

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 567

Introduced by Morfeld, 46.

Read first time January 22, 2019

Committee:

- 1 A BILL FOR AN ACT relating to prescription drugs; to adopt the
- 2 Prescription Drug Cost Transparency Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known and may be
2 cited as the Prescription Drug Cost Transparency Act.

3 Sec. 2. (1) The Legislature finds that the State of Nebraska has a
4 substantial public interest in the price and cost of prescription drugs.

5 (2) It is the intent of the Legislature to:

6 (a) Require notice and disclosure of information relating to the
7 cost and pricing of prescription drugs in order to provide accountability
8 to the state for prescription drug pricing;

9 (b) Permit a manufacturer of a prescription drug to voluntarily make
10 pricing decisions regarding the prescription drug, including any price
11 increases; and

12 (c) Permit both public and private purchasers of prescription drugs
13 to negotiate discounts and rebates for prescription drugs consistent with
14 state and federal law.

15 Sec. 3. For purposes of the Prescription Drug Cost Transparency
16 Act:

17 (1) Course of therapy means either:

18 (a) The recommended daily dosage units of a prescription drug
19 pursuant to its prescribing label as approved by the federal Food and
20 Drug Administration for thirty days; or

21 (b) The recommended daily dosage units of a prescription drug
22 pursuant to its prescribing label as approved by the federal Food and
23 Drug Administration for a normal course of treatment that is less than
24 thirty days;

25 (2) Department means the Department of Administrative Services; and

26 (3) Pharmacy benefit manager has the same meaning as in section
27 68-952.

28 Sec. 4. The Prescription Drug Cost Transparency Act applies to the
29 manufacturer of a prescription drug that is purchased or the price of
30 which is reimbursed by any of the following:

31 (1) A state purchaser in Nebraska, including, but not limited to,

1 the Department of Administrative Services, the Department of Correctional
2 Services, and the Department of Health and Human Services, and an entity
3 acting on behalf of a state purchaser;

4 (2) A health maintenance organization producer as defined in section
5 44-32,106;

6 (3) A health insurer authorized to transact sickness and accident
7 insurance business specified in section 44-201 holding a valid
8 certificate of authority from the Department of Insurance;

9 (4) A fraternal benefit society authorized to transact business
10 specified in sections 44-1072 to 44-10,109; or

11 (5) A pharmacy benefit manager.

12 Sec. 5. (1) A manufacturer of a prescription drug with a wholesale
13 acquisition cost of more than forty dollars for a course of therapy shall
14 provide notice to persons identified in subsection (2) of this section if
15 the increase in the wholesale acquisition cost of a prescription drug is
16 more than sixteen percent, including the proposed increase and any
17 cumulative increase that occurred within the previous two calendar years
18 prior to the year in which the sale is made.

19 (2) The notice required by this section shall be provided to (a)
20 each state purchaser identified in section 4 of this act and (b) any
21 other entity identified in section 4 of this act if such entity registers
22 with the Department of Administrative Services to receive such
23 notification. The department shall make a list of registered entities
24 available to manufacturers.

25 (3) The notice required by this section (a) shall be provided in
26 writing at least sixty days prior to the planned effective date of the
27 increase, (b) shall include the date of the increase, the wholesale
28 acquisition cost at the time of the notice, and the dollar amount of the
29 increase in the wholesale acquisition cost, and (c) shall include a
30 statement regarding whether a change or improvement in the prescription
31 drug necessitated the price increase and, if so, a description of the

1 change or improvement.

2 Sec. 6. If a pharmacy benefit manager receives a notice under
3 section 5 of this act, the pharmacy benefit manager shall provide notice
4 of the increase to contracting public and private purchasers which
5 provide coverage for more than five hundred lives.

6 Sec. 7. (1) A manufacturer shall report each calendar quarter to
7 the department the following information as provided in subsection (2) of
8 this section for each prescription drug for which a notice is required
9 under subsection (1) of section 5 of this act:

10 (a) If the manufacturer manufactured the prescription drug during
11 the past five years, a schedule of wholesale acquisition cost increases
12 for the prescription drug for the previous five years;

13 (b) If the manufacturer acquired the prescription drug within the
14 previous five years, the wholesale acquisition cost of the prescription
15 drug at the time of acquisition and in the calendar year prior to
16 acquisition, the name of the company from which the prescription drug was
17 acquired, the date of the acquisition, and the purchase price;

18 (c) The year the prescription drug was introduced to market and the
19 wholesale acquisition cost of the prescription drug at that time;

20 (d) The patent expiration date for the prescription drug if it is
21 under patent protection;

22 (e) An indication of whether the prescription drug is a multiple
23 source drug, an innovator multiple source drug, a noninnovator multiple
24 source drug, or a single source drug as defined in 42 U.S.C. 1396r-8(k)
25 (7)(A);

26 (f) A description of the change or improvement in the prescription
27 drug, if any, that necessitated the increase in the wholesale acquisition
28 cost; and

29 (g) The volume of sales by the manufacturer of the prescription drug
30 in the United States for the calendar year prior to the increase in the
31 wholesale acquisition cost.

1 (2) The department shall prescribe a format and a quarterly schedule
2 for the report. The manufacturer may limit the information on the report
3 to that information which is otherwise in the public domain or publicly
4 available.

5 (3) The department shall publish the information received in the
6 reports on the web site of the department within sixty days after receipt
7 from the manufacturer and shall update the information quarterly. The
8 information shall be published in a manner that identifies the
9 disclosures for each prescription drug and shall not be aggregated in a
10 manner that would prevent associating the disclosures with the applicable
11 prescription drug.

12 Sec. 8. (1) A manufacturer of a prescription drug shall notify the
13 department in writing if it introduces a new prescription drug to market
14 at a wholesale acquisition cost that exceeds the threshold set for a
15 specialty drug under the Medicare Prescription Drug, Improvement, and
16 Modernization Act of 2003, Public Law 108-173. The notification shall be
17 provided in writing within three days after the release of the
18 prescription drug in the commercial market. A manufacturer may make this
19 notification pending approval by the federal Food and Drug Administration
20 if commercial availability is expected within three days after approval.

21 (2) Within thirty days after notification pursuant to subsection (1)
22 of this section, a manufacturer shall report to the department the
23 following information as provided in subsection (3) of this section for
24 each prescription drug for which a notice is required under subsection
25 (1) of this section:

26 (a) A description of the pricing plans used in the launch of the new
27 prescription drug in the United States and internationally;

28 (b) The estimated volume of patients that may be prescribed the
29 prescription drug;

30 (c) An indication of whether the prescription drug was granted
31 breakthrough therapy designation or priority review by the federal Food

1 and Drug Administration prior to final approval by the federal Food and
2 Drug Administration; and

3 (d) The date and price of acquisition if the prescription drug was
4 not developed by the manufacturer.

5 (3) The department shall prescribe a format for the report. The
6 manufacturer may limit the information on the report to that information
7 which is otherwise in the public domain or publicly available.

8 (4) The department shall publish the information received in the
9 reports on the web site of the department within sixty days after receipt
10 from the manufacturer and shall update the information quarterly. The
11 information shall be published in a manner that identifies the
12 disclosures for each prescription drug and shall not be aggregated in a
13 manner that would prevent associating the disclosures with the applicable
14 prescription drug.

15 Sec. 9. The department shall adopt and promulgate rules and
16 regulations necessary for implementation of the Prescription Drug Cost
17 Transparency Act. For purposes of this section, the department may
18 consult with the Department of Health and Human Services, the Department
19 of Insurance, the Board of Pharmacy, any other state purchaser of
20 prescription drugs, and any entity acting on behalf of a state purchaser.

21 Sec. 10. The notifications and reports pursuant to the Prescription
22 Drug Cost Transparency Act shall be required beginning January 1, 2021,
23 for any activity subject to the act after such date.