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State of Minnesota
HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 448

01/28/2021 Authored by Acomb
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy
02/15/2021 Adoption of Report: Re-referred to the Committee on Health Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to health; modifying the definition of prescription drug for purposes of
- 1.3 the state antikickback provision; amending Minnesota Statutes 2020, section 62J.23,
- 1.4 subdivision 2.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2020, section 62J.23, subdivision 2, is amended to read:
- 1.7 Subd. 2. **Restrictions.** (a) From July 1, 1992, until rules are adopted by the commissioner
- 1.8 under this section, the restrictions in the federal Medicare antikickback statutes in section
- 1.9 1128B(b) of the Social Security Act, United States Code, title 42, section 1320a-7b(b), and
- 1.10 rules adopted under the federal statutes, apply to all persons in the state, regardless of whether
- 1.11 the person participates in any state health care program.
- 1.12 (b) Nothing in paragraph (a) shall be construed to prohibit an individual from receiving
- 1.13 a discount or other reduction in price or a limited-time free supply or samples of a prescription
- 1.14 drug, medical supply, or medical equipment offered by a pharmaceutical manufacturer,
- 1.15 medical supply or device manufacturer, health plan company, or pharmacy benefit manager,
- 1.16 so long as:
- 1.17 (1) the discount or reduction in price is provided to the individual in connection with
- 1.18 the purchase of a prescription drug, medical supply, or medical equipment prescribed for
- 1.19 that individual;
- 1.20 (2) it otherwise complies with the requirements of state and federal law applicable to
- 1.21 enrollees of state and federal public health care programs;

(3) the discount or reduction in price does not exceed the amount paid directly by the individual for the prescription drug, medical supply, or medical equipment; and

(4) the limited-time free supply or samples are provided by a physician, advanced practice registered nurse, or pharmacist, as provided by the federal Prescription Drug Marketing Act.

For purposes of this paragraph, "prescription drug" includes prescription drugs that are administered through infusion, injection, or other parenteral methods, and related services and supplies.

(c) No benefit, reward, remuneration, or incentive for continued product use may be provided to an individual or an individual's family by a pharmaceutical manufacturer, medical supply or device manufacturer, or pharmacy benefit manager, except that this prohibition does not apply to:

(1) activities permitted under paragraph (b);

(2) a pharmaceutical manufacturer, medical supply or device manufacturer, health plan company, or pharmacy benefit manager providing to a patient, at a discount or reduced price or free of charge, ancillary products necessary for treatment of the medical condition for which the prescription drug, medical supply, or medical equipment was prescribed or provided; and

(3) a pharmaceutical manufacturer, medical supply or device manufacturer, health plan company, or pharmacy benefit manager providing to a patient a trinket or memento of insignificant value.

(d) Nothing in this subdivision shall be construed to prohibit a health plan company from offering a tiered formulary with different co-payment or cost-sharing amounts for different drugs.