SENATE, No. 1608

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex and Morris)

SYNOPSIS

Prohibits use of manufacturer coupons for certain prescription drug and prescription biological products.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning prescription medications and supplementing Title 24 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. A manufacturer of a prescription drug product or prescription biological product shall be prohibited from offering any discount, rebate, product voucher, or other reduction in an individual's out-of-pocket expenses, including a co-payment or deductible, for any prescription drug or biological product if a lower cost brand name or nonbrand name product is available that is designated by the United States Food and Drug Administration as therapeutically equivalent to, or interchangeable with, the manufacturer's product.

b. Subsection a. of this section shall not apply to a discount, rebate, or other payment by a manufacturer of a prescription drug product or prescription biological product to a patient or another person on the patient's behalf, other than the prescriber of the drug or biological product, for health care items or services related to the patient's use of a prescription drug or biological product where the item or service is required under a U.S. Food and Drug Administration Risk Evaluation and Mitigation Strategy or are for the purpose of monitoring or facilitating the use of the prescription drug or biological product in a manner consistent with the product's approved labeling.

c. Nothing in this section shall be deemed to:

(1) Restrict a manufacturer of a prescription drug product or prescription biological product with regard to how it distributes a drug or biological product;

(2) Restrict a carrier, as that term is defined in section 2 of P.L.1997, c.192 (C.26:2S-2), with regard to how its health benefits plan design treats such discount, rebate, product voucher, or other reduction in out-of-pocket expenses; or

(3) Affect a pharmacist's duties with regard to substitutions involving interchangeable drug products pursuant to P.L.1977, c.240 (C.24:6E-1 et seq.) or interchangeable biological products pursuant to P.L.2015, c.130 (C.24:6K-1 et al.).

2. This act shall take effect the first day of the fourth month next following the date of enactment.

STATEMENT

This bill prohibits manufacturers of prescription drug products and prescription biological products from offering discounts, rebates, product vouchers, or other reductions in an individual's

out-of-pocket expenses, including co-payments and deductibles, for prescription drug or biological products if a lower-cost alternative product is available that has been designated by the United States Food and Drug Administration (FDA) as therapeutically equivalent to, or interchangeable with, the manufacturer's product. Alternative products may include both brand name and nonbrand name products.

This restriction will not apply to discounts, rebates, or other payments made by a manufacturer to a patient for health care items or services related to the patient's use of a prescription drug or biological product when the items or services are required under an FDA Risk Evaluation and Mitigation Strategy or are for the purpose of monitoring or facilitating an approved use of the product.

Nothing in the bill will restrict how a manufacturer may distribute a drug or product; restrict a health benefits carrier in how its plan design will treat discounts, rebates, product vouchers, or other reductions in out-of-pocket expenses; or affect a pharmacist's duties with regard to substitutions involving interchangeable drug and biological products under current law.

A 2013 article published in the New England Journal of Medicine discusses how pharmaceutical manufacturers frequently use coupons and discount offers to encourage consumers to choose that manufacturer's products. In the short term, the coupons and discounts reduce the consumer's out-of-pocket costs for the product, providing the consumer with an incentive to choose the product even when lower cost alternatives, such as generic versions of the product, are available. However, the article suggests this practice raises the cost of providing coverage for health and prescription benefits providers, which in turn results in higher costs for all consumers. Additionally, the practice generally results in higher long-term costs for individual consumers, who frequently continue to use a manufacturer's product even after the coupon or discount is no longer available, which is generally not effective for more than one year.

It is the sponsor's belief that restricting the use of coupon and discount offers when lower cost alternatives are available will help reduce the overall cost of health care for the citizens of New Jersey.