



SPONSOR: Rep. Bennett & Sen. Delcollo  
Reps. Bentz, Bush, Dorsey Walker, Heffernan, Jaques,  
Kowalko, Seigfried, D. Short, K. Williams; Sens.  
Cloutier, Hansen, Pettyjohn, Sokola, Townsend, Wilson

HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE BILL NO. 24

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO COPAYMENT OR COINSURANCE  
FOR PRESCRIPTION DRUGS.

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

1           Section 1. Amend Chapter 33, Title 18 of the Delaware Code by making deletions as shown by strike through and  
2     insertions as shown by underline as follows:

3           § 3350A. Copayment or coinsurance for prescription drugs limited.

4           (a) Definitions.

5                     (1) "Carrier" means any entity that provides health insurance in this State. "Carrier" includes an insurance  
6                     company, health service corporation, health maintenance organization, and any other entity providing a plan of health  
7                     insurance or health benefits subject to state insurance regulation.

8                     (2) "Pharmacy benefit manager" means as defined under § 3302A of this title.

9                     (3) "Retail price" means the amount an individual would pay for the prescription drug if the individual  
10                    purchased the prescription drug without using a health insurance plan, a health benefit plan, or any other source of  
11                    prescription drug benefits or discounts.

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

14           (c) A carrier subject to this section may not impose a copayment or coinsurance requirement for a covered  
15           prescription drug that exceeds the retail price of the prescription drug.

16           Section 2. Amend Subchapter III, Chapter 35, Title 18 of the Delaware Code by making deletions as shown by  
17     strike through and insertions as shown by underline as follows:

18           § 3566A. Copayment or coinsurance for prescription drugs limited.

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

(3) "Retail price" means the amount an individual would pay for the prescription drug if the individual purchased the prescription drug without using a health insurance plan, a health benefit plan, or any other source of prescription drug benefits or discounts.

(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 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 retail price of the prescription drug.

Section 3. This Act applies to health insurance or health benefit plans covered under Sections 1 or 2 of this Act that are issued or renewed on or after January 1, 2020.

#### SYNOPSIS

This Act would prohibit insurers and pharmacy benefit managers from engaging in the practice of "clawbacks". When the total cost of a prescription drug to an insurer or pharmacy benefits manager is less than a patient's co-pay, the insurer or pharmacy benefits manager keeps the difference in a practice known as a "clawback".

According to a March 2018 report issued by the University of Southern California's Schaeffer Center for Health Policy & Economics based on the Center's analysis of 2013 data from a large commercial insurer combined with data on national average drug reimbursements, almost 25% of filled pharmacy prescriptions involved a patient co-payment that exceeded the average reimbursement paid by the insurer by more than \$2.00. The report further noted that overpayments were more likely to occur on claims for generic drugs than brand drugs and that the total overpayments in the Center's sample amounted to \$135 million.