EXEMPT

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SECOND REPRINT **S.B. 283**

SENATE BILL NO. 283–SENATORS CANCELA, SPEARMAN AND RATTI

MARCH 15, 2019

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to prescription drugs. (BDR 38-114)

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; revising provisions concerning the administration of coverage of prescription drugs under the State Plan for Medicaid and the Children's Health Insurance Program; revising provisions governing restrictions imposed on the list of preferred prescription drugs to be used for the Medicaid program; revising the criteria for selecting prescription drugs for inclusion on that list; authorizing the Pharmacy and Therapeutics Committee to close certain meetings under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law: (1) requires the Department of Health and Human Services to administer the Medicaid program; and (2) authorizes the Department to contract with a health maintenance organization to provide services to recipients of Medicaid through managed care. (NRS 422.270, 422.273) **Section 1** of this bill requires any contract between the Department of Health and Human Services and a private insurer or pharmacy benefit manager to provide services related to prescription drug coverage under the State Plan for Medicaid or the Children's Health Insurance Program to require the insurer or pharmacy benefit manager to provide to the Department any information concerning such services provided pursuant to the contract. If the Department does not enter into such a contract, **section 1** requires the Department to directly manage and coordinate such services. **Section 1.3** of this bill otherwise prohibits the Department from contracting with a managed care organization for any services related to coverage of prescription drugs for recipients of Medicaid. **Section 1.6** of this bill makes a conforming change.

Existing law requires the Department by regulation to develop: (1) a list of preferred prescription drugs to be used for the Medicaid program; and (2) a list of prescription drugs which must be excluded from any restrictions that are imposed on the list of preferred prescription drugs to be used for the Medicaid program. (NRS 422.4025) **Section 1.9** of this bill removes certain categories of prescription drugs from the list of prescription drugs which must be excluded from any restrictions that are imposed on the list of preferred prescription drugs to be used for the Medicaid program.

Existing law requires the Department to create a Pharmacy and Therapeutics Committee to make decisions concerning the inclusion of therapeutic prescription drugs on the list of preferred prescription drugs to be used by the Medicaid program. (NRS 422.4025, 422.4035) Existing law requires the Committee to base its decisions on evidence of clinical efficacy and safety of prescription drugs without consideration of cost. (NRS 422.405) **Section 2** of this bill removes this requirement. Instead, **section 2** requires the Committee to determine whether one or more therapeutic prescription drugs in a class of drugs demonstrate significantly higher clinical efficacy and safety than other drugs in the class. If the Committee determines that one such drug exists, **section 2** requires the drug to be included on the list of preferred prescription drugs. If the Committee determines that multiple such drugs exist, **section 2** authorizes the Committee to consider cost effectiveness when determining which of those drugs should be included on the list of preferred prescription drugs.

Existing federal law requires certain information concerning the price of prescription drugs used in the Medicaid program to remain confidential. (42 U.S.C. 1396r-8) **Section 2** authorizes the Committee to close any portion of a meeting during which it considers the cost effectiveness of a prescription drug.

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

Section 1. Chapter 422 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, the Department shall directly manage, direct and coordinate all payments and rebates for prescription drugs and all other services and payments relating to the provision of prescription drugs under the State Plan for Medicaid and the Children's Health Insurance Program.

2. The Department may enter into a contract with a private insurer or pharmacy benefit manager for the provision of any services described in subsection 1. Such a contract:

(a) Must require the insurer or pharmacy benefit manager to disclose to the Department any information relating to the services covered by the contract, including, without limitation, information concerning dispensing fees, measures for the control of costs, rebates collected and paid and any fees and charges imposed by the pharmacy benefit manager pursuant to the contract.

(b) May require the insurer or pharmacy benefit manager to provide the entire amount of any rebates received for the purchase of prescription drugs to the Department.

3. As used in this section, "pharmacy benefit manager" has the meaning ascribed to it in NRS 683A.174.

Sec. 1.3. NRS 422.273 is hereby amended to read as follows:

422.273 1. For any Medicaid managed care program established in the State of Nevada, the Department shall contract only with a health maintenance organization that has:

(a) Negotiated in good faith with a federally-qualified health center to provide health care services for the health maintenance organization;

(b) Negotiated in good faith with the University Medical Center of Southern Nevada to provide inpatient and ambulatory services to recipients of Medicaid; and

(c) Negotiated in good faith with the University of Nevada School of Medicine to provide health care services to recipients of Medicaid.

➥ Nothing in this section shall be construed as exempting a federally-qualified health center, the University Medical Center of Southern Nevada or the University of Nevada School of Medicine from the requirements for contracting with the health maintenance organization.

2. During the development and implementation of any Medicaid managed care program, the Department shall cooperate with the University of Nevada School of Medicine by assisting in the provision of an adequate and diverse group of patients upon which the school may base its educational programs.

3. The University of Nevada School of Medicine may establish a nonprofit organization to assist in any research necessary for the development of a Medicaid managed care program, receive and accept gifts, grants and donations to support such a program and assist in establishing educational services about the program for recipients of Medicaid.

4. For the purpose of contracting with a Medicaid managed care program pursuant to this section, a health maintenance organization is exempt from the provisions of NRS 695C.123.

5. ***Except as authorized by section 1 of this act, the Department shall not contract with a managed care organization for any services relating to coverage of prescription drugs for recipients of Medicaid. Such coverage must be managed and coordinated by the Department in accordance with NRS 422.401 to 422.406, inclusive, and section 1 of this act.***

6. The provisions of this section apply to any managed care organization, including a health maintenance organization, that

provides health care services to recipients of Medicaid under the State Plan for Medicaid or the Children's Health Insurance Program pursuant to a contract with the Division. Such a managed care organization or health maintenance organization is not required to establish a system for conducting external reviews of adverse determinations in accordance with chapter 695B, 695C or 695G of NRS. This subsection does not exempt such a managed care organization or health maintenance organization for services provided pursuant to any other contract.

~~[6.]~~ ***7.*** As used in this section, unless the context otherwise requires:

(a) "Federally-qualified health center" has the meaning ascribed to it in 42 U.S.C. § 1396d(l)(2)(B).

(b) "Health maintenance organization" has the meaning ascribed to it in NRS 695C.030.

(c) "Managed care organization" has the meaning ascribed to it in NRS 695G.050.

Sec. 1.6. NRS 422.401 is hereby amended to read as follows:

422.401 As used in NRS 422.401 to 422.406, inclusive, ***and section 1 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 422.4015 and 422.402 have the meanings ascribed to them in those sections.

Sec. 1.9. NRS 422.4025 is hereby amended to read as follows:

422.4025 1. The Department shall, by regulation, develop a list of preferred prescription drugs to be used for the Medicaid program.

2. The Department shall, by regulation, establish a list of prescription drugs which must be excluded from any restrictions that are imposed on drugs that are on the list of preferred prescription drugs established pursuant to subsection 1. The list established pursuant to this subsection must include, without limitation:

(a) ~~[Atypical and typical antipsychotic medications that are prescribed for the treatment of a mental illness of a patient who is receiving services pursuant to Medicaid;~~

~~(b)]~~ Prescription drugs that are prescribed for the treatment of the human immunodeficiency virus or acquired immunodeficiency syndrome, including, without limitation, protease inhibitors and antiretroviral medications ***;***

~~[(c) Anticonvulsant medications;~~

~~(d)]~~ ***(b)*** Antirejection medications for organ transplants;

~~[(e) Antidiabetic medications;~~

~~(f)]~~ ***and***

(c) Antihemophilic medications ***.*** ~~[; and~~

~~(g) Any prescription drug which the Committee identifies as appropriate for exclusion from any restrictions that are imposed on drugs that are on the list of preferred prescription drugs.]~~

3. The regulations must provide that the Committee makes the final determination of:

(a) Whether a class of therapeutic prescription drugs is included on the list of preferred prescription drugs and is excluded from any restrictions that are imposed on drugs that are on the list of preferred prescription drugs;

(b) Which therapeutically equivalent prescription drugs will be reviewed for inclusion on the list of preferred prescription drugs and for exclusion from any restrictions that are imposed on drugs that are on the list of preferred prescription drugs; and

(c) Which prescription drugs should be excluded from any restrictions that are imposed on drugs that are on the list of preferred prescription drugs based on continuity of care concerning a specific diagnosis, condition, class of therapeutic prescription drugs or medical specialty.

4. The regulations must provide that each new pharmaceutical product and each existing pharmaceutical product for which there is new clinical evidence supporting its inclusion on the list of preferred prescription drugs must be made available pursuant to the Medicaid program with prior authorization until the Committee reviews the product or the evidence.

Sec. 2. NRS 422.405 is hereby amended to read as follows:

422.405 1. The Department shall, by regulation, set forth the duties of the Committee which must include, without limitation:

(a) Identifying the prescription drugs which should be included on the list of preferred prescription drugs developed by the Department for the Medicaid program pursuant to NRS 422.4025 and the prescription drugs which should be excluded from any restrictions that are imposed on drugs that are on the list of preferred prescription drugs;

(b) Identifying classes of therapeutic prescription drugs for its review and performing a clinical analysis of each drug included in each class that is identified for review; and

(c) Reviewing at least annually all classes of therapeutic prescription drugs on the list of preferred prescription drugs developed by the Department for the Medicaid program pursuant to NRS 422.4025.

2. The Department shall, by regulation, require the Committee to:

(a) ~~[Base its decisions on evidence of clinical efficacy and safety without consideration of the cost of the prescription drugs being considered by the Committee;~~

~~(b)~~] Review new pharmaceutical products in as expeditious a manner as possible; and

~~[(c)~~] ***(b)*** Consider new clinical evidence supporting the inclusion of an existing pharmaceutical product on the list of preferred prescription drugs developed by the Department for the Medicaid program and new clinical evidence supporting the exclusion of an existing pharmaceutical product from any restrictions that are imposed on drugs that are on the list of preferred prescription drugs in as expeditious a manner as possible.

3. The Department shall, by regulation, authorize the Committee to:

(a) In carrying out its duties, exercise clinical judgment and analyze peer review articles, published studies, and other medical and scientific information; and

(b) Establish subcommittees to analyze specific issues that arise as the Committee carries out its duties.

4. When identifying the prescription drugs to include on the list of preferred prescription drugs developed by the Department for the Medicaid program pursuant to NRS 422.4025, the Committee shall determine whether any therapeutic prescription drug in a class of drugs identified pursuant to paragraph (b) of subsection 1 demonstrates significantly higher clinical efficacy and safety than other drugs in the class. If the Committee:

(a) Identifies one such drug in a class, the drug must be included on the list of preferred prescription drugs without consideration of cost.

(b) Identifies two or more such drugs in a class with similarly high levels of clinical efficacy and safety or determines that all drugs in the class have similarly high levels of clinical efficacy and safety, the Committee may consider cost effectiveness, including, without limitation, the price of the drugs and any rebates or other discounts available, when determining which of those drugs to include on the list of preferred prescription drugs.

5. The Committee may close any portion of a meeting during which it considers the cost effectiveness of a prescription drug is considered pursuant to subsection 4. Any portion of a meeting that is closed pursuant to this subsection is not subject to the provisions of chapter 241 of NRS.

Sec. 3. NRS 241.016 is hereby amended to read as follows:

241.016 1. The meetings of a public body that are quasi-judicial in nature are subject to the provisions of this chapter.

2. The following are exempt from the requirements of this chapter:

(a) The Legislature of the State of Nevada.

(b) Judicial proceedings, including, without limitation, proceedings before the Commission on Judicial Selection and, except as otherwise provided in NRS 1.4687, the Commission on Judicial Discipline.

(c) Meetings of the State Board of Parole Commissioners when acting to grant, deny, continue or revoke the parole of a prisoner or to establish or modify the terms of the parole of a prisoner.

3. Any provision of law, including, without limitation, NRS 91.270, 219A.210, 228.495, 239C.140, 281A.350, 281A.690, 281A.735, 281A.760, 284.3629, 286.150, 287.0415, 287.04345, 287.338, 288.220, 289.387, 295.121, 360.247, 388.261, 388A.495, 388C.150, 388G.710, 388G.730, 392.147, 392.467, 394.1699, 396.3295, ***422.405,*** 433.534, 435.610, 463.110, 622.320, 622.340, 630.311, 630.336, 631.3635, 639.050, 642.518, 642.557, 686B.170, 696B.550, 703.196 and 706.1725, which:

(a) Provides that any meeting, hearing or other proceeding is not subject to the provisions of this chapter; or

(b) Otherwise authorizes or requires a closed meeting, hearing or proceeding,

➥ prevails over the general provisions of this chapter.

4. The exceptions provided to this chapter, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. This act becomes effective on July 1, 2019.

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