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FIRST REPRINT

S.B. 396

SENATE BILL NO. 396—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE COMMITTEE TO CONDUCT
AN INTERIM STUDY CONCERNING THE
COSTS OF PRESCRIPTION DRUGS)

MARCH 26, 2021

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the purchasing of prescription drugs. (BDR 38-443)

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

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

AN ACT relating to prescription drugs; authorizing public agencies of this State to enter into agreements with certain entities in other jurisdictions for the collaborative purchasing of prescription drugs; exempting a contract between the Department of Health and Human Services and a pharmacy benefit manager or health maintenance organization entered into pursuant to such an agreement from certain requirements; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes a public agency of this State to enter into a joint or
2 cooperative agreement with a public agency of this State or another state or the
3 Federal Government to exercise any power, privilege or authority of the public
4 agency. (NRS 277.110) Existing law additionally authorizes state agencies to
5 cooperate with other public entities within or outside of this State to purchase
6 prescription drugs, pharmaceutical services, or medical supplies and related
7 services. (NRS 333.435) **Sections 3.3 and 3.6** of this bill additionally authorize
8 public agencies in this State to enter into agreements for the purchase of
9 prescription drugs, pharmaceutical services, or medical supplies and related
10 services with private entities within or outside of this State. **Sections 1 and 2** of this
11 bill authorize the Department of Health and Human Services to enter into such an
12 agreement for the purchase of prescription drugs for Medicaid or the Children’s
13 Health Insurance Program.



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14 Existing law imposes certain requirements concerning transparency, rebates
15 and auditing on any contract between the Department and a pharmacy benefit
16 manager or health maintenance organization to manage, direct and coordinate
17 payments and rebates for prescription drugs or other services and payments relating
18 to the provision of prescription drugs under the State Plan for Medicaid and the
19 Children's Health Insurance Program. (NRS 422.4053, 422.4056) **Sections 2 and 3**
20 of this bill exempt a contract between the Department and a pharmacy benefit
21 manager or health maintenance organization entered into pursuant to an agreement
22 for the collaborative purchasing of prescription drugs from those requirements.

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

1 **Section 1.** NRS 422.4025 is hereby amended to read as
2 follows:

3 422.4025 1. The Department shall:

4 (a) By regulation, develop a list of preferred prescription drugs
5 to be used for the Medicaid program and the Children's Health
6 Insurance Program, and each public or nonprofit health benefit plan
7 that elects to use the list of preferred prescription drugs as its
8 formulary pursuant to NRS 287.012, 287.0433 or 687B.407; and

9 (b) Negotiate and enter into agreements to purchase the drugs
10 included on the list of preferred prescription drugs on behalf of the
11 health benefit plans described in paragraph (a) or enter into a
12 contract pursuant to NRS 422.4053 with a pharmacy benefit
13 manager, ~~for~~ health maintenance organization ~~for~~ *or one or more*
14 *public or private entities in this State, the District of Columbia or*
15 *other states or territories of the United States*, as appropriate, to
16 negotiate such agreements.

17 2. The Department shall, by regulation, establish a list of
18 prescription drugs which must be excluded from any restrictions that
19 are imposed by the Medicaid program on drugs that are on the list of
20 preferred prescription drugs established pursuant to subsection 1.
21 The list established pursuant to this subsection must include,
22 without limitation:

23 (a) Prescription drugs that are prescribed for the treatment of the
24 human immunodeficiency virus or acquired immunodeficiency
25 syndrome, including, without limitation, protease inhibitors and
26 antiretroviral medications;

27 (b) Antirejection medications for organ transplants;

28 (c) Antihemophilic medications; and

29 (d) Any prescription drug which the Board identifies as
30 appropriate for exclusion from any restrictions that are imposed by
31 the Medicaid program on drugs that are on the list of preferred
32 prescription drugs.



1 3. The regulations must provide that the Board makes the final
2 determination of:

3 (a) Whether a class of therapeutic prescription drugs is included
4 on the list of preferred prescription drugs and is excluded from any
5 restrictions that are imposed by the Medicaid program on drugs that
6 are on the list of preferred prescription drugs;

7 (b) Which therapeutically equivalent prescription drugs will be
8 reviewed for inclusion on the list of preferred prescription drugs and
9 for exclusion from any restrictions that are imposed by the Medicaid
10 program on drugs that are on the list of preferred prescription drugs;
11 and

12 (c) Which prescription drugs should be excluded from any
13 restrictions that are imposed by the Medicaid program on drugs that
14 are on the list of preferred prescription drugs based on continuity of
15 care concerning a specific diagnosis, condition, class of therapeutic
16 prescription drugs or medical specialty.

17 4. The list of preferred prescription drugs established pursuant
18 to subsection 1 must include, without limitation, any prescription
19 drug determined by the Board to be essential for treating sickle cell
20 disease and its variants.

21 5. The regulations must provide that each new pharmaceutical
22 product and each existing pharmaceutical product for which there is
23 new clinical evidence supporting its inclusion on the list of preferred
24 prescription drugs must be made available pursuant to the Medicaid
25 program with prior authorization until the Board reviews the product
26 or the evidence.

27 6. On or before February 1 of each year, the Department shall:

28 (a) Compile a report concerning the agreements negotiated
29 pursuant to paragraph (b) of subsection 1 and contracts entered into
30 pursuant to NRS 422.4053 which must include, without limitation,
31 the financial effects of obtaining prescription drugs through those
32 agreements and contracts, in total and aggregated separately for
33 agreements negotiated by the Department, contracts with a
34 pharmacy benefit manager , ~~and~~ contracts with a health
35 maintenance organization ~~;~~ *and contracts with public and private*
36 *entities from this State, the District of Columbia and other states*
37 *and territories of the United States;* and

38 (b) Post the report on an Internet website maintained by the
39 Department and submit the report to the Director of the Legislative
40 Counsel Bureau for transmittal to:

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

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

43 **Sec. 2.** NRS 422.4053 is hereby amended to read as follows:

44 422.4053 1. Except as otherwise provided in subsection 2,
45 the Department shall directly manage, direct and coordinate all



1 payments and rebates for prescription drugs and all other services
2 and payments relating to the provision of prescription drugs under
3 the State Plan for Medicaid and the Children's Health Insurance
4 Program.

5 2. The Department may enter into a contract with:

6 (a) A pharmacy benefit manager for the provision of any
7 services described in subsection 1.

8 (b) A health maintenance organization pursuant to NRS 422.273
9 for the provision of any of the services described in subsection 1 for
10 recipients of Medicaid or recipients of insurance through the
11 Children's Health Insurance Program who receive coverage through
12 a Medicaid managed care program.

13 (c) *One or more public or private entities from this State, the*
14 *District of Columbia or other states or territories of the United*
15 *States for the collaborative purchasing of prescription drugs in*
16 *accordance with subsection 3 of NRS 277.110. If such a contract*
17 *requires the Department to enter into a contract with a pharmacy*
18 *benefit manager or health maintenance organization for the*
19 *provision of any of the services described in subsection 1, the*
20 *contract is not subject to the provisions of subsection 3, paragraph*
21 *(b) of subsection 4 or NRS 422.4056.*

22 3. ~~1A~~ *Except as otherwise provided in paragraph (c) of*
23 *subsection 2, a contract entered into pursuant to paragraph (a) or*
24 *(b) of subsection 2 must:*

25 (a) Include the provisions required by NRS 422.4056; and

26 (b) Require the pharmacy benefit manager or health
27 maintenance organization, as applicable, to disclose to the
28 Department any information relating to the services covered by the
29 contract, including, without limitation, information concerning
30 dispensing fees, measures for the control of costs, rebates collected
31 and paid and any fees and charges imposed by the pharmacy benefit
32 manager or health maintenance organization pursuant to the
33 contract.

34 4. In addition to meeting the requirements of subsection 3, a
35 contract entered into pursuant to:

36 (a) Paragraph (a) of subsection 2 may require the pharmacy
37 benefit manager to provide the entire amount of any rebates
38 received for the purchase of prescription drugs, including, without
39 limitation, rebates for the purchase of prescription drugs by an entity
40 other than the Department, to the Department.

41 (b) Paragraph (b) of subsection 2 must, *except as otherwise*
42 *provided in paragraph (c) of subsection 2*, require the health
43 maintenance organization to provide to the Department the entire
44 amount of any rebates received for the purchase of prescription
45 drugs, including, without limitation, rebates for the purchase of



1 prescription drugs by an entity other than the Department, less an
2 administrative fee in an amount prescribed by the contract. The
3 Department shall adopt policies prescribing the maximum amount
4 of such an administrative fee.

5 **Sec. 3.** NRS 422.4056 is hereby amended to read as follows:

6 422.4056 1. ~~[Any]~~ *Except as otherwise provided in*
7 *paragraph (c) of subsection 2 of NRS 422.4053, any* contract
8 between the Department and a pharmacy benefit manager or health
9 maintenance organization entered into pursuant to NRS 422.4053
10 must require the pharmacy benefit manager or health maintenance
11 organization, as applicable, to:

12 (a) Submit to and cooperate with an annual audit by the
13 Department to evaluate the compliance of the pharmacy benefit
14 manager or health maintenance organization with the agreement and
15 generally accepted accounting and business practices. The audit
16 must analyze all claims processed by the pharmacy benefit manager
17 or health maintenance organization pursuant to the agreement.

18 (b) Obtain from an independent accountant, at the expense of the
19 pharmacy benefit manager or health maintenance organization, as
20 applicable, an annual audit of internal controls to ensure the
21 integrity of financial transactions and claims processing.

22 2. The Department shall post the results of any audit conducted
23 pursuant to paragraph (a) of subsection 1 on an Internet website
24 maintained by the Department.

25 **Sec. 3.3.** NRS 277.110 is hereby amended to read as follows:

26 277.110 Except as limited by NRS 280.105 and 711.175:

27 1. Any power, privilege or authority exercised or capable of
28 exercise by a public agency of this State, including, but not limited
29 to, law enforcement, may be exercised jointly with any other public
30 agency of this State, and jointly with any public agency of any other
31 state or of the United States to the extent that the laws of such other
32 state or of the United States permit such joint exercise. Any agency
33 of this State when acting jointly with any other public agency may
34 exercise all the powers, privileges and authority conferred by NRS
35 277.080 to 277.180, inclusive, upon a public agency.

36 2. Any two or more public agencies may enter into agreements
37 with one another for joint or cooperative action pursuant to the
38 provisions of NRS 277.080 to 277.170, inclusive.

39 3. *A public agency may enter into an agreement with any*
40 *other public agency or private entity in this State, the District of*
41 *Columbia or any other state or territory of the United States or any*
42 *agency of the United States for the purchase of prescription drugs,*
43 *pharmaceutical services, or medical supplies and related services*
44 *to the extent that the laws applicable to each participating agency*
45 *and entity permit such an agreement.*



1 4. If it is reasonably foreseeable that a participating public
2 agency will be required to:

3 (a) Expend more than \$25,000 to carry out [such] an agreement
4 [] *described in this section*, the agreement:

5 (1) Must be in writing.

6 (2) Becomes effective only upon ratification by appropriate
7 ordinance, resolution or otherwise pursuant to law on the part of the
8 governing bodies of the participating public agencies.

9 (b) Expend \$25,000 or less to carry out such an agreement, each
10 participating public agency shall maintain written documentation of
11 the terms of the agreement for at least 3 years after the date on
12 which the agreement was entered into.

13 **Sec. 3.6.** NRS 333.435 is hereby amended to read as follows:

14 333.435 1. Except as otherwise provided in subsection 2, a
15 using agency shall purchase prescription drugs, pharmaceutical
16 services, or medical supplies and related services, or any
17 combination thereof, only through the Purchasing Division.

18 2. A using agency may, on its own behalf or in cooperation
19 with one or more other using agencies or , *in accordance with the*
20 *provisions of subsection 3 of NRS 277.110*, other governmental
21 entities *or private entities* within or outside this State, purchase
22 prescription drugs, pharmaceutical services, or medical supplies and
23 related services from an entity other than the Purchasing Division if
24 the using agency or using agencies or other governmental entities, as
25 applicable, can obtain the best value for prescription drugs,
26 pharmaceutical services, or medical supplies and related services
27 from the other entity and the Purchasing Division is unable to match
28 or exceed that best value in a timely manner.

29 3. If a using agency purchases prescription drugs,
30 pharmaceutical services, or medical supplies and related services
31 from an entity other than the Purchasing Division pursuant to
32 subsection 2, the using agency shall report to the Purchasing
33 Division, within 10 days after the initial purchase:

34 (a) The purchase price for the prescription drugs, pharmaceutical
35 services, or medical supplies and related services; and

36 (b) The name, address and telephone number of the entity that
37 sold the using agency the prescription drugs, pharmaceutical
38 services, or medical supplies and related services.

39 **Sec. 4.** (Deleted by amendment.)

40 **Sec. 5.** The provisions of subsection 1 of NRS 218D.380 do
41 not apply to any provision of this act which adds or revises a
42 requirement to submit a report to the Legislature.

43 **Sec. 6.** This act becomes effective upon passage and approval.



