

SB 267 -- Redline

HA 1 to SB 267 to Bill Text -- AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE TO ENSURE FAIRNESS IN COST-SHARING FOR PRESCRIPTION DRUGS.

Deletions ~~struck~~ · Insertions underlined

~~Rep. Sen.~~

~~Griffith Mantzavinos HOUSE & OF Rep. REPRESENTATIVES 151st GENERAL ASSEMBLY HOUSE AMENDMENT NO.~~

~~1 Griffith TO & SENATE Rep. BILL NO.~~

~~267 Heffernan AMEND & Senate Rep. Bill No.~~

~~267 Dorsey by Walker deleting Sens. lines 60 and 61 in their entirety.~~

~~FURTHER Ennis, AMEND Gay, Senate Hansen, Bill Pinkney, No. Poore;~~

~~267 Reps. by deleting lines 102 and 103 in their entirety.~~

~~FURTHER Bolden, AMEND Bush, Senate K. Bill No.~~

~~267 Johnson, by Minor-Brown, deleting Mitchell, lines Osienksi, 139 Michael and Smith, 140 K. in their entirety.~~

~~FURTHER Williams, AMEND Wilson-Anton Senate DELAWARE Bill STATE No. SENATE 151st GENERAL ASSEMBLY SENATE BILL NO.~~

~~267 by AN inserting ACT after TO line AMEND 142 TITLE the 18 following: OF THE DELAWARE CODE TO ENSURE FAIRNESS IN COST-SHARING FOR PRESCRIPTION DRUGS.~~

~~"Section WHEREAS, 4, some residents of Delaware rely on state-regulated commercial carriers to secure access to the prescription medicines needed to protect their health;~~

~~This Act is effective immediately and applies WHEREAS, to commercial health insurance benefit designs plans may that require are patients entered to into, bear amended, significant extended, out-of-pocket or costs renewed for on their or prescription after medicines; January 1, 2024."~~

~~SYNOPSIS and This WHEREAS, amendment high resolves out-of-pocket a costs technical on error, prescription medicines may impact the ability of patients to start new and necessary medicines and to stay adherent to their current medicines;~~

~~HD and + WHEREAS, high or unpredictable cost-sharing requirements are a main driver of elevated patient out-of-pocket costs and may allow carriers to capture discounts and price concessions that are intended to benefit patients at the pharmacy counter;~~

~~KL and + WHEREAS, carriers may increase cost-sharing burdens on patients by refusing to count third party assistance toward patients' cost-sharing contributions;~~

~~MAW and Page WHEREAS, 1 the burdens of 1 high Released or unpredictable cost-sharing requirements are borne disproportionately by patients with chronic or debilitating conditions;~~

~~06/29/2022 and 02:40 WHEREAS, PM restrictions 2141510799 are needed on the ability of carriers and intermediaries to use unfair cost-sharing design to retain rebates and price concessions that instead should be passed on to patients as cost savings;~~

~~and WHEREAS, patients need equitable and accessible health coverage that does not impose unfair cost-sharing burdens upon them;~~

~~and WHEREAS, it is important that, to the full extent permissible and consistent with applicable law, state-regulated carriers and the entities with which they contract do not restrict patient access to medicines through the consumer- unfriendly practice of refusing to count third party cost-sharing assistance toward patient cost-sharing obligations.~~

~~NOW, THEREFORE:~~

~~BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:~~

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~~ALW Page 1 of 6 Released:~~

~~04/14/2022 01:17 PM Section 1.~~

~~Amend Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:~~

~~Sec. 3350B.~~

~~Copayment or coinsurance for prescription drugs limited.~~

~~(a) Definitions.~~

~~(1) "Carrier" means any entity that provides health insurance in this State.~~

~~"Carrier" includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.~~

(2) "Contract price" means the lowest price a pharmacy is paid for the acquisition of a prescription drug based on a contract that a pharmacy has with a carrier or pharmacy benefits manager.

"Contract price" includes a dispensing fee set by a contract between a pharmacy and a carrier or pharmacy benefits manager.

(3) "Cost-sharing requirement" means any copayment, coinsurance, deductible, or annual limitation on cost-sharing (including a limitation subject to 42 U.S.C.

Sec. 18022(c) and 300gg-6(b)), required by or on behalf of an enrollee in order to receive a specific health care service, including a prescription drug, covered by a health benefit plan.

(4) "Health benefit plan" means as defined in Sec. 3343 of this title.

(5) "Health care service" means an item or service furnished to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

(6) "Person" means as defined in Sec. 102 of this title.

(37) "Pharmacy" means as defined in Sec. 2502 of Title 24.

(48) "Pharmacy benefit manager" means as defined under Sec. 3302A of this title.

(b) Application.- This section applies to a carrier that provides coverage, either directly or through a pharmacy benefits manager, for prescription drugs under a health insurance policy, health benefit plan, or contract that is issued or delivered in this State.

(c) A carrier subject to this section may not impose a copayment or coinsurance requirement for a covered prescription drug that exceeds the lesser of 1 of the following:

(1) The applicable copayment or coinsurance that would apply for the prescription drug in the absence of this section.

(2) The amount an individual would pay for the prescription drug if the individual were paying the usual and customary price.

(3) The contract price for the prescription drug.

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04/14/2022 01:17 PM (d) Cost-Sharing Calculation.

When calculating an enrollee contribution to any applicable cost sharing requirement, a carrier shall include any cost-sharing amounts paid by the enrollee or on behalf of the enrollee by another person.

If under federal law, application of this requirement would result in Health Savings Account ineligibility under Sec. 223 of the federal Internal Revenue Code, this requirement shall apply for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Sec. 223, except with respect to items or services that are preventive care pursuant to Sec. 223(c)(2)(C) of the federal Internal Revenue Code, in which case the requirements of this paragraph shall apply regardless of whether the minimum deductible under Sec. 223 has been satisfied.

(e) Effective Date.

This section shall apply to health benefit plans that are entered into, amended, extended, or renewed on or after January 1, 2024.

(f) Rule-Making.

The Insurance Commissioner may promulgate rules and regulations as may be necessary or appropriate to implement and administer this section.

Section 2.

Amend Chapter 35, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

Sec. 3566A.

Copayment or coinsurance for prescription drugs limited.

(a) Definitions.

(1) "Carrier" means any entity that provides health insurance in this State.

"Carrier" includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(2) "Contract price" means the lowest price a pharmacy is paid for the acquisition of a prescription drug based on a contract that a pharmacy has with a carrier or pharmacy benefits manager.

"Contract price" includes a dispensing fee set by a contract between a pharmacy and a carrier or pharmacy benefits manager.

(3) "Cost-sharing requirement" means any copayment, coinsurance, deductible, or annual limitation on cost-sharing (including a limitation subject to 42 U.S.C.

Sec. Sec. 18022(c) and 300gg-6(b)), required by or on behalf of an enrollee in order to receive a specific health care service, including a prescription drug, covered by a health benefit plan.

(4) "Health benefit plan" means as defined in Sec. 3343 of this title.

(5) "Health care service" means an item or service furnished to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

(6) "Person" means as defined in Sec. 102 of this Title.

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04/14/2022 01:17 PM 82 (37) "Pharmacy" means as defined in Sec. 2502 of Title 24.

(48) "Pharmacy benefit manager" means as defined under Sec. 3302A of this title.

(b) Application.- This section applies to a carrier that provides coverage, either directly or through a pharmacy benefits manager, for prescription drugs under a health insurance policy, health benefit plan, or contract that is issued or delivered in this State.

(c) A carrier subject to this section may not impose a copayment or coinsurance requirement for a covered prescription drug that exceeds the lesser of one of the following:

(1) The applicable copayment or coinsurance that would apply for the prescription drug in the absence of this section.

(2) The amount an individual would pay for the prescription drug if the individual were paying the usual and customary price.

(3) The contract price for the prescription drug.

(d) Cost-Sharing Calculation.

When calculating an enrollee contribution to any applicable cost sharing requirement, a carrier shall include any cost-sharing amounts paid by the enrollee or on behalf of the enrollee by another person.

If under federal law, application of this requirement would result in Health Savings Account ineligibility under Sec. 223 of the federal Internal Revenue Code, this requirement shall apply for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Sec. 223, except with respect to items or services that are preventive care pursuant to Sec. 223(c)(2)(C) of the federal Internal Revenue Code, in which case the requirements of this paragraph shall apply regardless of whether the minimum deductible under Sec. 223 has been satisfied.

(e) Effective Date.

This section shall apply to health benefit plans that are entered into, amended, extended, or renewed on or after January 1, 2024.

(f) Rule-Making.

The Insurance Commissioner may promulgate rules and regulations as may be necessary or appropriate to implement and administer this section.

Section 3.

Amend Chapter 33A, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter III.

Fairness in Cost-Sharing for Pharmacy Benefits Managers.

Sec. 3381A.

Definitions.

For purposes of this subchapter:

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ALW Page 4 of 6 Released:

04/14/2022 01:17 PM (1) "Cost-sharing requirement" means any copayment, coinsurance, deductible, or annual limitation on cost-sharing (including a limitation subject to 42 U.S.C.

Sec. Sec. 18022(c) and 300gg-6(b)), required by or on behalf of an enrollee in order to receive a specific health care service, including a prescription drug, covered by a health benefit plan.

(2) "Enrollee" means any individual entitled to health care services from an insurer.

(3) "Health benefit plan" means a policy, contract, certification, or agreement offered or issued by an insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(4) "Health care service" means a policy, contract, certification, or agreement offered or issued by an insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(5) "Insurer" means as defined under Sec. 3321A of this title.

(6) "Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, not-for-profit corporation, unincorporated organization, government or governmental subdivision or agency.

(7) "Pharmacy benefits manager" means as defined under Sec. 3302A of Title 18, and shall include any person, business, or other entity that, pursuant to a contract or under an employment relationship with an insurer, either directly or through an intermediary, manages the prescription drug benefit provided by the insurer, including the processing and payment of claims for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to the prescription drug benefit, contracting with network pharmacies, and/or controlling the cost of covered prescription drugs.

Sec. 3382A.

Fairness in Cost-Sharing.

(a) Cost-Sharing Calculation.

When calculating an enrollee's contribution to any applicable cost-sharing requirement, a pharmacy benefits manager shall include any cost-sharing amounts paid by the enrollee or on behalf of the enrollee by another person.

If under federal law, application of this requirement would result in Health Savings Account ineligibility under Sec. 223 of the federal Internal Revenue Code, this requirement shall apply for Health Savings Account- qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Sec. 223, except with respect to items or services that are preventive care pursuant to Sec. 223(c)(2)(C) of the federal Internal Revenue Code, in which case the requirements of this paragraph shall apply regardless of whether the minimum deductible under Sec. 223 has been satisfied.

(b) Effective Date.

This section shall apply to health benefit plans that are entered into, amended, extended, or renewed on or after January 1, 2024.

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04/14/2022 01:17 PM (c) Rule-Making.

The Insurance Commissioner may promulgate rules and regulations as may be necessary or appropriate to implement and administer this section.

SYNOPSIS The bill requires that third-party cost-sharing assistance utilized by patients is applied toward the enrollee's health insurance deductibles and any out-of-pocket limits.

Additionally, the bill defines what constitutes a "cost-sharing requirement" as well as how to calculate the assistance when applying to patient's deductibles and out-of-pocket limits.

This bill applies to both carriers and pharmacy benefits managers with an effective date of January 1, 2024.

Author:

Senator Mantzavinos SD :

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