Information related to prescription drug increases

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Prescription drug" or "drug" means a prescription drug that a pharmaceutical manufacturer has made available in the State and:

(1) That is among the prescription drugs that the State has spent the most money on in the aggregate in the prior calendar year; and

(2) For which the wholesale acquisition cost of the drug has increased by 25% or more in the prior calendar year.

B. "Research and development expenditures" means all costs that a manufacturer incurs during a calendar year that relate to the research and development of products, processes or services, including the costs of research and development of products, processes or services that the manufacturer has acquired or obtained through a license.

C. "Wholesale acquisition cost" means the list price of a manufacturer of a prescription drug to a wholesaler or direct purchaser in the United States, not including prompt pay or other discounts, rebates or reductions in price, as reported in wholesale price guides or other publications of pharmaceutical pricing data or as estimated by the Maine Health Data Organization using the all-payer claims data and the ingredient cost and list price and dispensing fee information that is submitted to the Maine Health Data Organization.

2. Information on prescription drug costs and price increases. Beginning March 1, 2020 and annually thereafter, the Maine Health Data Organization shall provide a list of prescription drugs, both brand name and generic, to the superintendent that identifies:

A. The 10 costliest drugs as determined by the total amount spent on those drugs in the State in the prior calendar year; and

B. The 10 drugs with the largest increases in wholesale acquisition cost as long as the increases are 25% or more in the prior calendar year.

3. Compilation of list. The superintendent shall compile the list of drugs identified and reported pursuant to subsection 2 and shall make the list available to the public on the bureau's publicly accessible website.

4. Manufacturer information. The superintendent shall require the manufacturer of each drug identified pursuant to subsection 2, paragraph B to provide to the superintendent, in such form and standardized format and on a schedule determined by the superintendent, the following information to provide justification of the increase in wholesale acquisition cost:

A. A schedule of the drug's wholesale acquisition cost increases over the previous 5 calendar years;

B. The manufacturer's aggregate research and development costs for the drug, including those costs related to capital expenditures for the most recent year in which final audited financial information is available;

C. A written description, suitable for public release, of the factors that contributed to the drug's reported wholesale acquisition cost increases during the previous 5 calendar years; and

D. Other information necessary to justify the price increase for the drug.

5. Information publicly available. The superintendent shall post any information provided by prescription drug manufacturers pursuant to subsection 4 on the bureau's publicly accessible website.

6. Information consistent with Form 10-K filing. Information provided by a manufacturer pursuant to this section must be generally consistent with the level and type of information and data made available in a manufacturer's most recent Form 10-K annual report filed with the United States Securities and Exchange Commission or in other publicly available data sources. The superintendent shall consult with representatives of pharmaceutical manufacturers to establish a single, standard format for reporting information under this section that minimizes the administrative burden for the bureau and manufacturers.

7. Information not public record. Notwithstanding subsection 5, information provided under this section is not a public record under Title 1, chapter 13, subchapter 1 and may not be released in a manner that would allow the identification of an individual prescription drug, a therapeutic class of prescription drugs or a manufacturer or in a manner that is likely to compromise the financial, competitive or proprietary nature of the information.

8. Municipal action. Notwithstanding any other provision of law, a municipality or other political subdivision may not adopt an ordinance, regulation or procedure governing the disclosure of information by a pharmaceutical manufacturer or a pharmacy benefits manager related to revenues, expenses or prescription drug prices.

§ 4350-A. Rules

The superintendent may adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A to administer and enforce the requirements of this chapter.

SUMMARY

Under current law, pharmacy benefits managers are required to register with the State. This bill imposes additional requirements on pharmacy benefits managers. The bill requires pharmacy benefits managers to file certain information with the State when registering and imposes an annual reporting requirement on pharmacy benefits managers related to rebates beginning June 1, 2020. The bill also requires that a carrier or pharmacy benefits manager certify on an annual basis that each health plan offered in this State by the carrier will pass on at least 50% of any prescription drug savings and rebates negotiated by the carrier's pharmacy benefits manager for the benefit of enrollees in the health plan.

In addition, the bill directs the Maine Health Data Organization to annually report to the Department of Professional and Financial Regulation, Bureau of Insurance information related to prescription drug costs and prescription drug price increases. The bill also directs the Superintendent of Insurance to require certain information related to price increases from drug manufacturers.