STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1881 By: Hicks

AS INTRODUCED

An Act relating to prescription drugs; defining terms; requiring Insurance Department to compile list of drugs essential for treating diabetes and those with certain price increases; requiring drug manufacturer to submit certain financial information to Insurance Department; requiring manufacturer to submit information on price increases to Department; requiring pharmacy benefit managers to submit certain financial information to Department; providing exception for certain health plans to application of act; authorizing certain plans to require benefit managers to comply with act; requiring Department to produce certain report; requiring Department to create and maintain a website with certain information required by act; establishing certain terms of website; authorizing the Department to promulgate rules; providing for codification; 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 6800 of Title 36, unless there is created a duplication in numbering, reads as follows:

For purposes of this act:

1. "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;

2. "Pharmacy" means a place regularly licensed by the State Board of Pharmacy in which prescriptions, drugs, medicines, chemicals and poisons are compounded or dispensed; and

3. "Pharmacy benefit 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.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6801 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. On or before February 1 of each year, the Insurance Department shall compile:

1. A list of prescription drugs that the Department determines to be essential for treating diabetes in this state and the wholesale acquisition cost of each drug on the list. The list shall include, but not be limited to, all forms of insulin and biguanides marketed for sale in this state.

2. A list of prescription drugs described in paragraph 1 of this section that have been subject to an increase in the wholesale acquisition cost of a percentage equal to or greater than:

a. the percentage increase in the Consumer Price Index, Medical Care Component during the immediately preceding calendar year, or

b. twice the percentage increase in the Consumer Price Index, Medical Care Component during the immediately preceding two calendar years.

B. On or before April 1 of each year, the manufacturer of a prescription drug that appears on the most current list compiled by the Department pursuant to subsection A of this section shall prepare and submit to the Department, in a form to be prescribed by the Department, a report that shall include:

1. The costs of the drug;

2. The total administrative expenditures relating to the drug, including marketing and advertising costs;

3. The profit that the manufacturer has earned from the drug and the percentage of the total profit of the manufacturer for the

period during which the manufacturer has marketed the drug for sale that is attributable to the drug;

4. The total amount of financial assistance that the manufacturer has provided through any patient prescription assistance program;

5. The cost associated with coupons provided directly to consumers and for programs to assist consumers in paying copayments, and the cost to the manufacturer attributable to the redemption of those coupons and the use of those programs;

6. The wholesale acquisition cost of the drug;

7. A history of any increases in the wholesale acquisition cost of the drug over the five (5) years immediately preceding the date on which the report is submitted, including the amount of each increase expressed as a percentage of the total wholesale acquisition cost of the drug, the month and year in which each increase became effective and any explanation for the increase;

8. The aggregate amount of all rebates that the manufacturer has provided to pharmacy benefit managers for sales of the drug within this state; and

9. Any additional information prescribed by Insurance Department rules for the purpose of analyzing the cost of prescription drugs that appear on the list compiled pursuant to subsection A of this section, trends in those costs and rebates available for those drugs.

C. On or before April 1 of a year in which a drug is included on the list compiled pursuant to subsection A of this section, the manufacturer of the drug shall submit to the Department a report describing the reasons for the increase in the wholesale acquisition cost of the drug described in that subsection. The report shall include but not be limited to:

1. A list of each factor that has contributed to the increase;

2. The percentage of the total increase that is attributable to each factor;

3. An explanation of the role of each factor in the increase; and

4. Any other information prescribed by Insurance Department rules.

D. Except as provided for in this section, a pharmacy benefit manager shall submit to the Insurance Department a report that shall include:

1. The total amount of all rebates that the pharmacy benefit manager negotiated with manufacturers during the immediately preceding calendar year for prescription drugs included on the list compiled by the Department pursuant to subsection A of this section;

2. The total amount of all rebates described in paragraph 1 of this subsection that were retained by the pharmacy benefit manager;

3. The total amount of all rebates described in paragraph 1 of this subsection that the pharmacy benefit manager negotiated for purchases of drugs for use by:

a. recipients of Medicare,

b. recipients of Medicaid,

c. persons covered by third parties that are governmental entities not described in subparagraph a and b of this paragraph,

d. persons covered by third parties that are not governmental entities, and

e. persons covered by a plan described in paragraph 4 of this subsection to the extent required by a contract entered into pursuant to paragraph 5 of this subsection;

4. Except as otherwise provided in subparagraph c of paragraph 3, the requirements of this section do not apply to the coverage of prescription drugs under a plan that is subject to the Employee Retirement Income Security Act of 1974 or any information relating to that coverage; and

5. A plan described in paragraph 4 of this subsection may, by contract, require a pharmacy benefit manager that manages the coverage of prescription drugs under the plan to comply with the requirements of this section.

E. The Department shall analyze the information submitted pursuant to subsections B, C and D of this section and submit a report on the price of the prescription drugs that appear on the most current lists compiled by the Department pursuant to subsection A of this section, the reasons for any increases in those prices and the effect of those prices on overall spending on prescription drugs in this state. The report may include, but not be limited to, opportunities for persons and entities in this state to lower the cost of drugs for the treatment of diabetes while maintain access to the drugs.

F. 1. The Insurance Department shall create and maintain an Internet website, to be updated no less frequently than once each calendar quarter, and shall place or cause to be placed:

a. the list of prescription drugs compiled by the Department pursuant to subsection A of this section,

b. the wholesale acquisition cost of each prescription drug reported pursuant to subsection B of this section, and

c. The reports compiled by the Department pursuant to subsection E of this section.

2. The Department shall ensure that the information placed on the Internet website is organized so that each individual manufacturer has its own separate entry on the website.

3. The Department may establish additional or alternative procedures by which a consumer who is unable to access the Internet or is otherwise unable to receive the information described in this section, may access the information provided pursuant to this section. This shall include, but is not limited to, maintaining copies of the data reported pursuant to this section at the Department.

G. The Insurance Department shall promulgate rules to implement the provisions of this section.

SECTION 3. This act shall become effective November 1, 2020.

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