LEGISLATURE OF THE STATE OF IDAHO

Sixty-seventh Legislature Second Regular Session - 2024

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 671

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO PRESCRIPTION DRUGS; AMENDING CHAPTER 3, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-350, IDAHO CODE, TO DEFINE TERMS AND TO ESTABLISH PROVISIONS REGARDING AFFORDABLE PRESCRIPTION DRUG COSTS FOR CERTAIN DRUGS AND COVERED ENTITIES; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 3, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-350, Idaho Code, and to read as follows:

41-350. AFFORDABLE PRESCRIPTION DRUG COSTS. (1) As used in this section:

(a) "340B drug" means an outpatient drug that has been purchased by a covered entity at or below the ceiling price established under 42 U.S.C. 256b(a)(1).

(b) "Contract pharmacy" means a pharmacy that is registered with the 340B office of pharmacy affairs information system, under contract with a covered entity, and authorized under such contract to receive and dispense 340B drugs on behalf of the covered entity.

(c) "Covered entity" means a covered entity as defined in 42 U.S.C. 256b(a)(4) participating or authorized to participate in the federal 340B drug discount program pursuant to 42 U.S.C. 256b.

(d) "Health insurance issuer" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director of the department of insurance, that contracts or offers to contract or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a preferred provider organization or any similar entity, or any other entity providing a plan of health insurance or health benefits.

(e) "Manufacturer" means an entity that manufactures drugs, biologics, and other pharmaceutical products, and includes labelers and primary distributors of these products.

(f) "Pharmacy" means any place located within this state where drugs are dispensed and pharmacy services are provided, and any place outside of this state where drugs are dispensed and pharmacy services are provided to residents who are physically located in this state.

(g) "Pharmacy benefit manager" has the same meaning as provided in section 41-349, Idaho Code.

(2) With respect to reimbursement for 340B drugs, a health insurance issuer, pharmacy benefit manager, or other third-party payor or its agent shall not:

(a) Reimburse a covered entity or contract pharmacy for a quantity of a 340B drug at a rate lower than that paid for the same quantity of the same drug to entities that are not a covered entity or contract pharmacy;

(b) Refuse to reimburse a covered entity or contract pharmacy for a drug on the basis that it is a 340B drug or dispensed by a covered entity or contract pharmacy;

(c) Impose any terms or conditions on any covered entity or contract pharmacy with respect to any of the following that differ from such terms or conditions applied to a non-covered entity or non-contract pharmacy on the basis that the entity participates in the federal 340B drug discount program set forth in 42 U.S.C. 256b or that a drug is a 340B drug, including but not limited to:

(i) Fees, charges, clawbacks, or other adjustments or assessments. For the purposes of this paragraph, the term "other adjustment" includes placing any additional requirements, restrictions, or unnecessary burdens on the covered entity or contract pharmacy that results in administrative costs or fees to the covered entity or contract pharmacy that are not placed on other entities that do not participate in the 340B drug discount program, including affiliate pharmacies of the health insurance issuer, pharmacy benefit manager, or other third-party payor;

(ii) Dispensing fees;

(iii) Restrictions or requirements regarding participation in standard or preferred pharmacy networks;

(iv) Requirements relating to the frequency or scope of audits of inventory management systems;

(v) Requirements that a claim for a drug include any identification, billing modifier, attestation, or other indication that a drug is a 340B drug in order to be processed or submitted unless it is required by the centers for medicare and medicaid services or the Idaho department of health and welfare for the administration of the Idaho medicaid program; and

(vi) Any other restrictions, conditions, practices, or policies that are not imposed on non-covered entities or non-contract pharmacies;

(d) Require a covered entity or contract pharmacy 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 340B drug pricing;

(e) Prevent or interfere with any patient's choice to receive such drugs from the covered entity or contract pharmacy, via in-person administration, direct delivery, or delivery via mail or other forms of shipment. For purposes of this subsection, it is considered a discriminatory practice that prevents or interferes with a patient's choice to receive drugs at a covered entity or contract pharmacy if a health insurance issuer, pharmacy benefit manager, or other third-party payor places any additional costs, requirements, restrictions, or unneces-

sary burdens on a patient who chooses to receive a drug from a covered entity or contract pharmacy;

(f) Include any other provision in a contract between a health insurance issuer, pharmacy benefit manager, or other third-party payor and a covered entity or contract pharmacy that places any additional costs, requirements, restrictions, or unnecessary burdens on the covered entity or contract pharmacy that are not placed equally on a non-covered entity or non-contract pharmacy;

(g) Require or compel the submission of ingredient costs or pricing data pertaining to 340B drugs to any health insurance issuer, pharmacy benefit manager, or other third-party payor; or

(h) Exclude any covered entity or contract pharmacy from the health insurance issuer, pharmacy benefit manager, or other third-party payor network on the basis that the covered entity or contract pharmacy dispenses 340B drugs or refuse to contract with a covered entity or contract pharmacy for reasons other than those that apply equally to non-covered entities or non-contract pharmacies.

(3) Nothing in this section shall apply to the Idaho medicaid program as a payor when medicaid provides reimbursement for covered outpatient drugs as defined in 42 U.S.C. 1396r-8(k).

(4) A manufacturer or distributor shall not deny, restrict, prohibit, or otherwise interfere with, either directly or indirectly, the acquisition of a 340B drug by or delivery of a 340B drug to a contract pharmacy on behalf of a covered entity.

(5) A manufacturer or distributor shall not interfere with a pharmacy contract between a covered entity and a contract pharmacy.

(6) The commission of any act prohibited by this section is considered a violation of the consumer protection act and subjects the violator to any and all actions, including investigative demands, remedies, and penalties provided in chapter 6, title 48, Idaho Code. This section does not create a private right of action or serve as a basis for a private right of action under any other provision of law. A violation occurs each time a prohibited act is committed.

(7) Nothing in this section shall be construed or applies to be less restrictive than federal law for a person or entity regulated by this section. Nothing in this section shall be construed or applied to be in conflict with applicable federal law and related regulations or other laws of this state if the state law is compatible with applicable federal law. Limited distribution of a drug required under 21 U.S.C. 355-1 shall not be construed as a violation of this section.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2024.