

## Amendment No. 1132

Senate Amendment to Assembly Bill No. 232 Second Reprint (BDR 40-856)

**Proposed by:** Senate Committee on Human Resources and Education**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

SLP/KCR



Date: 6/3/2007

A.B. No. 232—Requires the Department of Health and Human Services to make available to consumers certain information relating to pharmacies and the prices of commonly prescribed prescription drugs. (BDR 40-856)



ASSEMBLY BILL NO. 232—ASSEMBLYMEN LESLIE, BUCKLEY, HORNE, MCCLAIN, OCEGUERA, ALLEN, ANDERSON, ARBERRY, ATKINSON, BEERS, BOBZIEN, CLABORN, CONKLIN, DENIS, GERHARDT, HOGAN, KIHUEN, KIRKPATRICK, KOIVISTO, MABEY, MANENDO, MORTENSON, MUNFORD, OHRENSCHALL, PARKS, PARNELL, PIERCE, SEGERBLOM AND SMITH

MARCH 1, 2007

JOINT SPONSORS: SENATORS WIENER, TITUS, CARE, COFFIN, LEE, MCGINNESS, NOLAN, SCHNEIDER AND WOODHOUSE

Referred to Committee on Health and Human Services

SUMMARY—~~[Requires the Department of Health and Human Services to make available to consumers]~~ **Provides for** certain information relating to pharmacies and the prices of commonly prescribed prescription drugs ~~[to be made available to consumers]~~. (BDR 40-856)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Contains Appropriation not included in Executive Budget.

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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 ~~[the Department of Health and Human Services; requiring the Department to make available to consumers]~~ **health; providing for** certain information relating to pharmacies and the prices of commonly prescribed prescription drugs ~~[to be made available to consumers]~~; requiring the Department **of Health and Human Services** to ~~[make]~~ **perform certain activities and adopt** certain ~~[determinations before performing certain duties]~~ **regulations**; providing **for the imposition of** an administrative penalty ~~[under certain circumstances]~~; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Section 2 of this bill defines the term “pharmacy” for the purposes of the bill. As defined, the term excludes institutional pharmacies. (NRS 639.0085) Section 3 of this bill requires the ~~[Retail Association of Nevada or its successor to compile]~~ organization that the Department of Health and Human Services determines to be the organization in the State with the largest membership of represented retail merchants, to prepare a list of not less than 100 prescription drugs, ~~[and their]~~ including generic equivalents, that are most commonly prescribed to residents of this State.

~~[Sections 5-8]~~ Section 4 of this bill requires certain pharmacies to provide certain contact information to the Department. Section 5 of this bill ~~[require]~~ requires the

Department ~~[of Health and Human Services to: (1) combine the contents of the list with usual and customary pricing information received from pharmacies that are licensed by the State Board of Pharmacy; and (2) present the combined information on the Department's]~~ to present on its Internet website : (1) the contact information provided by the pharmacies to the Department; and (2) the usual and customary price that the pharmacies charge for the prescription drugs set forth on the list prepared pursuant to section 3, so that consumers may compare the prices currently being charged by those pharmacies for those prescription drugs. ~~[By regulation, links to such information on the Department's website may be placed on the Internet websites of other persons and entities, including pharmacies and other governmental entities. Section 4 of this bill requires pharmacies that are licensed by the State Board of Pharmacy and located in the State of Nevada to provide to the Department, at least once each month, the usual and customary prices that the pharmacy charges for the prescription drugs on the list of most prescribed drugs compiled by the Retail Association of Nevada, as well as certain contact information for the pharmacy. Pharmacies that are licensed by the State Board of Pharmacy but located outside the State of Nevada may, but are not required to, provide such information.]~~ The Department is allowed to obtain the usual and customary prices charged by the pharmacies from claims reported by the pharmacies to the Medicaid program.

Section 6 of this bill requires the Department to ensure that the information is presented to consumers in such a manner that the prices charged by pharmacies for the relevant prescription drugs may be easily compared. Section 7 of the bill clarifies that the Department and its members, officers and employees are not liable in the event that information fails to be provided to consumers or in the event that incorrect information is provided to consumers. Section 8 of this bill requires the Department to adopt certain regulations.

Section 9 of this bill allows the Department to accept grants, donations, gifts and other public and private money to carry out the provisions of this bill. Section 9 also requires the Department to determine at the beginning of each fiscal year whether sufficient money is available to fund one or more components of the programs and duties of the Department relating to sections 2-10 of this bill ~~+~~ and, if sufficient money is not available, to suspend temporarily a component of the programs for which money is lacking.

Section 10 of this bill provides that if a pharmacy is required to provide information to the Department pursuant to section 4 and the pharmacy, without good cause, fails to do so or fails to do so in a timely manner, the Department may impose an administrative penalty of up to \$500 for each day on which such a failure occurs. ~~[This bill excludes institutional pharmacies from the application of its provisions.]~~

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

Section 1. Chapter 439 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. *As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, "pharmacy" means every store or shop licensed by the State Board of Pharmacy where drugs, controlled substances, poisons, medicines or chemicals are stored or possessed, or dispensed or sold at retail, or displayed for sale at retail, or where prescriptions are compounded or dispensed. The term does not include an institutional pharmacy as defined in NRS 639.0085.*

Sec. 3. *The ~~[Retail Association of Nevada or its successor]~~ organization with the largest membership in this State which represents the interests of retail merchants, as determined by the Department, shall:*

1. *~~[Compile]~~ Prepare a list of not less than the 100 brand name prescription drugs or generic equivalents most commonly prescribed to residents of this State; and*

2. ~~Ensure that the list compiled pursuant to subsection 1 sets forth a separate entry for the generic equivalent, if any, of each brand-name prescription drug included on the list; and~~

~~3.~~ At least once each calendar ~~quarter,~~ year, update the list ~~compiled~~ prepared pursuant to subsection 1 and transmit the list to the Department.

Sec. 4. 1. Except as otherwise provided in subsections 2 and 3, each pharmacy shall, in accordance with the regulations adopted pursuant to section 8 of this act, provide to the Department:

(a) Information that a consumer may use to locate, contact or otherwise do business with the pharmacy, including, without limitation:

(1) The name of the pharmacy;

(2) The physical address of the pharmacy; and

(3) The phone number of the pharmacy;

(b) If the pharmacy maintains an electronic mail address, the electronic mail address of the pharmacy; and

(c) If the pharmacy maintains an Internet website, the Internet address of that website. ~~It and~~

~~(d) Not less frequently than once each month;~~

~~(1) For each prescription drug that is on the list compiled pursuant to section 3 of this act and that is stocked by the pharmacy, the usual and customary price that the pharmacy is currently charging for the prescription drug; and~~

~~(2) For each generic equivalent that is on the list compiled pursuant to section 3 of this act and that is stocked by the pharmacy, the usual and customary price that the pharmacy is currently charging for the generic equivalent.~~

2. If a pharmacy is not located within the State of Nevada, the pharmacy may, but is not required to, provide to the Department the information described in subsection 1.

3. If a pharmacy is part of a larger company or corporation or a chain of pharmacies or retail stores, the parent company or corporation may provide to the Department the information described in subsection 1.

~~4. As used in this section, "usual and customary price" means the usual and customary charges that a provider charges to the general public for a drug, as described in 42 C.F.R. § 447.331.~~

Sec. 5. 1. Except as otherwise provided in subsection 2, the Department shall:

(a) Place or cause to be placed on the Internet website maintained by the Department the information provided by each pharmacy pursuant to section 4 of this act;

(b) Ensure that the information provided by each pharmacy pursuant to section 4 of this act and placed on the Internet website maintained by the Department is organized so that each individual pharmacy has its own separate entry on that website; and

(c) Ensure that the ~~pricing information provided by each pharmacy pursuant to section 4 of this act and placed on the Internet website maintained by the Department;~~ usual and customary price that each pharmacy charges for each prescription drug that is on the list prepared pursuant to section 3 of this act and that is stocked by the pharmacy;

(1) Is presented on the Internet website maintained by the Department in a manner which complies with the requirements of section 6 of this act; and

(2) Is updated not less frequently than once each ~~month,~~ calendar quarter.

Nothing in this subsection prohibits the Department from determining the usual and customary price that a pharmacy charges for a prescription drug by

extracting or otherwise obtaining such information from claims reported by pharmacies to the Medicaid program.

2. If a pharmacy is part of a larger company or corporation or a chain of pharmacies or retail stores, the Department may present the pricing information pertaining to such a pharmacy in such a manner that the pricing information is combined with the pricing information relative to other pharmacies that are part of the same company, corporation or chain, to the extent that the pricing information does not differ among those pharmacies.

3. The Department may establish additional or alternative procedures by which a consumer who is unable to access the Internet or is otherwise unable to receive the information described in subsection 1 in the manner in which it is presented by the Department may obtain that information:

(a) In the form of paper records;

(b) Through the use of a telephonic system; or

(c) Using other methods or technologies designed specifically to assist consumers who are hearing impaired or visually impaired.

4. As used in this section, "usual and customary price" means the usual and customary charges that a provider charges to the general public for a drug, as described in 42 C.F.R. § 447.331.

Sec. 6. 1. Except as otherwise provided in this section, the Department shall ensure that the list of prescription drugs ~~compiled~~ prepared pursuant to section 3 of this act and the information that pharmacies and the Department provide and obtain pursuant to ~~section~~ sections 4 and 5 of this act are combined and presented to consumers in such a manner that a consumer may easily compare the prices for particular prescription drugs, and their generic equivalents, that are currently charged by:

(a) Pharmacies located within the same city, county or zip code in which the consumer resides;

(b) Internet pharmacies; and

(c) Pharmacies that provide mail order service to residents of Nevada.

↪ The requirements of paragraphs (b) and (c) apply only to the extent that information regarding such pharmacies is made available to the Department.

2. As used in this section, "Internet pharmacy" has the meaning ascribed to it in NRS 639.00865.

Sec. 7. The Department and its members, officers and employees are not liable civilly or criminally for any act, omission, error or technical problem that results in:

1. The failure to provide to consumers information regarding a pharmacy, including, without limitation, the prices charged by the pharmacy for the prescription drugs and generic equivalents that are on the list ~~compiled~~ prepared pursuant to section 3 of this act; or

2. The providing to consumers of incorrect information regarding a pharmacy, including, without limitation, the prices charged by the pharmacy for the prescription drugs and generic equivalents that are on the list ~~compiled~~ prepared pursuant to section 3 of this act.

Sec. 8. The Department shall adopt such regulations as it determines to be necessary or advisable to carry out the provisions of sections 2 to 10, inclusive, of this act. Such regulations must provide for, without limitation:

1. Notice to consumers stating that:

(a) Although the Department will strive to ensure that consumers receive accurate information regarding pharmacies, including, without limitation, the prices charged by those pharmacies for the prescription drugs and generic

1 equivalents that are on the list ~~compiled~~ prepared pursuant to section 3 of this  
2 act, the Department is unable to guarantee the accuracy of such information;

3 (b) If a consumer follows an Internet link from the Internet website  
4 maintained by the Department to an Internet website maintained by a pharmacy,  
5 the Department is unable to guarantee the accuracy of any information made  
6 available on the Internet website maintained by the pharmacy; and

7 (c) The Department advises consumers to contact a pharmacy directly to  
8 verify the accuracy of any information regarding the pharmacy which is made  
9 available to consumers pursuant to sections 2 to 10, inclusive, of this act;

10 2. Procedures adopted cooperatively with the Office of the Governor to  
11 direct consumers who have questions regarding the program described in  
12 sections 2 to 10, inclusive, of this act to contact the Office for Consumer Health  
13 Assistance in the Office of the Governor;

14 3. Provisions in accordance with which the Department will allow an  
15 Internet link to the information provided by each pharmacy pursuant to section 4  
16 of this act and made available on the Department's Internet website to be placed  
17 on other Internet websites managed or maintained by other persons and entities,  
18 including, without limitation, Internet websites managed or maintained by:

19 (a) ~~Pharmacies;~~

20 ~~(b);~~ Other governmental entities, including, without limitation, the State  
21 Board of Pharmacy and the Office of the Governor; and

22 ~~(c);~~ (b) Nonprofit organizations and advocacy groups;

23 4. Procedures pursuant to which consumers and pharmacies may report to  
24 the Department that information made available to consumers pursuant to  
25 sections 2 to 10, inclusive, of this act is inaccurate;

26 5. The form and manner in which pharmacies are to provide to the  
27 Department the information described in section 4 of this act; and

28 6. Standards and criteria pursuant to which the Department may remove  
29 from its Internet website information regarding a pharmacy or an Internet link to  
30 the Internet website maintained by a pharmacy, or both, if the Department  
31 determines that the pharmacy has:

32 (a) Ceased to be licensed and in good standing pursuant to chapter 639 of  
33 NRS; or

34 (b) Engaged in a pattern of providing to consumers information that is false  
35 or would be misleading to reasonably informed persons. ~~For~~

36 ~~(c) Violated any state or federal law governing the practice of pharmacy.~~

37 Sec. 9. 1. On or before July 1 of each odd-numbered year, the  
38 Department shall make a determination of whether sufficient money is available  
39 and authorized for expenditure to fund one or more components of the programs  
40 and other duties of the Department relating to sections 2 to 10, inclusive, of this  
41 act.

42 2. The Department shall temporarily suspend any components of the  
43 program or duties of the Department for which it determines pursuant to  
44 subsection 1 that sufficient money is not available.

45 3. The Department may apply for and accept any available grants and may  
46 accept any bequests, devises, donations or gifts from any public or private source  
47 to carry out the provisions of sections 2 to 10, inclusive, of this act.

48 Sec. 10. If a pharmacy that is licensed under the provisions of chapter 639  
49 of NRS and is located within the State of Nevada fails to provide to the  
50 Department the information required to be provided pursuant to section 4 of this  
51 act or fails to provide such information on a timely basis, and the failure was not  
52 caused by excusable neglect, technical problems or other extenuating

1 *circumstances, the Department may impose against the pharmacy an*  
2 *administrative penalty of not more than \$500 for each day of such failure.*

3 **Sec. 11.** NRS 639.2802 is hereby amended to read as follows:

4 639.2802 ~~[Prescription]~~ *In addition to any applicable requirements set forth*  
5 *in sections 2 to 10, inclusive, of this act, prescription* price information must be  
6 made available, upon request, by a pharmacist or practitioner who dispenses drugs.

7 **Sec. 12.** NRS 639.28025 is hereby amended to read as follows:

8 639.28025 ~~[Every]~~ *In addition to any applicable requirements set forth in*  
9 *sections 2 to 10, inclusive, of this act, every* practitioner who dispenses drugs shall  
10 post on the premises in a place conspicuous to customers and easily accessible and  
11 readable by customers a notice, provided by the Board, advising customers that a  
12 price list of drugs and professional services is available to them upon request.

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

14 **Sec. 14.** 1. This section and section 9 of this act become effective upon  
15 passage and approval.

16 2. Sections 1 to 8, inclusive, 10, 11 and 12 of this act become effective on  
17 October 1, 2007.