

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1853

By: Kirby

AS INTRODUCED

An Act relating to public health; creating the Oklahoma Prescription Drug Fair Pricing Act; providing for short title; stating legislative findings and purpose; creating the Oklahoma Prescription Drug Fair Pricing Board; providing for membership, terms, officers, travel reimbursement and staff support; making proceedings of Board subject to certain named acts; specifying the powers and duties of the Board; authorizing the collection of certain information in certain manner; directing certain persons to provide certain information; authorizing certain agreements for certain purpose; directing the completion of certain surveys; providing for content; providing for distribution of survey results; directing the establishment of certain maximum prescription drug prices in certain manner; providing for the effective date of certain maximum prescription drug prices; providing for certain determinations; specifying criteria; directing the State Department of Health to compile and disseminate certain information; directing certain health care providers to provide certain information to certain patients; providing for certain exemption; providing for appeals; prohibiting certain acts; stating penalty; amending 15 O.S. 1991, Section 753, as last amended by Section 3, Chapter 175, O.S.L. 1999 (15 O.S. Supp. 2000, Section 753), which relates to the Oklahoma Consumer Protection Act; adding to certain list of certain unlawful practices; providing for codification; providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6001 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Sections 1 through 8 of this act shall be known and may be cited as the "Oklahoma Prescription Drug Fair Pricing Act".

B. The Oklahoma State Legislature finds:

1. That the citizens of Oklahoma and other Americans pay the highest prices in the world for prescription drugs;

2. That lack of affordable access to medically necessary prescription drugs results in the denial of health care, the likelihood of serious illness and death, and the inability to lead a life of good health for many Oklahoma citizens. Many Oklahoma citizens are admitted or treated at hospitals each year because they cannot afford the medications prescribed for them. Many others are forced into expensive institutional settings because they cannot afford necessary prescription drugs. All Oklahoma citizens are threatened by the possibility that when they need medically necessary prescription drugs they will be unable to afford their physician's recommended treatment; and

3. Prescription drug costs represent the fastest growing item in health care and are a driving force in rapidly increasing hospital costs and insurance rates. Excessive pricing for prescription drugs threatens Oklahoma government's ability to assist with health care costs through the state Medicaid program and significantly reduces the ability of Oklahoma's business community to provide health insurance coverage for their employees.

C. The purpose of the Oklahoma Prescription Drug Fair Pricing Act is to promote the health and safety of all Oklahoma citizens by providing them with affordable access to prescription drugs at the lowest reasonable prices through nonregulatory means or, if necessary, through a regulatory system that ensures that prices charged to Oklahoma citizens for medical necessary prescription drugs are fair and nondiscriminatory, but not excessive.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6002 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Oklahoma Prescription Drug Fair Pricing Board. The Board shall consist of thirteen (13) members as follows:

1. The Director of the Oklahoma Board of Pharmacy;
2. The Director of the Oklahoma Health Care Authority;
3. The Commissioner of the State Department of Health;
4. The Director of the Oklahoma State and Education Employees Group Insurance Board;
5. The chair of the Medicaid Drug Utilization Review Board;
6. Three members appointed by the Speaker of the Oklahoma House of Representatives, one of whom shall be a representative of a statewide pharmacist organization, one of whom shall be a representative of a statewide organization of allopathic physicians, and one of whom shall represent senior citizens;
7. Three members appointed by the President Pro Tempore of the Oklahoma State Senate, one of whom shall be a representative of a statewide organization of health benefit managers, one of whom shall be a representative of a statewide organization of osteopathic physicians, and one of whom shall represent low-income persons; and
8. Two members appointed by the Governor, one of whom shall be a representative of a statewide organization of health insurers, and one of whom shall represent disabled persons.

B. The proceedings of the Board shall be subject to the Administrative Procedures Act, the Open Meeting Act, and the Open Records Act.

C. The appointed members of the Board shall serve three-year terms, and may be reappointed.

D. The Director of the Oklahoma Health Care Authority shall convene the first meeting. At its first meeting, the Board shall elect a chair and a vice-chair from among its membership, and shall elect officers annually thereafter.

E. The members of the Board shall serve without pay but may be reimbursed in accordance with the State Travel Reimbursement Act.

F. Staff support for the Board shall be provided by the Oklahoma Health Care Authority. All agencies of the state shall provide information and assistance as requested by the Board.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6003 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Prescription Drug Fair Pricing Board shall have the power and duty to:

1. Promulgate rules as necessary and appropriate to fulfill the functions of the Board;

2. As provided by subsection B of this section, collect from any manufacturer, wholesaler or retailer of prescription drugs sold in this state such information as is necessary to carry out its duties pursuant to the Oklahoma Prescription Drug Fair Pricing Act;

3. Complete prescription drug surveys as provided by Section 4 of this act;

4. Establish maximum prices for prescription drugs and a date on which the prices become effective as provided by Section 5 of this act;

5. Enter into agreements with other states for the purpose of maintaining fair and uniform prescription drug prices and ensuring maximum access to affordable prescription drugs; and

6. Take such other action as is necessary and appropriate to carry out its duties.

B. 1. Every manufacturer, wholesaler and retailer of prescription drugs sold in this state shall submit to the Board such data, statistics, schedules or other information requested by the Board.

2. The Board shall have the authority to examine the books, accounts and other documents of any manufacturer, wholesaler or

retailer of prescription drugs sold in this state, subpoena witnesses and examine those witnesses and documents on all matters falling within the jurisdiction of the Board.

3. The Board shall promulgate rules for the designation of information collected by the Board as public information or as proprietary information that shall not be disclosed to any person other than the Board and its staff, or to the Attorney General for the purpose of enforcing the Oklahoma Prescription Drug Fair Pricing Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6004 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Prescription Drug Fair Pricing Board shall conduct semiannual surveys of prescription drugs for the purpose of developing maximum prices for prescription drugs and determining an effective date for the implementation of the prices.

B. The surveys shall include, but not be limited to:

1. The current manufacturer, wholesaler and retailer maximum prices of prescription drugs in this state, as established by the Board;

2. The actual manufacturer, wholesaler and retailer maximum prices for prescription drugs for the previous five years, to be shown at six month intervals;

3. The federal supply schedule for pharmaceuticals and drugs maintained by the United States Department of Veterans Affairs;

4. The prices shown on one or more appropriate drug formularies, including the drug formulary maintained by the Province of Quebec, Canada; and

5. Any other information related to prescription drug prices in this state that the Board determines to be appropriate.

C. The Board shall provide copies of the survey results to the Governor, the Legislature and to every affected state agency. The

survey results shall be public information and shall be provided to any member of the public requesting a copy. The Board may establish and maintain an Internet site containing current and past survey results.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6005 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The maximum drug prices established by this section shall become effective only as provided by subsection B of this section. The provisions of this section shall not apply to prices subject to legally binding contracts entered into prior to the effective date of the Oklahoma Prescription Drug Fair Pricing Act.

B. Beginning January 1, 2002, and each January 1 thereafter, the Oklahoma Prescription Drug Fair Pricing Board shall promulgate rules establishing the maximum prices for prescription drugs sold in this state and shall submit the rules to the Oklahoma House of Representatives on or before April 1 of each year. The prices established by the Board shall become effective on July 1 of each year in which the prices are established unless:

1. The rules are disapproved by the Oklahoma State Legislature as provided by the Administrative Procedures Act; or

2. Utilizing the criteria established by subsection D of this section, the Board determines, after a public hearing, that:

- a. prescription drug prices in this state are less than or equal to the maximum prices set by the Board, or
- b. alternative nonregulatory mechanisms have been implemented to ensure that prescription drugs are sold in this state at prices that do not exceed the prices established by the Board.

C. The Board shall establish the maximum prices of prescription drugs as follows:

1. The Board shall establish the maximum manufacturers prices for prescription drugs sold in this state after consideration of the prices charged for prescription drugs in Canada, the prices listed on the federal supply schedule for pharmaceuticals and drugs maintained by the United States Department of Veterans Affairs, and other relevant information. The maximum manufacturer price of a prescription drug shall not exceed the manufacturer price for that drug sold in Canada. If a prescription drug is not sold in Canada, the maximum manufacturer prices shall not exceed the maximum price for all other prescription drugs within the same classification of drugs;

2. The maximum wholesaler price for a prescription drug sold in this state by a wholesaler shall be the maximum price established pursuant to paragraph 1 of this subsection plus any reasonable and customary cost of doing business and profit markup by the wholesaler; and

3. The maximum retailer price for a prescription drug sold in this state shall be the maximum wholesaler price established pursuant to paragraph 2 of this subsection plus any usual or customary cost of doing business and profit markup by the retailer.

D. The criteria to be used in making a determination as provided by paragraph 2 of subsection B of this section shall include, but not be limited to:

1. The implementation and effect of any Medicaid drug rebate program;

2. The implementation and effect of the Qualified Medicare Beneficiary Program;

3. The implementation and effect of the State Children's Health Insurance Program;

4. The effect on prescription drug prices of patient access to pharmaceutical manufacturer patient assistance programs and the

information initiative established by Section 6 of the Prescription Drug Fair Pricing Act; and

5. The effect on prescription drug prices of any regional strategies or regional purchasing alliances implemented within this state.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6006 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall compile information from pharmaceutical manufacturer patient assistance programs and any other prescription drug assistance programs available within the state and shall provide health care providers with the information.

B. Health care providers practicing within the state shall examine the applicability of pharmaceutical manufacturer patient assistance programs and any other prescription programs available within the state to the patients of the health care provider and shall provide information about those programs to any patients of the health care provider who are likely to benefit from it.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6007 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Prescription Drug Fair Pricing Board shall promulgate rules establishing procedures whereby a pharmaceutical manufacturer may request an exemption from a prescription drug price established by the Board.

B. If the exception is not granted, the pharmaceutical manufacturer may appeal the ruling of the Board as provided by Article 2 of the Administrative Procedures Act.

C. The factors to be considered in appeal pursuant to this section shall include but not be limited to:

1. Changed circumstances since the price schedule was established;

2. Reasonable costs of production, distribution, marketing and research;

3. The profit through sale and the price charged in other markets for the prescription drug; and

4. The availability of prescription drugs essential to the health of the citizens of the state, or other relevant factor related to the health and safety of the citizens of the state.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6008 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. On and after the effective date of this act it shall be unlawful to sell or offer for sale a prescription drug at a price that is in excess of the price for that drug that has been established by the Oklahoma Prescription Drug Fair Pricing Board and is in effect as provided by subsection B of Section 5 of this act.

B. In addition to any other remedies available by law, a violation of this section shall be subject to the Oklahoma Consumer Protection Act.

SECTION 9. AMENDATORY 15 O.S. 1991, Section 753, as last amended by Section 3, Chapter 175, O.S.L. 1999 (15 O.S. Supp. 2000, Section 753), is amended to read as follows:

Section 753. A person engages in a practice which is declared to be unlawful under the Oklahoma Consumer Protection Act, Section 751 et seq. of this title, when, in the course of the person's business, the person:

1. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular make or brand, when it is of another;

2. Makes a false or misleading representation, knowingly or with reason to know, as to the source, sponsorship, approval, or certification of the subject of a consumer transaction;

3. Makes a false or misleading representation, knowingly or with reason to know, as to affiliation, connection, association with, or certification by another;

4. Makes a false or misleading representation or designation, knowingly or with reason to know, of the geographic origin of the subject of a consumer transaction;

5. Makes a false representation, knowingly or with reason to know, as to the characteristics, ingredients, uses, benefits, alterations, or quantities of the subject of a consumer transaction or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;

6. Represents, knowingly or with reason to know, that the subject of a consumer transaction is original or new if the person knows that it is reconditioned, reclaimed, used, or secondhand;

7. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another;

8. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;

9. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity;

10. Advertises under the guise of obtaining sales personnel when in fact the purpose is to sell the subject of a consumer transaction to the sales personnel applicants;

11. Makes false or misleading statements of fact, knowingly or with reason to know, concerning the price of the subject of a consumer transaction or the reason for, existence of, or amounts of price reduction;

12. Employs "bait and switch" advertising, which consists of an offer to sell the subject of a consumer transaction which the seller

does not intend to sell, which advertising is accompanied by one or more of the following practices:

- a. refusal to show the subject of a consumer transaction advertised,
- b. disparagement of the advertised subject of a consumer transaction or the terms of sale,
- c. requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction,
- d. refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time,
- e. showing or demonstrating defective subject of a consumer transaction which the seller knows is unusable or impracticable for the purpose set forth in the advertisement,
- f. accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item, or
- g. willful failure to make deliveries of the subject of a consumer transaction within a reasonable time or to make a refund therefor upon the request of the purchaser;

13. Conducts a closing out sale without having first obtained a license as required in this act, Section 751 et seq. of this title;

14. Resumes the business for which the closing out sale was conducted within one (1) year from the expiration date of the closing out sale license;

15. Falsely states, knowingly or with reason to know, that services, replacements or repairs are needed;

16. Violates any provision of the Oklahoma Health Spa Act, Section 2000 et seq. of Title 59 of the Oklahoma Statutes;

17. Violates any provision of the Home Repair Fraud Act, Section 765.1 et seq. of this title;

18. Violates any provision of the Consumer Disclosure of Prizes and Gifts Act, Section 996.1 et seq. of Title 21 of the Oklahoma Statutes;

19. Violates any provision of Section 755.1 of this title or Section 1847a of Title 21 of the Oklahoma Statutes;

20. Commits an unfair or deceptive trade practice as defined in Section 752 of this title;

21. Violates any provision of Section 169.1 of Title 8 of the Oklahoma Statutes in fraudulently or intentionally failing or refusing to honor the contract to provide certain cemetery services specified in the contract entered into pursuant to the Perpetual Care Fund Act;

22. Misrepresents a mail solicitation as an invoice or as a billing statement; ~~or~~

23. Offers to purchase a mineral or royalty interest through an offer that resembles an oil and gas lease and that the consumer believed was an oil and gas lease; or

24. Sells or offers for sale a prescription drug at a price that is in excess of the price for that drug that has been established by the Oklahoma Prescription Drug Fair Pricing Board and is in effect as provided by subsection B of Section 5 of the Oklahoma Prescription Drug Fair Pricing Act.

SECTION 10. This act shall become effective November 1, 2001.

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