SENATE BILL 2442
By Harris

HOUSE BILL 2206

By Mitchell

AN ACT to amend Tennessee Code Annotated, Title 8; Title 53; Title 56; Title 63 and Title 71, relative to the cost of prescription drugs.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 53, Chapter 10, Part 2, is amended by adding the following new sections:

53-10-212.

(a) The department of health shall develop a list of critical prescription drugs for which there is a substantial public interest in understanding the development of the drugs' pricing. In developing the list, the department of health shall consider the following factors:

(1) The cost of the drug to public health care programs, including the programs established under title 8, chapter 27 and the Medical Assistance Act of 1968, compiled in title 71, chapter 5, part 1;

(2) The current cost of the drug in the state;

(3) The extent of utilization of the drug within the state; and

(4) Potential impact of the cost of the drug on statewide healthcare cost growth.

(b) The department of health shall require the manufacturer of each drug placed on the critical prescription drug list pursuant to subsection (a) to report the following information to the department of health:

(1) Total cost of production, and approximate cost of production per dose of the drug;

(2) Research and development costs of the drug, including:

(A) Research and development costs that are paid with public funds;

(B) After-tax research and development costs paid by the manufacturer; and

(C) Research and development costs paid by third parties;

(3) Marketing and advertising costs for the drug, apportioned by marketing activities that are directed to consumers, marketing activities that are directed to prescribers, and the total cost of all marketing and advertising that is directed primarily to consumers and prescribers in the state;

(4) The prices for the drug that are charged to purchasers outside the United States, by country, for a representative set of countries determined by the department of health;

(5) Prices charged to typical purchasers in this state, including pharmacies, pharmacy wholesalers, or other direct purchasers;

(6) The typical net prices charged to prescription drug benefit managers for distribution in this state, after accounting for any rebates or other payments from the manufacturer to the pharmacy benefit manager and the pharmacy benefit manager to the manufacturer.

(c) The department of health is authorized to promulgate rules to effectuate the purposes of this act. The rules may include civil penalties for failure to comply with this section and shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) Information reported pursuant to subsection (b) shall not be considered a public record under title 10, chapter 7. All public reporting of information submitted pursuant to subsection (b) shall be aggregated as to protect the financial, competitive, or proprietary nature of the information.

(e) The department of health shall prepare an annual report on prescription drug prices and their role in overall health care spending in the state based on the data submitted to the department of health pursuant to subsection (b) and in accordance with subsection (d). As part of the report, the department of health may include recommendations for actions to lower prescription drug costs and spending across the state while maintaining access to quality health care. The department of health's report shall be posted on the department of health's web site and shall be submitted to the chair of the health and welfare committee of the senate and the chair of the health committee of the house of representatives prior to February 1 of each year.

53-10-213.

(a) The department of health shall identify, using information submitted to the department of health pursuant to § 53-10-212, those prescription drugs that due to their cost, jeopardize the state's ability to reduce statewide healthcare costs. In reviewing the data, the department of health shall review and consider all data reported to the department of health and determine whether the price of the prescription drug is significantly high given:

(1) The prescription drug's medical benefits;

(2) The cost to develop and manufacture the prescription drug; and

(3) The prices charged by the manufacturer in other countries.

(b) If the department of health determines that a prescription drug price is significantly high, then the department of health may set the maximum allowable price that the manufacturer can charge for that prescription drug that is sold for use in the state.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.