Amendment No. 529

Senate Amendment to Senate Bill No. 262 (BDR 40-55)

Proposed by: Senator Settelmeyer

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted ☐	Lost ☐		Adopted ☐	Lost ☐	
Concurred In ☐	Not ☐		Concurred In ☐	Not ☐	
Receded ☐	Not ☐		Receded ☐	Not ☐	

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added 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 proposed to be retained in this amendment.

EWR/RBL Date: 4/16/2019

S.B. No. 262—Makes various changes to provide for tracking and reporting of information concerning the pricing of prescription drugs for treating asthma. (BDR 40-55)

SENATE BILL NO. 262–SENATORS CANCELA, RATTI, CANNIZZARO, PARKS; BROOKS, DONDERO LOOP, HARRIS, OHRENSCHALL, SCHEIBLE, SPEARMAN AND WOODHOUSE

MARCH 12, 2019

Referred to Committee on Health and Human Services

SUMMARY—Makes various changes **relating** to ~~[provide for]~~ tracking and reporting of information concerning the pricing of **certain** prescription drugs **.** ~~[for treating asthma.]~~ (BDR 40-55)

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

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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; making various changes to provide for tracking and reporting of information concerning the pricing of prescription drugs for treating asthma; requiring certain insurers to provide certain notice concerning those drugs to insureds; providing for an administrative penalty for failure to provide certain information concerning those drugs to the Department of Health and Human Services; **allowing such information to be protected as a trade secret;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Department of Health and Human Services to compile: (1) a list of prescription drugs that the Department determines to be essential for treating diabetes in this State; and (2) a list of such prescription drugs that have been subject to a significant price increase within the immediately preceding 2 calendar years. (NRS 439B.630) Existing law requires the manufacturer of a prescription drug included on the list of essential diabetes drugs to submit to the Department an annual report that contains certain information concerning the cost of the drug. (NRS 439B.635) Existing law additionally requires the manufacturer of a drug included on the list of essential diabetes drugs that have undergone a substantial cost increase to submit to the Department a report concerning the reasons for the cost increase. (NRS 439B.640) Existing law requires a pharmacy benefit manager to report certain information concerning essential diabetes drugs to the Department. (NRS 439B.645) Existing law authorizes the Department to impose an administrative penalty against a manufacturer, pharmacy benefit manager, nonprofit organization or pharmaceutical sales representative who fails to provide the required information. (NRS 439B.695) The Department is required to analyze the information submitted by such manufacturers and compile a report concerning the reasons for and effect of the pricing of essential diabetes drugs. (NRS 439B.650) Existing law requires an insurer that offers or issues a policy of individual health insurance and uses a formulary to provide, during each open enrollment period, a notice of any drugs on the list of essential diabetes drugs that have been removed from the formulary or will be removed from the formulary during the current plan year or the next plan year. (NRS 689A.405)

~~[This]~~ **Sections 1-3, 4 and 5 of this** bill ~~[makes]~~ **make** those provisions apply to drugs for treating asthma to the same extent as drugs for treating diabetes. Additionally, **section 3** of this bill authorizes the Department to use the money collected from administrative penalties for failure to submit a required report to establish and carry out programs to provide education concerning asthma and to prevent asthma.

Existing law provides that information disclosed to the Department by a manufacturer of a list of essential diabetes drugs is not a trade secret for the purposes of provisions prohibiting the theft and misappropriation of trade secrets. (NRS 600A.030) Section 3.5 of this bill removes this provision, allowing such information to constitute a trade secret if it otherwise meets the requirements to be considered a trade secret.

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

Section 1. NRS 439B.630 is hereby amended to read as follows:

439B.630 On or before February 1 of each year, the Department shall compile:

1. A list of prescription drugs that the Department determines to be essential for treating ***asthma and*** diabetes in this State and the wholesale acquisition cost of each such drug on the list. The list must include, without limitation, all forms of insulin and biguanides marketed for sale in this State.

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

(a) The percentage increase in the Consumer Price Index, Medical Care Component during the immediately preceding calendar year; or

(b) Twice the percentage increase in the Consumer Price Index, Medical Care Component during the immediately preceding 2 calendar years.

Sec. 2. NRS 439B.650 is hereby amended to read as follows:

439B.650 On or before June 1 of each year, the Department shall analyze the information submitted pursuant to NRS 439B.635, 439B.640 and 439B.645 and compile a report on the price of the prescription drugs that appear on the most current lists compiled by the Department pursuant to NRS 439B.630, the reasons for any increases in those prices and the effect of those prices on overall spending on prescription drugs in this State. The report may include, without limitation, opportunities for persons and entities in this State to lower the cost of drugs for the treatment of ***asthma and*** diabetes while maintaining access to such drugs.

Sec. 3. NRS 439B.695 is hereby amended to read as follows:

439B.695 1. If a pharmacy that is licensed under the provisions of chapter 639 of NRS and is located within the State of Nevada fails to provide to the Department the information required to be provided pursuant to NRS 439B.655 or fails to provide such information on a timely basis, and the failure was not caused by excusable neglect, technical problems or other extenuating circumstances, the Department may impose against the pharmacy an administrative penalty of not more than $500 for each day of such failure.

2. If a manufacturer fails to provide to the Department the information required by NRS 439B.635, 439B.640 or 439B.660, a pharmacy benefit manager fails to provide to the Department the information required by NRS 439B.645, a nonprofit organization fails to post or provide to the Department, as applicable, the information required by NRS 439B.665 or a manufacturer, pharmacy benefit manager or nonprofit organization fails to post or provide, as applicable, such information on a timely basis, and the failure was not caused by excusable neglect,

technical problems or other extenuating circumstances, the Department may impose against the manufacturer, pharmacy benefit manager or nonprofit organization, as applicable, an administrative penalty of not more than $5,000 for each day of such failure.

3. If a pharmaceutical sales representative fails to comply with the requirements of NRS 439B.660, the Department may impose against the pharmaceutical sales representative an administrative penalty of not more than $500 for each day of such failure.

4. Any money collected as administrative penalties pursuant to this section must be accounted for separately and used by the Department to establish and carry out programs to provide education concerning ***asthma and*** diabetes and prevent ~~[diabetes.]~~ ***those diseases.***

Sec. 3.5. **NRS 600A.030 is hereby amended to read as follows:**

600A.030 As used in this chapter, unless the context otherwise requires:

1. "Improper means" includes, without limitation:

(a) Theft;

(b) Bribery;

(c) Misrepresentation;

(d) Willful breach or willful inducement of a breach of a duty to maintain secrecy;

(e) Willful breach or willful inducement of a breach of a duty imposed by common law, statute, contract, license, protective order or other court or administrative order; and

(f) Espionage through electronic or other means.

2. "Misappropriation" means:

(a) Acquisition of the trade secret of another by a person by improper means;

(b) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(c) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(1) Used improper means to acquire knowledge of the trade secret;

(2) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:

(I) Derived from or through a person who had used improper means to acquire it;

(II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(III) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(3) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

3. "Owner" means the person who holds legal or equitable title to a trade secret.

4. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

5. "Trade secret" ~~[:~~

~~(a) Means]~~ ***means*** information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that:

~~[(1)]~~ ***(a)*** Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means

by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and

~~[(2)]~~ ***(b)*** Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

~~[(b) Does not include any information that a manufacturer is required to report pursuant to NRS 439B.635 or 439B.640, information that a pharmaceutical sales representative is required to report pursuant to NRS 439B.660 or information that a pharmacy benefit manager is required to report pursuant to NRS 439B.645, to the extent that such information is required to be disclosed by those sections.]~~

Sec. 4. NRS 689A.405 is hereby amended to read as follows:

689A.405 1. An insurer that offers or issues a policy of health insurance which provides coverage for prescription drugs shall include with any summary, certificate or evidence of that coverage provided to an insured, notice of whether a formulary is used and, if so, of the opportunity to secure information regarding the formulary from the insurer pursuant to subsection 2. The notice required by this subsection must:

(a) Be in a language that is easily understood and in a format that is easy to understand;

(b) Include an explanation of what a formulary is; and

(c) If a formulary is used, include:

(1) An explanation of:

(I) How often the contents of the formulary are reviewed; and

(II) The procedure and criteria for determining which prescription drugs are included in and excluded from the formulary; and

(2) The telephone number of the insurer for making a request for information regarding the formulary pursuant to subsection 2.

2. If an insurer offers or issues a policy of health insurance which provides coverage for prescription drugs and a formulary is used, the insurer shall:

(a) Provide to any insured or participating provider of health care, upon request:

(1) Information regarding whether a specific drug is included in the formulary.

(2) Access to the most current list of prescription drugs in the formulary, organized by major therapeutic category, with an indication of whether any listed drugs are preferred over other listed drugs. If more than one formulary is maintained, the insurer shall notify the requester that a choice of formulary lists is available.

(b) Notify each person who requests information regarding the formulary, that the inclusion of a drug in the formulary does not guarantee that a provider of health care will prescribe that drug for a particular medical condition.

(c) During each period for open enrollment, publish on an Internet website that is operated by the insurer and accessible to the public or include in any enrollment materials distributed by the insurer a notice of all prescription drugs that:

(1) Are included on the most recent list of drugs that are essential for treating ***asthma and*** diabetes in this State compiled by the Department of Health and Human Services pursuant to subsection 1 of NRS 439B.630; and

(2) Have been removed or will be removed from the formulary during the current plan year or the next plan year.

(d) Update the notice required by paragraph (c) throughout the period for open enrollment.

Sec. 5. This act becomes effective:

1. Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

2. On October 1, 2019, for all other purposes.