WEST VIRGINIA CODE: §9-5-15

§9-5-15. Medicaid program; preferred drug list and drug utilization review.

The Legislature finds that it is a public necessity that trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and supplemental rebates that are contained in records, as well as any meetings at which this information is negotiated or discussed need confidentiality to insure the most significant rebates available for the state. Information pertaining to similar agreements with the federal government and negotiated by pharmaceutical manufacturers is confidential pursuant to 42 U.S.C. 1396r-8. A rebate as a percentage of average manufacture price is confidential under federal law and the federal rebate could be made known if not protected by state law. Because of the protection afforded by federal law, if this information is not protected by state law, manufacturers will not be willing to offer a rebate in West Virginia. Further, the Legislature finds that the number and value of supplemental rebates obtained by the department will increase, to the benefit of Medicaid recipients, if information related to the supplemental rebates is protected in the records of the department and in meetings in which this information is disclosed because manufacturers will be assured they will not to be placed at a competitive disadvantage by exposure of this information.

The secretary of the Department of Human Services has the authority to develop a preferred drug list, in accordance with federal law, which shall consist of federally approved drugs. The department, through administration of the Medicaid program, may reimburse, where applicable and in accordance with federal law, entities providing and dispensing prescription drugs from the preferred drug list.

The secretary is authorized to negotiate and enter into agreements with pharmaceutical manufacturers for supplemental rebates for Medicaid reimbursable drugs.

The provisions of article three, chapter five-a of this code shall not apply to any contract or contracts entered into under this section.

Trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and supplemental rebates which are contained in the department's records and those of its agents with respect to supplemental rebate negotiations and which are prepared pursuant to a supplemental rebate agreement are confidential and exempt from all of article one, chapter twenty-nine-b of this code.

Those portions of any meetings of the committee at which trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and supplemental rebates are disclosed for discussion or negotiation of a supplemental rebate agreement are exempt from all of article nine-a, chapter six of this code.

The secretary will monitor and evaluate the effects of this provision on Medicaid recipients,

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the Medicaid program, physicians and pharmacies.

The commissioner shall implement a drug utilization review program to assure that prescribing and dispensing of drug products result in the most rational cost-effective medication therapy for Medicaid patients.

Any moneys received in supplemental rebates will be deposited in the medical services fund established in §9-4-2 of this code.

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