

(Reprinted with amendments adopted on May 30, 2019)

SECOND REPRINT

S.B. 378

SENATE BILL NO. 378—SENATOR CANCELA

MARCH 20, 2019

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to prescription drugs.
(BDR 18-574)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to prescription drugs; revising provisions concerning coverage of prescription drugs under Medicaid and the Children’s Health Insurance Program; revising provisions governing restrictions imposed on the list of preferred prescription drugs to be used for the Medicaid program; revising the criteria for selecting prescription drugs for inclusion on the list; replacing the Pharmacy and Therapeutics Committee with the Silver State Scripts Board; authorizing certain public and nonprofit insurers to use the preferred prescription drug list for Medicaid as their formulary; revising provisions governing the duties of pharmacy benefit managers; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires the Department of Health and Human Services to
2 administer the Medicaid program. (NRS 422.270) **Section 31.15** of this bill
3 requires any contract between the Department and a pharmacy benefit manager or
4 health maintenance organization to provide services related to prescription drug
5 coverage under Medicaid or the Children’s Health Insurance Program to require the
6 pharmacy benefit manager or health maintenance organization, as applicable, to
7 provide to the Department any information concerning such services provided
8 pursuant to the contract. **Section 31.15** additionally requires any health
9 maintenance organization that enters into such a contract with the Department to
10 provide all rebates received through the purchase of prescription drugs pursuant to
11 the contract to the Department, except for an administrative fee. If the Department
12 does not enter into such a contract, **section 31.15** also requires the Department to
13 directly manage and coordinate such services. **Section 31.2** of this bill provides for



14 an annual audit of any contract between the Department and a pharmacy benefit
15 manager or health maintenance organization entered into pursuant to **section 31.15**.

16 Existing law requires the Department to develop: (1) a list of preferred
17 prescription drugs to be used for the Medicaid program; and (2) a list of preferred
18 prescription drugs on the list of preferred prescription drugs to be used for the
19 Medicaid program that are not subject to certain restrictions. (NRS 422.4025)
20 **Section 31.4** of this bill requires the Children's Health Insurance Program to use
21 the list of preferred prescription drugs. **Sections 28.5, 29.3, 31.4 and 33** of this bill
22 authorize other public and nonprofit insurance plans to use the list of preferred
23 prescription drugs as the formulary for such plans. **Section 31.4** also requires the
24 Department to negotiate and enter into agreements to purchase prescription drugs
25 included on the list of preferred prescription drugs on behalf of those health benefit
26 plans or enter into a contract with a pharmacy benefit manager or health
27 maintenance organization, as appropriate, to negotiate and enter into such
28 agreements. **Section 31.4** of this bill removes certain categories of prescription
29 drugs from the list of preferred prescription drugs to be used for the Medicaid
30 program that are not subject to certain restrictions.

31 Existing law requires the Director of the Department to create a Pharmacy and
32 Therapeutics Committee within the Department, consisting of members appointed
33 by the Governor based on recommendations of the Director. (NRS 422.4035)
34 Existing law requires the Committee to identify: (1) prescription drugs for inclusion
35 in the list of preferred prescription drugs for the Medicaid program; and (2)
36 prescription drugs on that list which should be excluded from any restrictions
37 imposed by the Medicaid program. (NRS 422.405) **Sections 31.55-31.8** of this bill
38 replace the Committee with the Silver State Scripts Board. **Section 31.55** requires
39 the Director to appoint the members of the Board, who must have the same
40 qualifications as the members of the Committee. **Section 31.8** of this bill requires
41 the Board to: (1) identify prescription drugs for inclusion in the formulary
42 developed for use by publicly funded and nonprofit health plans; and (2) assume
43 the other duties of the Committee.

44 Existing law requires the Committee to make its decisions based on evidence of
45 clinical efficacy and safety without consideration of cost. (NRS 422.405) **Section**
46 **31.8** of this bill authorizes the Board to consider cost if there is no significant
47 difference in the clinical efficacy, safety and patient outcomes of two or more
48 drugs. **Sections 28 and 31.8** of this bill authorize the Board to close a portion of a
49 meeting to the public in order to consider the cost of prescription drugs. **Sections**
50 **25, 29.2, 31-31.1, 31.3, 31.35, 31.45 and 31.9** of this bill make conforming
51 changes.

52 Under existing law, a pharmacy benefit manager has a fiduciary duty to a third
53 party with which the pharmacy benefit manager has entered into a contract to
54 manage the pharmacy benefits plan of the third party. (NRS 683A.178) **Section**
55 **32.5** of this bill removes this fiduciary duty and instead imposes on a pharmacy
56 benefit manager an obligation of good faith and fair dealing toward a third party or
57 pharmacy when performing contractual duties. **Section 32.5** also provides that any
58 contractual provision that limits or waives that obligation is void and
59 unenforceable.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** (Deleted by amendment.)
2 **Sec. 2.** (Deleted by amendment.)
3 **Sec. 3.** (Deleted by amendment.)



- 1 **Sec. 4.** (Deleted by amendment.)
- 2 **Sec. 5.** (Deleted by amendment.)
- 3 **Sec. 6.** (Deleted by amendment.)
- 4 **Sec. 7.** (Deleted by amendment.)
- 5 **Sec. 8.** (Deleted by amendment.)
- 6 **Sec. 9.** (Deleted by amendment.)
- 7 **Sec. 10.** (Deleted by amendment.)
- 8 **Sec. 11.** (Deleted by amendment.)
- 9 **Sec. 11.5.** (Deleted by amendment.)
- 10 **Sec. 12.** (Deleted by amendment.)
- 11 **Sec. 13.** (Deleted by amendment.)
- 12 **Sec. 14.** (Deleted by amendment.)
- 13 **Sec. 15.** (Deleted by amendment.)
- 14 **Sec. 16.** (Deleted by amendment.)
- 15 **Sec. 17.** (Deleted by amendment.)
- 16 **Sec. 18.** (Deleted by amendment.)
- 17 **Sec. 19.** (Deleted by amendment.)
- 18 **Sec. 20.** (Deleted by amendment.)
- 19 **Sec. 21.** (Deleted by amendment.)
- 20 **Sec. 22.** (Deleted by amendment.)
- 21 **Sec. 23.** (Deleted by amendment.)
- 22 **Sec. 24.** (Deleted by amendment.)
- 23 **Sec. 25.** NRS 232.320 is hereby amended to read as follows:
- 24 232.320 1. The Director:
- 25 (a) Shall appoint, with the consent of the Governor,
- 26 administrators of the divisions of the Department, who are
- 27 respectively designated as follows:
- 28 (1) The Administrator of the Aging and Disability Services
- 29 Division;
- 30 (2) The Administrator of the Division of Welfare and
- 31 Supportive Services;
- 32 (3) The Administrator of the Division of Child and Family
- 33 Services;
- 34 (4) The Administrator of the Division of Health Care
- 35 Financing and Policy; and
- 36 (5) The Administrator of the Division of Public and
- 37 Behavioral Health.
- 38 (b) Shall administer, through the divisions of the Department,
- 39 the provisions of chapters 63, 424, 425, 427A, 432A to 442,
- 40 inclusive, 446 to 450, inclusive, 458A and 656A of NRS, NRS
- 41 127.220 to 127.310, inclusive, 422.001 to 422.410, inclusive, *and*
- 42 *sections 31.05 to 31.2, inclusive, of this act*, 422.580, 432.010 to
- 43 432.133, inclusive, 432B.621 to 432B.626, inclusive, 444.002 to
- 44 444.430, inclusive, and 445A.010 to 445A.055, inclusive, and all
- 45 other provisions of law relating to the functions of the divisions of



1 the Department, but is not responsible for the clinical activities of
2 the Division of Public and Behavioral Health or the professional line
3 activities of the other divisions.

4 (c) Shall administer any state program for persons with
5 developmental disabilities established pursuant to the
6 Developmental Disabilities Assistance and Bill of Rights Act of
7 2000, 42 U.S.C. §§ 15001 et seq.

8 (d) Shall, after considering advice from agencies of local
9 governments and nonprofit organizations which provide social
10 services, adopt a master plan for the provision of human services in
11 this State. The Director shall revise the plan biennially and deliver a
12 copy of the plan to the Governor and the Legislature at the
13 beginning of each regular session. The plan must:

14 (1) Identify and assess the plans and programs of the
15 Department for the provision of human services, and any
16 duplication of those services by federal, state and local agencies;

17 (2) Set forth priorities for the provision of those services;

18 (3) Provide for communication and the coordination of those
19 services among nonprofit organizations, agencies of local
20 government, the State and the Federal Government;

21 (4) Identify the sources of funding for services provided by
22 the Department and the allocation of that funding;

23 (5) Set forth sufficient information to assist the Department
24 in providing those services and in the planning and budgeting for the
25 future provision of those services; and

26 (6) Contain any other information necessary for the
27 Department to communicate effectively with the Federal
28 Government concerning demographic trends, formulas for the
29 distribution of federal money and any need for the modification of
30 programs administered by the Department.

31 (e) May, by regulation, require nonprofit organizations and state
32 and local governmental agencies to provide information regarding
33 the programs of those organizations and agencies, excluding
34 detailed information relating to their budgets and payrolls, which the
35 Director deems necessary for the performance of the duties imposed
36 upon him or her pursuant to this section.

37 (f) Has such other powers and duties as are provided by law.

38 2. Notwithstanding any other provision of law, the Director, or
39 the Director's designee, is responsible for appointing and removing
40 subordinate officers and employees of the Department, other than
41 the State Public Defender of the Office of State Public Defender
42 who is appointed pursuant to NRS 180.010.

43 **Sec. 26.** (Deleted by amendment.)

44 **Sec. 27.** (Deleted by amendment.)



1 **Sec. 28.** NRS 241.016 is hereby amended to read as follows:
2 241.016 1. The meetings of a public body that are quasi-
3 judicial in nature are subject to the provisions of this chapter.

4 2. The following are exempt from the requirements of this
5 chapter:

6 (a) The Legislature of the State of Nevada.

7 (b) Judicial proceedings, including, without limitation,
8 proceedings before the Commission on Judicial Selection and,
9 except as otherwise provided in NRS 1.4687, the Commission on
10 Judicial Discipline.

11 (c) Meetings of the State Board of Parole Commissioners when
12 acting to grant, deny, continue or revoke the parole of a prisoner or
13 to establish or modify the terms of the parole of a prisoner.

14 3. Any provision of law, including, without limitation, NRS
15 91.270, 219A.210, 228.495, 239C.140, 281A.350, 281A.690,
16 281A.735, 281A.760, 284.3629, 286.150, 287.0415, 287.04345,
17 287.338, 288.220, 289.387, 295.121, 360.247, 388.261, 388A.495,
18 388C.150, 388G.710, 388G.730, 392.147, 392.467, 394.1699,
19 396.3295, **422.405**, 433.534, 435.610, 463.110, 622.320, 622.340,
20 630.311, 630.336, 631.3635, 639.050, 642.518, 642.557, 686B.170,
21 696B.550, 703.196 and 706.1725, which:

22 (a) Provides that any meeting, hearing or other proceeding is not
23 subject to the provisions of this chapter; or

24 (b) Otherwise authorizes or requires a closed meeting, hearing
25 or proceeding,

26 ↪ prevails over the general provisions of this chapter.

27 4. The exceptions provided to this chapter, and electronic
28 communication, must not be used to circumvent the spirit or letter of
29 this chapter to deliberate or act, outside of an open and public
30 meeting, upon a matter over which the public body has supervision,
31 control, jurisdiction or advisory powers.

32 **Sec. 28.5.** Chapter 287 of NRS is hereby amended by adding
33 thereto a new section to read as follows:

34 *A governing body of a county, school district, municipal*
35 *corporation, political subdivision, public corporation or other*
36 *local governmental agency of the State of Nevada that provides*
37 *coverage of prescription drugs pursuant to NRS 287.010 or any*
38 *issuer of a policy of health insurance purchased pursuant to NRS*
39 *287.010 may use the list of preferred prescription drugs developed*
40 *by the Department of Health and Human Services pursuant to*
41 *subsection 1 of NRS 422.4025 as its formulary and obtain*
42 *prescription drugs through the purchasing agreements negotiated*
43 *by the Department pursuant to that section by notifying the*
44 *Department in the form prescribed by the Department.*

45 **Sec. 29.** (Deleted by amendment.)



1 **Sec. 29.2.** NRS 287.040 is hereby amended to read as follows:
2 287.040 The provisions of NRS 287.010 to 287.040, inclusive,
3 *and section 28.5 of this act* do not make it compulsory upon any
4 governing body of any county, school district, municipal
5 corporation, political subdivision, public corporation or other local
6 governmental agency of the State of Nevada, except as otherwise
7 provided in NRS 287.021 or subsection 4 of NRS 287.023 or in an
8 agreement entered into pursuant to subsection 3 of NRS 287.015, to
9 pay any premiums, contributions or other costs for group insurance,
10 a plan of benefits or medical or hospital services established
11 pursuant to NRS 287.010, 287.015, 287.020 or paragraph (b), (c) or
12 (d) of subsection 1 of NRS 287.025, for coverage under the Public
13 Employees' Benefits Program, or to make any contributions to a
14 trust fund established pursuant to NRS 287.017, or upon any officer
15 or employee of any county, school district, municipal corporation,
16 political subdivision, public corporation or other local governmental
17 agency of this State to accept any such coverage or to assign his or
18 her wages or salary in payment of premiums or contributions
19 therefor.

20 **Sec. 29.3.** NRS 287.0433 is hereby amended to read as
21 follows:

22 287.0433 *1.* The Board may establish a plan of life, accident
23 or health insurance and provide for the payment of contributions
24 into the Program Fund, a schedule of benefits and the disbursement
25 of benefits from the Program Fund. The Board may reinsure any
26 risk or any part of such a risk.

27 *2. If the Board provides coverage of prescription drugs*
28 *pursuant to this section, the Board or any entity with which the*
29 *Board enters into a contract to provide such coverage may use the*
30 *list of preferred prescription drugs developed by the Department of*
31 *Health and Human Services pursuant to subsection 1 of NRS*
32 *422.4025 as its formulary and obtain prescription drugs through*
33 *the purchasing agreements negotiated by the Department*
34 *pursuant to that section by notifying the Department in the form*
35 *prescribed by the Department.*

36 **Sec. 29.6.** (Deleted by amendment.)

37 **Sec. 30.** (Deleted by amendment.)

38 **Sec. 31.** Chapter 422 of NRS is hereby amended by adding
39 thereto the provisions set forth as sections 31.05 to 31.2, inclusive,
40 of this act.

41 **Sec. 31.05.** *“Health benefit plan” means a policy, contract,*
42 *certificate or agreement offered to provide, deliver, arrange for,*
43 *pay for or reimburse any of the costs of health care services.*

44 **Sec. 31.07.** *“Health maintenance organization” has the*
45 *meaning ascribed to it in NRS 695C.030.*



1 **Sec. 31.1.** *“Pharmacy benefit manager” has the meaning*
2 *ascribed to it in NRS 683A.174.*

3 **Sec. 31.15.** *1. Except as otherwise provided in subsection 2,*
4 *the Department shall directly manage, direct and coordinate all*
5 *payments and rebates for prescription drugs and all other services*
6 *and payments relating to the provision of prescription drugs under*
7 *the State Plan for Medicaid and the Children’s Health Insurance*
8 *Program.*

9 *2. The Department may enter into a contract with:*

10 *(a) A pharmacy benefit manager for the provision of any*
11 *services described in subsection 1.*

12 *(b) A health maintenance organization pursuant to NRS*
13 *422.273 for the provision of any of the services described in*
14 *subsection 1 for recipients of Medicaid or recipients of insurance*
15 *through the Children’s Health Insurance Program who receive*
16 *coverage through a Medicaid managed care program.*

17 *3. A contract entered into pursuant to subsection 2 must:*

18 *(a) Include the provisions required by section 31.2 of this act;*
19 *and*

20 *(b) Require the pharmacy benefit manager or health*
21 *maintenance organization, as applicable, to disclose to the*
22 *Department any information relating to the services covered by the*
23 *contract, including, without limitation, information concerning*
24 *dispensing fees, measures for the control of costs, rebates collected*
25 *and paid and any fees and charges imposed by the pharmacy*
26 *benefit manager or health maintenance organization pursuant to*
27 *the contract.*

28 *4. In addition to meeting the requirements of subsection 3, a*
29 *contract entered into pursuant to:*

30 *(a) Paragraph (a) of subsection 2 may require the pharmacy*
31 *benefit manager to provide the entire amount of any rebates*
32 *received for the purchase of prescription drugs, including, without*
33 *limitation, rebates for the purchase of prescription drugs by an*
34 *entity other than the Department, to the Department.*

35 *(b) Paragraph (b) of subsection 2 must require the health*
36 *maintenance organization to provide to the Department the entire*
37 *amount of any rebates received for the purchase of prescription*
38 *drugs, including, without limitation, rebates for the purchase of*
39 *prescription drugs by an entity other than the Department, less an*
40 *administrative fee in an amount prescribed by the contract. The*
41 *Department shall adopt policies prescribing the maximum amount*
42 *of such an administrative fee.*

43 **Sec. 31.2.** *1. Any contract between the Department and a*
44 *pharmacy benefit manager or health maintenance organization*
45 *entered into pursuant to section 31.15 of this act must require the*



1 *pharmacy benefit manager or health maintenance organization,*
2 *as applicable, to:*

3 (a) *Submit to and cooperate with an annual audit by the*
4 *Department to evaluate the compliance of the pharmacy benefit*
5 *manager or health maintenance organization with the agreement*
6 *and generally accepted accounting and business practices. The*
7 *audit must analyze all claims processed by the pharmacy benefit*
8 *manager or health maintenance organization pursuant to the*
9 *agreement.*

10 (b) *Obtain from an independent accountant, at the expense of*
11 *the pharmacy benefit manager or health maintenance*
12 *organization, as applicable, an annual audit of internal controls to*
13 *ensure the integrity of financial transactions and claims*
14 *processing.*

15 2. *The Department shall post the results of any audit*
16 *conducted pursuant to paragraph (a) of subsection 1 on an*
17 *Internet website maintained by the Department.*

18 **Sec. 31.25.** (Deleted by amendment.)

19 **Sec. 31.3.** NRS 422.401 is hereby amended to read as follows:

20 422.401 As used in NRS 422.401 to 422.406, inclusive, *and*
21 *sections 31.05 to 31.2, inclusive of this act*, unless the context
22 otherwise requires, the words and terms defined in NRS 422.4015
23 and 422.402 *and sections 31.05 and 31.1 of this act* have the
24 meanings ascribed to them in those sections.

25 **Sec. 31.35.** NRS 422.4015 is hereby amended to read as
26 follows:

27 422.4015 ~~["Committee"]~~ **"Board"** means the ~~[Pharmacy and~~
28 ~~Therapeutics Committee]~~ *Silver State Scripts Board* established
29 pursuant to NRS 422.4035.

30 **Sec. 31.4.** NRS 422.4025 is hereby amended to read as
31 follows:

32 422.4025 1. The Department shall ~~[, by]~~:

33 (a) *By regulation, develop a list of preferred prescription drugs*
34 *to be used for the Medicaid program [] and the Children's Health*
35 *Insurance Program, and each public or nonprofit health benefit*
36 *plan that elects to use the list of preferred prescription drugs as its*
37 *formulary pursuant to NRS 287.0433 or section 28.5 or 33 of this*
38 *act; and*

39 (b) *Negotiate and enter into agreements to purchase the drugs*
40 *included on the list of preferred prescription drugs on behalf of*
41 *the health benefit plans described in paragraph (a) or enter into a*
42 *contract pursuant to section 31.15 of this act with a pharmacy*
43 *benefit manager or health maintenance organization, as*
44 *appropriate, to negotiate such agreements.*



1 2. The Department shall, by regulation, establish a list of
2 prescription drugs which must be excluded from any restrictions that
3 are imposed *by the Medicaid program* on drugs that are on the list
4 of preferred prescription drugs established pursuant to subsection 1.
5 The list established pursuant to this subsection must include,
6 without limitation:

7 ~~(a) [Atypical and typical antipsychotic medications that are~~
8 ~~prescribed for the treatment of a mental illness of a patient who is~~
9 ~~receiving services pursuant to Medicaid;~~

10 ~~—(b)]~~ Prescription drugs that are prescribed for the treatment of
11 the human immunodeficiency virus or acquired immunodeficiency
12 syndrome, including, without limitation, protease inhibitors and
13 antiretroviral medications;

14 ~~[(c) Anticonvulsant medications;~~

15 ~~—(d)]~~ (b) Antirejection medications for organ transplants;

16 ~~[(e) Antidiabetic medications;~~

17 ~~—(f)]~~ (c) Antihemophilic medications; and

18 ~~[(g)]~~ (d) Any prescription drug which the ~~[Committee]~~ Board
19 identifies as appropriate for exclusion from any restrictions that are
20 imposed *by the Medicaid program* on drugs that are on the list of
21 preferred prescription drugs.

22 3. The regulations must provide that the ~~[Committee]~~ Board
23 makes the final determination of:

24 (a) Whether a class of therapeutic prescription drugs is included
25 on the list of preferred prescription drugs and is excluded from any
26 restrictions that are imposed *by the Medicaid program* on drugs that
27 are on the list of preferred prescription drugs;

28 (b) Which therapeutically equivalent prescription drugs will be
29 reviewed for inclusion on the list of preferred prescription drugs and
30 for exclusion from any restrictions that are imposed *by the Medicaid*
31 *program* on drugs that are on the list of preferred prescription drugs;
32 and

33 (c) Which prescription drugs should be excluded from any
34 restrictions that are imposed *by the Medicaid program* on drugs that
35 are on the list of preferred prescription drugs based on continuity of
36 care concerning a specific diagnosis, condition, class of therapeutic
37 prescription drugs or medical specialty.

38 4. The regulations must provide that each new pharmaceutical
39 product and each existing pharmaceutical product for which there is
40 new clinical evidence supporting its inclusion on the list of preferred
41 prescription drugs must be made available pursuant to the Medicaid
42 program with prior authorization until the ~~[Committee]~~ Board
43 reviews the product or the evidence.

44 *5. On or before February 1 of each year, the Department*
45 *shall:*



1 (a) *Compile a report concerning the agreements negotiated*
2 *pursuant to paragraph (b) of subsection 1 and contracts entered*
3 *into pursuant to section 31.15 of this act which must include,*
4 *without limitation, the financial effects of obtaining prescription*
5 *drugs through those agreements and contracts, in total and*
6 *aggregated separately for agreements negotiated by the*
7 *Department, contracts with a pharmacy benefit manager and*
8 *contracts with a health maintenance organization; and*

9 (b) *Post the report on an Internet website maintained by the*
10 *Department and submit the report to the Director of the*
11 *Legislative Counsel Bureau for transmittal to:*

12 (1) *In odd-numbered years, the Legislature; or*

13 (2) *In even-numbered years, the Legislative Commission.*

14 **Sec. 31.45.** NRS 422.403 is hereby amended to read as
15 follows:

16 422.403 1. The Department shall, by regulation, establish and
17 manage the use by the Medicaid program of step therapy and prior
18 authorization for prescription drugs.

19 2. The Drug Use Review Board shall:

20 (a) Advise the Department concerning the use by the Medicaid
21 program of step therapy and prior authorization for prescription
22 drugs;

23 (b) Develop step therapy protocols and prior authorization
24 policies and procedures for use by the Medicaid program for
25 prescription drugs; and

26 (c) Review and approve, based on clinical evidence and best
27 clinical practice guidelines and without consideration of the cost of
28 the prescription drugs being considered, step therapy protocols used
29 by the Medicaid program for prescription drugs.

30 3. The Department shall not require the Drug Use Review
31 Board to develop, review or approve prior authorization policies or
32 procedures necessary for the operation of the list of preferred
33 prescription drugs developed ~~[for the Medicaid program]~~ pursuant
34 to NRS 422.4025.

35 4. The Department shall accept recommendations from the
36 Drug Use Review Board as the basis for developing or revising step
37 therapy protocols and prior authorization policies and procedures
38 used by the Medicaid program for prescription drugs.

39 **Sec. 31.5.** (Deleted by amendment.)

40 **Sec. 31.55.** NRS 422.4035 is hereby amended to read as
41 follows:

42 422.4035 1. The Director shall create ~~[a Pharmacy and~~
43 ~~Therapeutics Committee]~~ *the Silver State Scripts Board* within the
44 Department. The ~~[Committee]~~ *Board* must consist of ~~[at least 5]~~



1 *such* members ~~[and not more than 11 members]~~ *as are* appointed by
2 the ~~[Governor based on recommendations from the]~~ Director.

3 2. The ~~[Governor]~~ *Director* shall appoint to the ~~[Committee]~~
4 *Board* health care professionals who have knowledge and expertise
5 in one or more of the following:

6 (a) The clinically appropriate prescribing of outpatient
7 prescription drugs that are covered by Medicaid;

8 (b) The clinically appropriate dispensing and monitoring of
9 outpatient prescription drugs that are covered by Medicaid;

10 (c) The review of, evaluation of and intervention in the use of
11 prescription drugs; and

12 (d) Medical quality assurance.

13 3. At least one-third of the members of the ~~[Committee]~~ *Board*
14 must be active physicians licensed to practice medicine in this State,
15 at least one of whom must be an active psychiatrist licensed to
16 practice medicine in this State. At least one-third of the members of
17 the ~~[Committee]~~ *Board* must be either active pharmacists registered
18 in this State or persons in this State with doctoral degrees in
19 pharmacy.

20 4. A person must not be appointed to the ~~[Committee]~~ *Board* if
21 the person is employed by, compensated by in any manner, has a
22 financial interest in, or is otherwise affiliated with a business or
23 corporation that manufactures prescription drugs.

24 **Sec. 31.6.** NRS 422.404 is hereby amended to read as follows:

25 422.404 1. The ~~[Governor]~~ *Director* shall appoint the Chair
26 of the ~~[Committee]~~ *Board* from among its members.

27 2. After the initial terms, the term of each member of the
28 ~~[Committee]~~ *Board* is 2 years. A member may be reappointed.

29 3. A vacancy occurring in the membership of the ~~[Committee]~~
30 *Board* must be filled for the remainder of the unexpired term in the
31 same manner as the original appointment.

32 4. The ~~[Committee]~~ *Board* shall meet at least once every 3
33 months and at the times and places specified by a call of the Chair
34 of the ~~[Committee]~~ *Board*.

35 5. A majority of the members of the ~~[Committee]~~ *Board*
36 constitutes a quorum for the transaction of business, and the
37 affirmative vote of a majority of the members of the ~~[Committee]~~
38 *Board* is required to take action.

39 **Sec. 31.7.** NRS 422.4045 is hereby amended to read as
40 follows:

41 422.4045 1. Members of the ~~[Committee]~~ *Board* serve
42 without compensation, except that a member of the ~~[Committee]~~
43 *Board* is entitled, while engaged in the business of the ~~[Committee]~~
44 *Board*, to receive the per diem allowance and travel expenses
45 provided for state officers and employees generally.



1 2. Each member of the ~~{Committee}~~ *Board* who is an officer or
2 employee of the State of Nevada or a local government must be
3 relieved from his or her duties without loss of regular compensation
4 so that the person may prepare for and attend meetings of the
5 ~~{Committee}~~ *Board* and perform any work necessary to carry out
6 the duties of the ~~{Committee}~~ *Board* in the most timely manner
7 practicable. A state agency or local governmental entity shall not
8 require an officer or employee who is a member of the ~~{Committee}~~
9 *Board* to make up the time that the officer or employee is absent
10 from work to carry out any duties as a member of the ~~{Committee}~~
11 *Board* or to use annual vacation or compensatory time for the
12 absence.

13 **Sec. 31.8.** NRS 422.405 is hereby amended to read as follows:

14 422.405 1. The Department shall, by regulation, set forth the
15 duties of the ~~{Committee}~~ *Board*, which must include, without
16 limitation:

17 (a) Identifying the prescription drugs which should be included
18 on the list of preferred prescription drugs developed by the
19 Department ~~{for the Medicaid program}~~ pursuant to NRS 422.4025
20 ~~{and}~~, *which must include, without limitation, any prescription*
21 *drug required by the Centers for Medicare and Medicaid Services*
22 *of the United States Department of Health and Human Services to*
23 *be covered by the Medicaid program and any other prescription*
24 *drug deemed essential by the Board;*

25 (b) *Identifying* the prescription drugs which should be excluded
26 from any restrictions that are imposed *by the Medicaid program* on
27 drugs that are on the list of preferred prescription drugs;

28 ~~{(b)}~~ (c) Identifying classes of therapeutic prescription drugs for
29 its review and performing a clinical analysis of each drug included
30 in each class that is identified for review; and

31 ~~{(c)}~~ (d) Reviewing at least annually all classes of therapeutic
32 prescription drugs on the list of preferred prescription drugs
33 developed by the Department ~~{for the Medicaid program}~~ pursuant
34 to NRS 422.4025.

35 2. The Department shall, by regulation, require the
36 ~~{Committee}~~ *Board* to:

37 (a) Base its decisions on evidence of clinical efficacy, ~~{and}~~
38 safety ~~{without consideration of the cost of the prescription drugs~~
39 ~~being considered by the Committee;~~ *and outcomes for patients*
40 *and, if the difference between the clinical efficacy, safety and*
41 *outcomes for two or more drugs is not clinically significant, cost;*

42 (b) Review new pharmaceutical products in as expeditious a
43 manner as possible; and

44 (c) Consider new clinical evidence supporting the inclusion of
45 an existing pharmaceutical product on the list of preferred



1 prescription drugs developed by the Department ~~for the Medicaid~~
2 ~~program~~ and new clinical evidence supporting the exclusion of an
3 existing pharmaceutical product from any restrictions that are
4 imposed *by the Medicaid program* on drugs that are on the list of
5 preferred prescription drugs in as expeditious a manner as possible.

6 3. The Department shall, by regulation, authorize the
7 ~~Committee~~ Board to:

8 (a) In carrying out its duties, exercise clinical judgment and
9 analyze peer review articles, published studies, and other medical
10 and scientific information; and

11 (b) Establish subcommittees to analyze specific issues that arise
12 as the ~~Committee~~ Board carries out its duties.

13 4. *The Board may close any portion of a meeting during*
14 *which it considers the cost of prescription drugs.*

15 **Sec. 31.9.** NRS 422.406 is hereby amended to read as follows:

16 422.406 1. The Department may, to carry out its duties set
17 forth in NRS 422.27172 to 422.27178, inclusive, and 422.401 to
18 422.406, inclusive, *and sections 31.05 to 31.2, inclusive, of this act*
19 and to administer the provisions of those sections:

20 (a) Adopt regulations; and

21 (b) Enter into contracts for any services.

22 2. Any regulations adopted by the Department pursuant to NRS
23 422.27172 to 422.27178, inclusive, and 422.401 to 422.406,
24 inclusive, *and sections 31.05 to 31.2, inclusive, of this act* must be
25 adopted in accordance with the provisions of chapter 241 of NRS.

26 **Sec. 32.** (Deleted by amendment.)

27 **Sec. 32.5.** NRS 683A.178 is hereby amended to read as
28 follows:

29 683A.178 1. A pharmacy benefit manager has ~~a fiduciary~~
30 ~~duty to~~ *an obligation of good faith and fair dealing toward* a third
31 party ~~with~~ *or pharmacy when performing duties pursuant to a*
32 *contract to* which the pharmacy benefit manager ~~has entered into a~~
33 ~~contract to manage the pharmacy benefits plan of the third party~~
34 ~~and~~ *is a party. Any provision of a contract that waives or limits*
35 *that obligation is against public policy, void and unenforceable.*

36 2. *A pharmacy benefit manager* shall notify ~~the~~ a third party
37 *with which it has entered into a contract* in writing of any activity,
38 policy or practice of the pharmacy benefit manager that presents a
39 conflict of interest that interferes with the ~~ability of the pharmacy~~
40 ~~benefit manager to discharge that fiduciary duty.~~ *obligations*
41 *imposed by subsection 1.*

42 **Sec. 33.** Chapter 687B of NRS is hereby amended by adding
43 thereto a new section to read as follows:

44 1. *A nonprofit health benefit plan may use the list of*
45 *preferred prescription drugs developed by the Department of*



1 *Health and Human Services pursuant to subsection 1 of NRS*
2 *422.4025 as its formulary and obtain prescription drugs through*
3 *the purchasing agreements negotiated by the Department*
4 *pursuant to that section by notifying the Department in the form*
5 *prescribed by the Department.*

6 *2. As used in this section "health benefit plan" has the*
7 *meaning ascribed to it in section 31.05 of this act.*

8 **Sec. 34.** (Deleted by amendment.)

9 **Sec. 35.** (Deleted by amendment.)

10 **Sec. 35.5.** (Deleted by amendment.)

11 **Sec. 36.** (Deleted by amendment.)

12 **Sec. 36.1.** (Deleted by amendment.)

13 **Sec. 36.2.** (Deleted by amendment.)

14 **Sec. 36.3.** (Deleted by amendment.)

15 **Sec. 36.4.** (Deleted by amendment.)

16 **Sec. 36.5.** (Deleted by amendment.)

17 **Sec. 36.6.** (Deleted by amendment.)

18 **Sec. 36.8.** (Deleted by amendment.)

19 **Sec. 37.** (Deleted by amendment.)

20 **Sec. 38.** (Deleted by amendment.)

21 **Sec. 38.3.** (Deleted by amendment.)

22 **Sec. 38.5.** (Deleted by amendment.)

23 **Sec. 38.7.** (Deleted by amendment.)

24 **Sec. 38.9.** (Deleted by amendment.)

25 **Sec. 39.** (Deleted by amendment.)

26 **Sec. 39.5.** 1. Notwithstanding any other provision of law, the
27 terms of the members appointed to the Pharmacy and Therapeutics
28 Committee established pursuant to NRS 422.4035, as that section
29 exists on June 30, 2019, expire on that date.

30 2. The Director of the Department of Health and Human
31 Services may appoint to the Silver State Scripts Board established
32 pursuant to NRS 422.4035, as amended by section 31.55 of this act,
33 a person who served as a member of the Pharmacy and Therapeutics
34 Committee established pursuant to NRS 422.4035, as that section
35 exists on June 30, 2019.

36 **Sec. 40.** The amendatory provisions of sections 31.15 and 31.2
37 of this act do not apply to any contract or other agreement entered
38 into before January 1, 2020, but apply to the renewal of any such
39 contract or other agreement and to any contract or other agreement
40 entered into or renewed on or after January 1, 2020.

41 **Sec. 41.** The provisions of subsection 1 of NRS 218D.380 do
42 not apply to any provision of this act which adds or revises a
43 requirement to submit a report to the Legislature.



1 **Sec. 42.** This act becomes effective:

2 1. Upon passage and approval for the purpose of adopting any
3 regulations and performing any other preparatory administrative
4 tasks that are necessary to carry out the provisions of this act; and

5 2. On January 1, 2020, for all other purposes.



