HOUSE BILL 1327
By Stewart

SENATE BILL 1423

By Tate

AN ACT to amend Tennessee Code Annotated, Title 8; Title 53; Title 56; Title 63; Title 68 and Title 71, relative to prescription drugs.

WHEREAS, the costs of prescription drugs have been increasing dramatically without any apparent reason; and

WHEREAS, containing healthcare costs requires containing prescription drug costs; and

WHEREAS, in order to contain prescription drug costs, it is essential to understand the drivers of those costs, as transparency is typically the first step toward cost containment; now, therefore,

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

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

(a) As used in this section:

(1) "Manufacturer" has the same meaning as defined in § 53-10-302; and

(2) "Prescription drug" means a drug as defined in 21 U.S.C. § 321.

(b)

(1) The bureau of TennCare, in collaboration with the division of benefits administration of the department of finance and administration, shall identify annually up to fifteen (15) prescription drugs on which the state spends significant healthcare dollars and for which the wholesale acquisition cost has increased by fifty percent (50%) or more over the past five (5) years or by fifteen percent (15%) or more over the past twelve (12) months, creating a substantial

public interest in understanding the development of the drugs' pricing. The drugs identified shall represent different drug classes.

(2) The bureau of TennCare shall provide to the commissioner of health the list of prescription drugs developed pursuant to this subsection (b) and the percentage of the wholesale acquisition cost increase for each drug and shall make the information available to the public on the bureau's website.

(c)

(1) For each prescription drug identified pursuant to subsection (b), the commissioner of health shall require the drug's manufacturer to provide a justification for the increase in the wholesale acquisition cost of the drug in a format that the commissioner of health determines to be understandable and appropriate. The manufacturer shall submit to the commissioner of health all relevant information and supporting documentation necessary to justify the manufacturer's wholesale acquisition cost increase, which may include:

(A) All factors that have contributed to the wholesale acquisition cost increase;

(B) The percentage of the total wholesale acquisition cost increase attributable to each factor; and

(C) An explanation of the role of each factor in contributing to the wholesale acquisition cost increase.

(2) Nothing in this section shall be construed to restrict the legal ability of a prescription drug manufacturer to change prices to the extent permitted under federal law.

(d) The commissioner of health shall provide a report to the general assembly on or before December 1 of each year based on the information received from manufacturers pursuant to this section. The commissioner of health shall also post the report on the department of health's website.

(e) Information provided to the commissioner of health pursuant to this section shall be treated as confidential and is exempt from the open records requirements of § 10-7-503. No summary of the information that is released shall be released in a manner that allows for the identification of an individual drug or manufacturer or in a manner that is likely to compromise the financial, competitive, or proprietary nature of the information.

(f) The attorney general and reporter may bring an action in the circuit or chancery court of Davidson County for injunctive relief, costs, and attorney's fees, and to impose on a manufacturer that fails to provide the information required by subsection (c) of this section a civil penalty of no more than ten thousand dollars ($10,000) per violation. Each unlawful failure to provide information shall constitute a separate violation. In any action brought pursuant to this section, the attorney general and reporter shall have the same authority to investigate and to obtain remedies as if the action were brought under the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1.

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 7, Part 32, is amended by adding the following as a new section:

On or before January 1, 2018, the commissioner of commerce and insurance shall promulgate rules to require all health insurers that offer health insurance coverage on the individual market to provide information to enrollees, potential enrollees, and healthcare providers about the prescription drug formularies for the health insurance coverage. The rules shall ensure that the formulary is posted online in a standard format established by the department of commerce and insurance; that the formulary is updated frequently and is searchable by enrollees, potential enrollees, and healthcare providers; and that the formulary includes information about the prescription drugs covered,

applicable cost-sharing amounts, drug tiers, prior authorization, step therapy, and utilization management requirements.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.