STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1722 By: Hicks

AS INTRODUCED

An Act relating to prescription drugs; providing for codification; defining terms; requiring drug manufacturer to notify Insurance Department of price increase of certain drug; requiring drug manufacturer to notify Department in writing within certain time period of introduction of new drug in certain circumstances; requiring manufacturer to report certain data in writing to Department within certain time period; requiring pharmacy benefit managers to report certain data to Department within certain time period; applying certain protections to information reported under act; requiring drug distributor to report certain data to Department within certain time period; requiring certain insurers to annually report certain data on prescription drugs; requiring registration of certain entities with Department; requiring entities to pay annual assessment to implement act; specifying costs included in assessment; specifying minimum amount for assessment; providing terms for collection of assessment; requiring reporting entity to certify certain information; providing civil penalty for violation of act; authorizing the Department to audit certain data at Department expense; authorizing Department to require submission of corrective action plan in event of violation; authorizing Department to hold public hearings and subpoena certain entities; requiring Department to develop and publish certain data on website; declaring certain data confidential; authorizing Department to share certain data with Attorney General; and 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 6730 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Brand-name drug" means a prescription drug approved under 21 U.S. Code § 355(b), as amended or 42 U.S Code § 262, as amended;

2. "Insurer" means any entity or insurer authorized to provide health insurance or health benefits pursuant to the laws of this state and any entity or person engaged in the business of making contracts for accident or health insurance;

3. "Manufacturer" means any person or entity that holds the national drug code for a prescription drug and is either engaged in the production, preparation, propagation, compounding, conversion, or processing of drug products in this state. It shall also include any person or entity that is engaged in the packaging, repackaging, labeling, relabeling or distribution of drug products in this state, or any person or entity that causes the drug products to be compounded, packaged or transported in this state, that is not a wholesale distributor of drugs or a retail pharmacy licensed by the Board of Pharmacy;

4. "Market introduction" means the month and year in which the manufacturer acquired or first marketed the drug for sale in the United States;

5. “National drug code” means the numerical code maintained by the Food and Drug Administration that includes the labeler code, product code and package code;

6. “Pharmacy benefits manager” means a person or entity that performs pharmacy benefits management and any other person or entity acting under a contractual or employment relationship in the performance of pharmacy benefits management for a managed-care company, nonprofit hospital, medical service organization, insurance company, third-party payor or a health program administered by a department of this state;

7. “Reporting entity” means any manufacturer, insurer, pharmacy benefits manager, wholesale drug distributor or any other entity required to report to the Insurance Department under this act;

8. “Wholesale acquisition cost” means the list price of the manufacturer charged to wholesalers or direct purchasers in the United States on December 31 of the reference year, as reported in wholesale price guides or other publications of drug or biological pricing data. This does not include prompt pay or other discounts, rebates or reductions in price. The current or proposed wholesale acquisition cost is the amount that requires reporting under this act;

9. “Wholesale acquisition cost unit” means the lowest identifiable quantity of a drug or biological that is dispensed,

exclusive of any diluent without reference to volume measures pertaining to liquids; and

10. "Wholesale drug distributor" means a person or entity engaged in the sale of prescription drugs to persons other than a consumer or patient and licensed by the Board of Pharmacy.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6731 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A manufacturer shall notify the Insurance Department if it is increasing the wholesale acquisition cost of a brand-name drug by more than twenty percent (20%) per wholesale acquisition cost unit during any twelve-month period, or if it is increasing the wholesale acquisition cost of a generic drug priced at Ten Dollars ($10.00) or more per wholesale acquisition cost unit by more than twenty percent (20%) during any twelve-month period. The notice shall be provided, in writing, at least sixty (60) days prior to the planned effective date of the increase.

B. A manufacturer shall notify the Insurance Department if it intends to introduce a new drug in the United States that has a wholesale acquisition cost of more than Six Hundred Seventy Dollars ($670.00) per wholesale acquisition cost unit. The notice shall be provided, in writing, at least sixty (60) days prior to market introduction.

C. A manufacturer that is required to notify the Insurance Department under subsection A of this section shall report to the Insurance Department all data elements specified in the National Academy for State Health Policy Model Act report template at least thirty (30) days before the price increase.

D. A manufacturer that is required to notify the Insurance Department under subsection B of this section shall report to the Insurance Department all data elements specified in the National Academy for State Health Policy Model Act report template at least sixty (60) days before the date of market introduction.

E. Disclosure of all information reported under this section is subject to protections defined in Section 8 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6732 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Each pharmacy benefit manager shall, to the extent allowed by law, report annually to the Insurance Department all data elements specified in the National Academy for State Health Policy Model Act report template within sixty (60) days after receiving notification by the Insurance Department indicating the specific drugs for which reporting is required.

B. Disclosure of all information reported under this Section is subject to protections defined in Section 8 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6733 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Each wholesale drug distributor shall report annually to the Insurance Department all data elements specified in the National Academy for State Health Policy Model Act report template within sixty (60) days after receiving notification by the Insurance Department indicating the specific drugs for which reporting is required.

B. Disclosure of all information reported under this section is subject to protections defined in Section 8 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6734 of Title 36, unless there is created a duplication in numbering, reads as follows:

Each insurer designated by the Insurance Department as a reporting entity shall report annually to the Department, to the extent allowed by federal and state law, spending on prescription drugs before enrollee cost sharing, in total and per prescription drug user, and spending on the top twenty-five (25) prescription drugs prescribed in this state, in total and individually, as determined by the Insurance Department. The report shall include:

1. The greatest total spending before enrollee cost sharing in the last calendar year;

2. The greatest total spending per user of any drug before enrollee cost sharing in the last calendar year;

3. Highest year-over-year increase in total spending before enrollee cost sharing; and

4. The highest year-over-year increase in total spending per user of any drug before enrollee cost sharing.

For each drug, the insurer shall report to the Insurance Department all data elements specified in the National Academy for State Health Policy Model Act report template within sixty (60) days of the close of each calendar year.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6735 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Beginning on January 1, 2021, each reporting entity shall register with the Insurance Department no later than January 31 of each calendar year, in a form and manner specified by the Insurance Department.

B. Each reporting entity shall pay an annual assessment, in an amount to be determined by the Insurance Commissioner, to support the operational costs of the Department in implementing the provisions of this this act. The costs shall include staff salaries, administrative expenses, data system expenses and consulting fees of the Department. Annual assessments shall be at least One Hundred Dollars ($100.00) for each individual entity

required to pay an assessment under this act. The assessments shall be placed in the State Insurance Commissioner Revolving Fund pursuant to Section 307.3 of Title 36 of the Oklahoma Statutes.

C. The Department shall send request for payment of the assessment to all reporting entities under this act by certified mail beginning July 1, 2021, and annually thereafter. All assessments shall be due to the Department within thirty (30) days of receipt of the request for payment. Any reporting entity that fails to pay the assessment pursuant to this act shall be subject to the penalty in Section 7 of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6736 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The reporting entity shall certify required reporting under this act as accurate under the penalty of perjury.

B. Failure of a reporting entity to comply with the provisions of this act may result in a civil penalty, at the discretion of the Insurance Commissioner. Civil penalties under this act shall not exceed Thirty Thousand Dollars ($30,000.00) per day that the reporting entity is found to be in violation of the provisions of this act.

C. The Insurance Department may audit the data submitted to the Department by a reporting entity pursuant to the provisions of this

act, in a form and manner to be specified by the Department. The reporting entity shall pay all costs associated with the audit.

D. The Insurance Department may require a reporting entity to submit a corrective action plan, in a form and manner to be specified by the Department, to correct deficiencies in reporting pursuant to the provisions of this act.

E. The Insurance Department is authorized to call one or more public hearings on the price of prescription drugs in this state and may subpoena any reporting entity pursuant to the provisions of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6737 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Not later than July 1, 2021, the Insurance Department shall develop and publish on its website a report on emerging trends in prescription drug prices in this state. The report shall include, but not be limited to, analysis of manufacturer prices and price increases as reported under this act, analysis of information reported under this act by issuers, pharmacy benefit managers and wholesale drug distributors and the impacts on insurance premiums and consumer cost sharing. The data in the report shall not reveal information specific to any individual reporting entity.

B. Except as provided in this section, the Insurance Department shall keep confidential all information submitted by an individual

reporting entity and protect it from public disclosure. The Insurance Department may share such information with the Attorney General; provided, however, that the Attorney General shall keep confidential any information shared by the Insurance Department. The information shall not be subject to the Oklahoma Open Records Act.

SECTION 9. This act shall become effective November 1, 2020.

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