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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 209 Session of 2021

INTRODUCED BY DeLUCA, ZABEL, HILL-EVANS, FREEMAN, HOWARD, DEASY, PASHINSKI, CIRESI, ROZZI AND PISCIOTTANO, JANUARY 22, 2021

REFERRED TO COMMITTEE ON INSURANCE, JANUARY 22, 2021

AN ACT

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," in casualty insurance, providing for pharmaceutical cost transparency.

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

Section 1. The act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, is amended by adding a section to read:

Section 635.8. Pharmaceutical Cost Transparency.--(a) This section shall apply to a prescription drug that has one or more of the following:

(1) An average wholesale price of five thousand dollars ($5,000) or more annually.

(2) An average wholesale price of five thousand dollars

($5,000) or more per course of treatment.

(3) An average wholesale price that has increased by fifty per centum (50%) or more over the past five years.

(4) An average wholesale price that has increased by twenty-five per centum (25%) or more over the past twelve months.

(b) A health insurance policy or government program providing benefits for a prescription drug described under subsection (a) may not be required to provide the benefits if the Insurance Department finds that the manufacturer of the prescription drug has not filed a report on the prescription drug as required under subsection (c).

(c) On or before March 1 of each year, a manufacturer of a prescription drug described under subsection (a) shall file with the Insurance Department the following information on a form prescribed by the Insurance Department:

(1) The costs for the production of the drug, including the following:

(i) The research and development costs paid by the manufacturer and, separately, the research and development costs paid by any predecessor in the development of the drug.

(ii) The costs of clinical trials and other regulatory costs paid by the manufacturer and, separately, the costs of clinical trials and other regulatory costs paid by any predecessor in the development of the drug.

(iii) The costs for materials, manufacturing and administration attributable to the drug.

(iv) The costs paid by any entity other than the manufacturer or predecessor for research and development, including any amount from Federal, State or other governmental programs or any form of subsidies, grants or other support.

(v) The other costs to acquire the drug, including costs for the purchase of patents, licensing or acquisition of a corporate entity owning rights to the drug while in development, or all of the costs under this subparagraph.

(vi) The marketing and advertising costs for the promotion of the drug directly to consumers, including:

(A) Costs associated with coupons or discounts, that are directed to consumers and the amount redeemed.

(B) Marketing and advertising costs for promotion of the drug directly or indirectly to prescribers.

(C) Any other advertising for the drug.

(D) Any payments or contributions to providers not employed on a full-time basis by the manufacturer, regardless of whether the payments or contributions are connected to a particular drug.

(2) The filing under this subsection must be audited and certified by an independent third-party auditor prior to filing.

(3) A cumulative annual history of average wholesale price increases for the drug expressed as percentages, including the months each average wholesale price increase took effect.

(4) The profit attributable to the drug as represented in dollars and represented as a percentage of the total company profits that were derived from the sale of the drug.

(5) A description of the manufacturers' patient prescription assistance programs, including:

(i) The amount of financial assistance provided.

(ii) The amount of financial assistance provided to residents of this Commonwealth.

(iii) The average amount of assistance per resident of this Commonwealth and for which drugs the assistance was provided.

(iv) The parameters and qualifications for the patient prescription assistance programs.

(6) Any payments or financial incentives, direct or indirect, to hospitals, health care providers or physicians attributable to the drug described under subsection (a), including speaking fees, dinners, research, consulting, charitable donations, grants or other incentives.

(d) The Insurance Department may promulgate regulations as may be necessary and appropriate to carry out the provisions of this section.

(e) This section shall apply as follows:

(1) For a health insurance policy for which either rates or forms are required to be filed with the Federal Government or the Insurance Department, this section shall apply to any policy for which a form or rate is first permitted to be used on or after one hundred eighty days following the effective date of this section.

(2) For a health insurance policy for which neither rates nor forms are required to be filed with the Federal Government or the Insurance Department, this section shall apply to any policy issued or renewed on or after one hundred eighty days following the effective date of this section.

(f) As used in this section:

(1) "Government program" means any of the following:

(i) The Commonwealth's medical assistance program established under the act of June 13, 1967 (P.L.31, No.21), known as the "Human Services Code."

(ii) The program for comprehensive health care for uninsured children established under Article XXIII-A.

(iii) The program of pharmaceutical assistance for the

elderly established under Chapter 5 of the act of August 26, 1971 (P.L.351, No.91), known as the "State Lottery Law."

(2) "Health insurance policy" means a policy, subscriber contract, certificate or plan issued by an insurer that provides medical or health care coverage. The term does not include any of the following:

(i) An accident only policy.

(ii) A credit only policy.

(iii) A long-term care or disability income policy.

(iv) A specified disease policy.

(v) A Medicare supplement policy.

(vi) A TRICARE policy, including a Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplement policy.

(vii) A fixed indemnity policy.

(viii) A dental only policy.

(ix) A vision only policy.

(x) A workers' compensation policy.

(xi) An automobile medical payment policy under 75 Pa.C.S. (relating to vehicles).

(xii) Any other similar policies providing for limited benefits.

(3) "Insurer" means an entity licensed by the Insurance Department with accident and health authority to issue a policy, subscriber contract, certificate or plan that provides medical or health care coverage that is offered or governed under any of the following:

(i) This act, including section 630 and Article XXIV.

(ii) The act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act."

(iii) 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or 63 (relating to professional health services plan corporations).

(4) "Prescription" means a written or oral order issued by a duly licensed medical practitioner in the course of the practitioner's professional practice for a controlled substance, other drug or device or medication that is dispensed for use by a consumer.

Section 2. This act shall take effect in 60 days.