STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 896 By: Nichols

AS INTRODUCED

An Act relating to state government; creating the Oklahoma Pharmaceutical Availability and Affordability Act; defining terms; allowing for state to enter into multistate agreements; requiring council to represent state; creating Oklahoma Pharmaceutical Cost Management Council; mandating composition of Council; outlining powers of Council; requiring reporting of certain costs by certain makers of prescription drugs; allowing exemptions for certain disclosures; providing for promulgation of rules; creating the Task Force on State and Education Employee Insurance; providing for makeup of task force; requiring actuarial study of state health insurance plan; setting parameters of study; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

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 1380.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 7 of this act shall be known and may be cited as the “Oklahoma Pharmaceutical Availability and Affordability Act”.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1380.2 of Title 74, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "AWP" or "average wholesale price" means the amount determined from the latest publication of the blue book, a universally subscribed pharmacist reference guide annually published by the Hearst Corporation. "AWP" or "average wholesale price" may also be derived electronically from the drug pricing database

synonymous with the latest publication of the blue book and furnished in the National Drug Data File (NDDF) by First Data Bank (FDB), a service of the Hearst Corporation;

2. “Council” means the Oklahoma Pharmaceutical Cost Management Council created in Section 4 of this act;

3. "Dispensing fee" means the fee charged by a pharmacy to dispense pharmaceuticals;

4. "Drug manufacturer" or "pharmaceutical manufacturer" means any entity which is engaged in:

a. the production, preparation, propagation, compounding, conversion or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, or

b. in the packaging, repackaging, labeling, relabeling or distribution of prescription drug products. "Drug manufacturer" or "pharmaceutical manufacturer" does not include a wholesale distributor of drugs or a retail pharmacy licensed under state law;

5. "Federal supply schedule" or "FSS" means the price available to all federal agencies for the purchase of pharmaceuticals authorized in the Veterans Health Care Act of 1992, PL 102-585. FSS prices are intended to equal or better the prices manufacturers charge their "most-favored" nonfederal customers under comparable terms and conditions;

6. "Multiple-source drug", "innovator drug" and "noninnovator drug" mean the following:

a. the term "multiple-source drug" means, for which there are two or more drug products which are: rated as therapeutically equivalent (under the United States Food and Drug Administration's most recent publication

of "Approved Drug Products with Therapeutic Equivalence Evaluations"), except as provided in subparagraph b of this paragraph, are pharmaceutically equivalent and bioequivalent, as determined by the United States Food and Drug Administration, and the term "innovator drug" shall hereinafter be referred to as "brand". The term "innovator drug" means a drug which is produced or distributed under an original new drug application approved by the United States Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application and any multiple-source drug that was originally marketed under an original new drug application approved by the United States Food and Drug Administration. The term "noninnovator drug" shall hereinafter be referred to as "generic". The term "noninnovator drug" means a multiple-source drug that is not an "innovator drug", and

b. subparagraph a of this paragraph shall not apply if the United States Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph a of this paragraph, in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent;

7. "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the Federal Food and Drug Administration pursuant to 21 C.F.R., Section 207.20 (1999);

8. "Person" means any natural person or persons or any corporation, partnership, company, trust or association of persons;

9. "Savings" means the difference between the previous price of a prescription drug including any discounts, rebates or price containments and the current price after the effective date of this act for the public employees insurance agency, children's health insurance program, Medicaid and workers' compensation programs or other programs which are payors for prescription drugs; and

10. "Sole source" means a pharmaceutical that provides a unique and powerful advantage available in the market to a broad group of patients established under federal law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1380.3 of Title 74, unless there is created a duplication in numbering, reads as follows:

For the purposes of reviewing or amending the program establishing the process for making pharmaceuticals more available and affordable to the citizens of Oklahoma, the state may enter into multistate discussions and agreements. For purposes of participating in these discussions, the state shall be represented by members of the council created in Section 4 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1380.4 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Oklahoma Pharmaceutical Cost Management Council which consists of:

1. The Director of the Office of State Finance, or designee;

2. The Director of the State and Education Employees Group Insurance Board, or designee;

3. The Director of the Oklahoma Health Care Authority, or designee;

4. The Director of the Department of Human Services, or designee;

5. The Commissioner of the Department of Mental Health and Substance Abuse Services, or designee;

6. The Administrator of the Workers' Compensation Court, or designee; and

7. Four members of the public, appointed by the Governor with the advice and consent of the Senate.

B. One public member shall be a licensed pharmacist employed by a community retail pharmacy, one public member shall be a primary care physician, one public member shall represent those who will receive benefit from the establishment of this program and one public member shall have experience in the financing, development, or management of a health insurance company which provides pharmaceutical coverage.

C. Each public member shall be appointed for a term of four (4) years. Of the public members of the council first appointed, one shall be appointed for a term ending June 30, 2007, and two each for two- and three-year terms. They shall serve until the successor is appointed and has qualified. A member of the Council may be removed by the Governor for cause.

D. The Director of the Office of State Finance or designee shall serve as the chairperson of the Council, which shall meet at times and places specified by the chairperson, or upon request of two or more members of the Council.

E. Members shall not be compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1380.5 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Pharmaceutical Cost Management Council shall have the power and authority to:

1. Contract for the purpose of implementing the cost containment provisions of this act;

2. File suit;

3. Execute, as permitted by applicable federal law, prescription drug purchasing agreements with:

a. all departments, agencies, authorities, institutions, programs, any agencies or programs of the federal government, quasi-public corporations and political subdivisions of this state,

b. governments of other states and jurisdictions and their individual departments, agencies, authorities, institutions, programs, quasi-public corporations and political subdivisions, and

c. regional or multistate purchasing alliances or consortia, formed for the purpose of pooling the combined purchasing power of the individual members in order to increase bargaining power;

4. Consider strategies by which Oklahoma may manage the increasing costs of prescription drugs and increase access to prescription drugs for all of the citizens of the state, including the authority to:

a. explore the enactment of fair prescription drug-pricing policies,

b. explore discount prices or rebate programs for seniors and persons without prescription drug coverage,

c. explore programs offered by pharmaceutical manufacturers that provide prescription drugs for free or at reduced prices,

d. explore requirements and criteria, including the level of detail, for prescription drug manufacturers to disclose to the council expenditures for advertising,

marketing and promotion, based on aggregate national data,

e. explore the establishment of counter-detailing programs aimed at educating health care practitioners authorized to prescribe prescription drugs about the relative costs and benefits of various prescription drugs, with an emphasis on generic substitution for brand name drugs when available and appropriate; prescribing older, less costly drugs instead of newer, more expensive drugs, when appropriate; and prescribing lower dosages of prescription drugs, when available and appropriate,

f. explore state disease-management programs aimed at enhancing the effectiveness of treating certain diseases identified as prevalent among this state's population with prescription drugs,

g. explore prescription drug purchasing agreements with large private sector purchasers of prescription drugs and including those private entities in pharmacy benefit management contracts provided that no private entity may be compelled to participate in a purchasing agreement,

h. explore the feasibility of using or referencing, the federal supply schedule or referencing to the price, as adjusted for currency valuations, set by the Canadian Patented Medicine Prices Review Board (PMPRB), or any other appropriate referenced price to establish prescription drug pricing for brand name drugs in the state,

i. explore, if possible, joint negotiations for drug purchasing and a shared prescription drug pricing schedule and shared preferred drug list for use by the

State and Education Employees Group Insurance Board, the Medicaid program, other state payors and private insurers,

j. explore coordination between the Medicaid program, the State and Education Employees Group Insurance Board and, to the extent possible, in-state hospitals and private insurers toward the development of a uniform preferred prescription drug list which is clinically appropriate and which leverages retail prices,

k. explore policies which promote the use of generic drugs, where appropriate,

l. explore a policy that precludes a drug manufacturer from reducing the amounts of drug rebates or otherwise penalize an insurer, health plan or other entity which pays for prescription drugs based upon the fact that the entity uses step therapy or other clinical programs before a drug is covered or otherwise authorized for payment,

m. explore arrangements with entities in the private sector, including self-funded benefit plans and nonprofit corporations, toward combined purchasing of health care services, health care management services, pharmacy benefits management services or pharmaceutical products on the condition that no private entity be compelled to participate in the prescription drug purchasing pool, and

n. explore other strategies, as permitted under state and federal law, aimed at managing escalating prescription drug prices and increasing affordable access to prescription drugs for all Oklahoma citizens;

5. Contract with appropriate legal, actuarial and other service providers required to accomplish any function within the powers of the Council;

6. Develop other strategies, as permitted under state and federal law, aimed at managing escalating prescription drug prices and increasing affordable access to prescription drugs for all Oklahoma citizens;

7. Explore the licensing and regulation of pharmaceutical detailers, including the requirement of continuing professional education, the imposition of fees for licensing and continuing education, the establishment of a special revenue account for deposit of the fees and the imposition of penalties for noncompliance with licensing and continuing education requirements, and rules to establish procedures to implement the provisions of the subdivision; and

8. The Council shall provide recommendations to the Legislature on needed legislative action and other functions established by this act.

B. The Council shall, upon the passage of this act, immediately commence to study the fiscal impact to this state of the federal "Medicare Prescription Drug Improvement and Modernization Act of 2003" and shall report to the Legislature on or before October 15, 2006, as to the findings of the Council.

C. The Council shall develop an evaluation methodology to certify and audit savings in the discount savings program by determining the impact on growth and profit of the pharmaceutical manufacturers to ensure that prices have not been inflated to offset the discount card value.

D. The Council shall:

1. Review to determine that the implementation of the programs under this act will not jeopardize, reduce or penalize the benefits of veterans or other recipients of FSS drug prices, considering

their respective co-pay structures, and the pricing mechanisms of their respective programs; and

2. Commence negotiations to obtain independent agreements or multistate agreements with as many as ten states to use or reference a pricing schedule.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1380.6 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Council is authorized to establish time lines, the documentation, form and manner of reporting required as the Council determines necessary to effectuate the purpose of this act. The Council shall report to the Legislature, in an aggregate form, the information provided in the required reporting.

B. Notwithstanding any provision of law to the contrary, information submitted to the Council pursuant to this section is confidential and is not a public record and is not available for release pursuant to the Oklahoma Open Records Act. Data compiled in aggregate form by the Council for the purposes of reporting required by this section is a public record as defined in the Oklahoma Open Records Act, as long as it does not reveal trade information that is protected by state or federal law.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1380.7 of Title 74, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Pharmaceutical Cost Management Council may promulgate rules necessary to implement any section of this act.

SECTION 8. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. There is hereby created the Task Force on State and Education Employee Insurance. The purpose of the task force is to provide plan design alternatives for the State and Education Employee Group Health Insurance Plan.

B. The task force shall consist of five (5) members as follows:

1. Two members of the Senate to be appointed by the President Pro Tempore of the Senate;

2. Two members of the House of Representatives to be appointed by the Speaker of the House;

3. The Director of the Office of State Finance, or designee.

C. The Director of the Office of State Finance shall convene an organizational meeting of the task force no later than September 1, 2005. The members of the task force shall elect a chair and vice-chair.

D. The task force shall meet at such times and places as deemed necessary to perform its duties as specified in this section. Meetings shall be held at the call of the chair. Staffing assistance for the task force shall be provided by the Office of State Finance.

E. Members of the task force shall receive no compensation for serving on the task force, but may receive travel reimbursement as follows:

1. Legislative members of the task force may be reimbursed for necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes, from the legislative body in which they serve; and

2. Other members of the task force may be reimbursed for travel expenses incurred in the performance of their duties by their respective appointing authorities in accordance with the State Travel Reimbursement Act.

F. The task force shall:

a. through the Office of State Finance, contract with an actuary to study plan design and funding alternatives for the State and Education Employees Group Health Insurance Plan,

b. set the scope and parameters of the study. The actuarial study will include, but not be limited to:

(1) the Oklahoma State and Education Employees Group Insurance Board (OSEEGIB) offering a point-of-service (POS) product, either in addition to or in the place of the current plan,

(2) limiting choices to those offered by the state self-insured plan,

(3) pharmaceutical plan design and pharmaceutical benefit manager options,

(4) increasing the provider network offered by the State and Education Employees Group Insurance Board, and

(5) comparing the plan offered to state employees and teachers to those offered by similar employers, other states and the federal government, and

c. submit a report on the findings and recommendations of the task force to the Governor and Legislature by February 1, 2006.

SECTION 9. This act shall become effective July 1, 2005.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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