

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 165

By: Hicks

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5
6 AS INTRODUCED

7 An Act relating to prescription drugs; defining
8 terms; requiring Insurance Department to compile list
9 of drugs essential for treating diabetes and those
10 with certain price increases; requiring drug
11 manufacturer to submit certain financial information
12 to Insurance Department; requiring manufacturer to
13 submit information on price increases to Department;
14 requiring pharmacy benefits managers to submit
15 certain financial information to Department;
16 providing exception for certain health plans to
17 application of act; authorizing certain plans to
18 require pharmacy benefits managers to comply with
19 act; requiring Department to produce certain report;
20 requiring Department to create and maintain a website
21 with certain information required by act;
22 establishing certain terms of website; authorizing
23 additional or alternative consumer access procedures;
24 authorizing the Department to promulgate rules;
25 providing for codification; and providing an
effective date.

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19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 6861 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

23 For purposes of this act:
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1 1. "Manufacturer" means any person or entity that holds the
2 national drug code for a prescription drug and is engaged in the
3 production, preparation, propagation, compounding, conversion or
4 processing of drug products in this state. Manufacturer shall also
5 include any person or entity that is engaged in the packaging,
6 repackaging, labeling, relabeling or distribution of drug products
7 in this state, or any person or entity that causes the drug products
8 to be compounded, packaged or transported in this state, that is not
9 a wholesale distributor of drugs or a retail pharmacy licensed by
10 the State Board of Pharmacy;

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

14 3. "Pharmacy benefits manager" means a person or entity that
15 performs pharmacy benefits management and any other person or entity
16 acting under a contractual or employment relationship in the
17 performance of pharmacy benefits management for a managed care
18 company, nonprofit hospital, medical service organization, insurance
19 company, third-party payor or a health program administered by a
20 department of this state.

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 6862 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

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

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

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

- 11 a. the percentage increase in the Consumer Price Index,
12 Medical Care Component during the immediately
13 preceding calendar year, or
14 b. twice the percentage increase in the Consumer Price
15 Index, Medical Care Component during the immediately
16 preceding two calendar years.

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

- 22 1. The costs of the drug;
23 2. The total administrative expenditures relating to the drug
24 including marketing and advertising costs;

1 3. The profit that the manufacturer has earned from the drug
2 and the percentage of the total profit of the manufacturer for the
3 period during which the manufacturer has marketed the drug for sale
4 that is attributable to the drug;

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

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

12 6. The wholesale acquisition cost of the drug;

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

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

22 9. Any additional information prescribed by Insurance
23 Department rules for the purpose of analyzing the cost of
24 prescription drugs that appear on the list compiled pursuant to

1 subsection A of this section, trends in those costs and rebates
2 available for those drugs.

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

- 9 1. A list of each factor that has contributed to the increase;
- 10 2. The percentage of the total increase that is attributable to
11 each factor;
- 12 3. An explanation of the role of each factor in the increase;
- 13 and
- 14 4. Any other information prescribed by Insurance Department
15 rules.

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

- 19 1. The total amount of all rebates that the pharmacy benefits
20 manager negotiated with manufacturers during the immediately
21 preceding calendar year for prescription drugs included on the list
22 compiled by the Department pursuant to subsection A of this section;
- 23 2. The total amount of all rebates described in paragraph 1 of
24 this subsection that were retained by the pharmacy benefits manager;

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

- 4 a. recipients of Medicare,
- 5 b. recipients of Medicaid,
- 6 c. persons covered by third parties that are governmental
7 entities not described in subparagraph a and b of this
8 paragraph,
- 9 d. persons covered by third parties that are not
10 governmental entities, and
- 11 e. persons covered by a plan described in paragraph 4 of
12 this subsection to the extent required by a contract
13 entered into pursuant to paragraph 5 of this
14 subsection;

15 4. Except as otherwise provided in subparagraph c of paragraph
16 3 of this subsection, the requirements of this section do not apply
17 to the coverage of prescription drugs under a plan that is subject
18 to the Employee Retirement Income Security Act of 1974 or any
19 information relating to that coverage; and

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

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

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

- 14 a. the list of prescription drugs compiled by the
15 Department pursuant to subsection A of this section,
- 16 b. the wholesale acquisition cost of each prescription
17 drug reported pursuant to subsection B of this
18 section, and
- 19 c. The reports compiled by the Department pursuant to
20 subsection E of this section.

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

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

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

10 SECTION 3. This act shall become effective November 1, 2021.

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