ENROLLED

2023 Regular Session

ACT No. 358

HOUSE BILL NO. 548

BY REPRESENTATIVES TURNER AND KNOX

AN ACT

To enact Chapter 36-A of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:2881 through 2886, relative to the dispensation of certain drugs by a healthcare facility; to provide for definitions; to identify certain actions as discriminatory with respect to drugs discounted by a federal program and the entities that dispense them; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 36-A of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:2881 through 2886, is hereby enacted to read as follows:

CHAPTER 36-A. DEFENDING AFFORDABLE PRESCRIPTION DRUG COSTS

§2881. Short title

This Chapter may be cited as the "Defending Affordable Prescription Drug Costs Act".

§2882. Definitions

As used in this Chapter, the following terms have the following meanings:

(1) "340B drug" means a drug that has been subject to any offer for reduced prices by a manufacturer pursuant to 42 U.S.C. 256b and is purchased by a covered entity as defined in 42 U.S.C. 256b(a)(4).

(2) "340B entity" means an entity participating or authorized to participate in the federal 340B drug discount program, as described in 42 U.S.C. 256b, including its pharmacy, or any pharmacy contracted with the participating entity to dispense drugs purchased through the 340B drug discount program.

(3) "Health insurance issuer" has the same meaning as provided in R.S. 22:1019.1.

(4) "Manufacturer" has the same meaning as defined in R.S. 37:3462(12).

(5) "Pharmacy" has the same meaning as defined in R.S. 37:1164(38) except that residents who are provided pharmacy care shall be physically located in this state.

(6) "Pharmacy benefit manager" has the same meaning as provided in R.S. 40:2863.

§2883. Prohibition of certain discriminatory actions related to reimbursement of 340B entities

A.(1) With respect to reimbursement to a 340B entity for 340B drugs, a health insurance issuer, pharmacy benefit manager, other third-party payor, or its agent shall not do any of the following:

(a) Reimburse a 340B entity for 340B drugs at a rate lower than that paid for the same drug to entities that are not 340B entities or lower reimbursement for a claim on the basis that the claim is for a 340B drug.

(b) Impose any terms or conditions on any 340B entity with respect to any of the following that differ from such terms or conditions applied to non-340B entities 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, without limitation, any of the following:

(i) Fees, charges, clawbacks, or other adjustments or assessments. For purposes of this Subsection, the term "other adjustment" includes placing any additional requirements, restrictions, or unnecessary burdens upon the 340B entity that results in administrative costs or fees to the 340B entity that are not placed upon 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 that are less than the dispensing fees for non-340B entities.

(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 resubmitted unless it is required by the Centers for Medicare and Medicaid Services or the Louisiana Department of Health for the administration of the Louisiana Medicaid program.

(vi) Any other restrictions, conditions, practices, or policies that are not imposed on non-340B entities.

(c) Require a 340B entity 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.

(d) Discriminate against a 340B entity in a manner that prevents or interferes with any patient's choice to receive such drugs from the 340B entity, including the administration of such drugs. 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 340B entity if a health insurance issuer, pharmacy benefit manager, or other third-party payor places any additional requirements, restrictions, or unnecessary burdens upon the 340B entity that results in administrative costs or fees to the 340B entity, including but not limited to requiring a claim for a drug to include any identification, billing modifier, attestation or other indication that a drug is a 340B drug in order to be processed or resubmitted unless it is required by the Centers for Medicare and Medicaid Services or the Louisiana Department of Health in administration of the Louisiana Medicaid program.

(e) Include any other provision in a contract between a health insurance issuer, pharmacy benefit manager, or other third-party payor and a 340B entity that discriminates against the 340B entity or prevents or interferes with an individual's choice to receive a prescription drug from a 340B entity, including the administration

of the drug, in person or via direct delivery, mail, or other form of shipment, or creation of a restriction or additional charge on a patient who chooses to receive drugs from a 340B entity.

(f) 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.

(g) Exclude any 340B entity from the health insurance issuer, pharmacy benefit manager, or other third-party payor network on the basis that the 340B entity dispenses drugs subject to an agreement under 42 U.S.C. 256b, or refusing to contract with a 340B entity for reasons other than those that apply equally to non-340B entities.

B. Nothing in this Chapter applies to the Louisiana Medicaid program as payor when Medicaid provides reimbursement for covered outpatient drugs as defined in 42 U.S.C. 1396r-8(k)).

§2884. Prohibition of certain discriminatory actions by a manufacturer or distributor related to 340B entities

A. 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 pharmacy that is under contract with a 340B entity and is authorized under such contract to receive and dispense 340B drugs on behalf of the covered entity unless such receipt is prohibited by the United States Department of Health and Human Services.

B. A manufacturer or distributor shall not interfere with a pharmacy contracted with a 340B entity.

§2885. Violations

The commission of any act prohibited by this Chapter is considered a violation of the Unfair Trade Practices and Consumer Protection Law, provided for in R.S. 51:1401 et seq. and subjects the violator to any and all actions, including investigative demands, remedies, and penalties provided for in the Unfair Trade Practices and Consumer Protection Law, except there shall be no right to bring a

private action pursuant to R.S. 51:1409. A violation occurs each time a prohibited act is committed.

§2886. Federal preemption

A. Nothing in this Chapter is to be construed or applied to be less restrictive than federal law for a person or entity regulated by this Chapter.

B. Nothing in this Chapter is to be construed or applied to be in conflict with any of the following:

(1) Applicable federal law and related regulations.

(2) Other laws of this state if the state law is compatible with applicable federal law.

C. Limited distribution of a drug required under 21 U.S.C. 355-1 is not to be construed as a violation of this Chapter.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____