**Amendment No. 410**

Senate Amendment to Senate Bill No. 171 (BDR 57-848)

**Proposed by:** Senate Committee on Commerce and Labor

**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.

ALA/WLK Date: 4/19/2021

S.B. No. 171—Prohibits a pharmacy benefit manager from requiring a covered person to obtain a drug by mail. (BDR 57-848)

SENATE BILL NO. 171–SENATOR HARDY

MARCH 4, 2021

JOINT SPONSOR: ASSEMBLYWOMAN HARDY

Referred to Committee on Commerce and Labor

SUMMARY—~~[Prohibits a pharmacy benefit manager from requiring a covered person to obtain a drug by mail.]~~ **Revises provisions related to drugs and the prescription of drugs in this State.** (BDR 57-848)

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

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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 pharmacy benefit managers; prohibiting a pharmacy benefit manager from requiring a covered person to obtain a drug by mail ~~[.]~~ **or implementing a copayment accumulator program for certain drugs; clarifying that such prohibitions do not apply to certain contracts established by the Department of Health and Human Services; prohibiting certain insurers from implementing a copayment accumulator program for certain drugs;** and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law prohibits a pharmacy benefit manager from engaging in certain trade practices. (NRS 683A.179) **Section 1** of this bill additionally prohibits a pharmacy benefit manager from **: (1)** requiring a covered person to obtain a drug by mail ~~[.]~~ **; and (2) implementing a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug. Section 1 additionally provides that these new prohibitions do not apply to the Public Employees' Benefits Program.** **Section** ~~[2.]~~ **16** of this bill provides that ~~[this prohibition applies]~~ **these prohibitions apply** to a contract existing on July 1, 2021, for a pharmacy benefit manager to manage a pharmacy benefits plan for a third party to the extent the ~~[prohibition does]~~ **prohibitions do** not conflict with the contract. Under **section** ~~[2,]~~ **16,** if such a conflict exists, the provisions of the contract control.

**Sections 2, 4, 5, 7-10 and 12-14 of this bill prohibit any insurer, other than Medicaid, the Children's Health Insurance Program and insurance provided by the state and local governments for their employees, from implementing a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug. Sections 3, 6 and 11 of this bill make conforming changes by indicating the proper placement of certain sections of this act in the Nevada Revised Statutes.**

**Section 15 of this bill clarifies the term "pharmacy benefit manager" for contracts between the Department of Health and Human Services and a pharmacy benefit**

**manager or health maintenance organization that manages the provision of prescription drugs under Medicaid or the Children's Health Insurance Program.**

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

**Section 1.** NRS 683A.179 is hereby amended to read as follows:

683A.179 1. A pharmacy benefit manager shall not:

(a) Prohibit a pharmacist or pharmacy from providing information to a covered person concerning:

(1) The amount of any copayment or coinsurance for a prescription drug; or

(2) The availability of a less expensive alternative or generic drug including, without limitation, information concerning clinical efficacy of such a drug;

(b) Penalize a pharmacist or pharmacy for providing the information described in paragraph (a) or selling a less expensive alternative or generic drug to a covered person;

(c) Prohibit a pharmacy from offering or providing delivery services directly to a covered person as an ancillary service of the pharmacy; ~~[or]~~

(d) If the pharmacy benefit manager manages a pharmacy benefits plan that provides coverage through a network plan, charge a copayment or coinsurance for a prescription drug in an amount that is greater than the total amount paid to a pharmacy that is in the network of providers under contract with the third party ~~[.]~~ ***; ~~[or]~~***

***(e) Require a covered person to obtain any drug by mail ~~[.]~~ ; or***

***(f) Implement a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug.***

2. The provisions of this section:

(a) Must not be construed to authorize a pharmacist to dispense a drug that has not been prescribed by a practitioner, as defined in NRS 639.0125.

(b) Do not apply to an institutional pharmacy, as defined in NRS 639.0085, or a pharmacist working in such a pharmacy as an employee or independent contractor.

3. ***The provisions of paragraphs (e) and (f) of subsection 1 do not apply to the Public Employees' Benefits Program established pursuant to NRS 287.0402 to 287.049, inclusive.***

***4.*** As used in this section ~~[, "network]~~ ***:***

***(a) "Copayment accumulator program" means a program that prevents a payment made by use of a copay assistance coupon, copay savings program or other payment assistance program offered by a third party from applying towards the deductible or maximum out-of-pocket spending of the covered person.***

***(b) "Network*** plan" means a health benefit plan offered by a health carrier under which the financing and delivery of medical care is provided, in whole or in part, through a defined set of providers under contract with the carrier. The term does not include an arrangement for the financing of premiums.

***Sec. 2.*** **Chapter 689A of NRS is hereby amended by adding thereto a new section to read as follows:**

***1. An insurer that offers or issues a policy of health insurance shall not implement a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug.***

***2. As used in this section, "copayment accumulator program" means a program that prevents a payment made by use of a copay assistance coupon, copay savings program or other payment assistance program offered by a third party from applying towards the deductible or maximum out-of-pocket spending of the insured.***

***Sec. 3.*** **NRS 689A.330 is hereby amended to read as follows:**

689A.330 If any policy is issued by a domestic insurer for delivery to a person residing in another state, and if the insurance commissioner or corresponding public officer of that other state has informed the Commissioner that the policy is not subject to approval or disapproval by that officer, the Commissioner may by ruling require that the policy meet the standards set forth in NRS 689A.030 to 689A.320, inclusive ~~.~~ ***, and section 2 of this act.***

***Sec. 4.*** **Chapter 689B of NRS is hereby amended by adding thereto a new section to read as follows:**

***1. An insurer that offers or issues a policy of group health insurance shall not implement a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug.***

***2. As used in this section, "copayment accumulator program" means a program that prevents a payment made by use of a copay assistance coupon, copay savings program or other payment assistance program offered by a third party from applying towards the deductible or maximum out-of-pocket spending of the insured.***

***Sec. 5.*** **Chapter 689C of NRS is hereby amended by adding thereto a new section to read as follows:**

***1. A carrier that offers or issues a health benefit plan shall not implement a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug.***

***2. As used in this section, "copayment accumulator program" means a program that prevents a payment made by use of a copay assistance coupon, copay savings program or other payment assistance program offered by a third party from applying towards the deductible or maximum out-of-pocket spending of the insured.***

***Sec. 6.*** **NRS 689C.425 is hereby amended to read as follows:**

689C.425 A voluntary purchasing group and any contract issued to such a group pursuant to NRS 689C.360 to 689C.600, inclusive, are subject to the provisions of NRS 689C.015 to 689C.355, inclusive, ***and section 5 of this act*** to the extent applicable and not in conflict with the express provisions of NRS 687B.408 and 689C.360 to 689C.600, inclusive.

***Sec. 7.*** **Chapter 695A of NRS is hereby amended by adding thereto a new section to read as follows:**

***1. A society that offers or issues a benefit contract shall not implement a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug.***

***2. As used in this section, "copayment accumulator program" means a program that prevents a payment made by use of a copay assistance coupon, copay savings program or other payment assistance program offered by a third party from applying towards the deductible or maximum out-of-pocket spending of the insured.***

***Sec. 8.*** **Chapter 695B of NRS is hereby amended by adding thereto a new section to read as follows:**

***1. An insurer that offers or issues a contract for hospital or medical services shall not implement a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug.***

***2. As used in this section, "copayment accumulator program" means a program that prevents a payment made by use of a copay assistance coupon, copay savings program or other payment assistance program offered by a third party from applying towards the deductible or maximum out-of-pocket spending of the insured.***

***Sec. 9.*** **Chapter 695C of NRS is hereby amended by adding thereto a new section to read as follows:**

***1. A health maintenance organization that offers or issues a health care plan shall not implement a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug.***

***2. As used in this section, "copayment accumulator program" means a program that prevents a payment made by use of a copay assistance coupon, copay savings program or other payment assistance program offered by a third party from applying towards the deductible or maximum out-of-pocket spending of the enrollee.***

***Sec. 10.*** **NRS 695C.050 is hereby amended to read as follows:**

695C.050 1. Except as otherwise provided in this chapter or in specific provisions of this title, the provisions of this title are not applicable to any health maintenance organization granted a certificate of authority under this chapter. This provision does not apply to an insurer licensed and regulated pursuant to this title except with respect to its activities as a health maintenance organization authorized and regulated pursuant to this chapter.

2. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, must not be construed to violate any provision of law relating to solicitation or advertising by practitioners of a healing art.

3. Any health maintenance organization authorized under this chapter shall not be deemed to be practicing medicine and is exempt from the provisions of chapter 630 of NRS.

4. The provisions of NRS 695C.110, 695C.125, 695C.1691, 695C.1693, 695C.170, 695C.1703, 695C.1705, 695C.1709 to 695C.173, inclusive, 695C.1733, 695C.17335, 695C.1734, 695C.1751, 695C.1755, 695C.176 to 695C.200, inclusive, ***and section 9 of this act*** and 695C.265 do not apply to a health maintenance organization that provides health care services through managed care to recipients of Medicaid under the State Plan for Medicaid or insurance pursuant to the Children's Health Insurance Program pursuant to a contract with the Division of Health Care Financing and Policy of the Department of Health and Human Services. This subsection does not exempt a health maintenance organization from any provision of this chapter for services provided pursuant to any other contract.

5. The provisions of NRS 695C.1694 to 695C.1698, inclusive, 695C.1701, 695C.1708, 695C.1728, 695C.1731, 695C.17345, 695C.1735, 695C.1745 and 695C.1757 apply to a health maintenance organization that provides health care services through managed care to recipients of Medicaid under the State Plan for Medicaid.

***Sec. 11.*** **NRS 695C.330 is hereby amended to read as follows:**

695C.330 1. The Commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization pursuant to the provisions of this chapter if the Commissioner finds that any of the following conditions exist:

(a) The health maintenance organization is operating significantly in contravention of its basic organizational document, its health care plan or in a manner contrary to that described in and reasonably inferred from any other information submitted pursuant to NRS 695C.060, 695C.070 and 695C.140, unless

any amendments to those submissions have been filed with and approved by the Commissioner;

(b) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of NRS 695C.1691 to 695C.200, inclusive, ***and section 9 of this act*** or 695C.207;

(c) The health care plan does not furnish comprehensive health care services as provided for in NRS 695C.060;

(d) The Commissioner certifies that the health maintenance organization:

(1) Does not meet the requirements of subsection 1 of NRS 695C.080; or

(2) Is unable to fulfill its obligations to furnish health care services as required under its health care plan;

(e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(f) The health maintenance organization has failed to put into effect a mechanism affording the enrollees an opportunity to participate in matters relating to the content of programs pursuant to NRS 695C.110;

(g) The health maintenance organization has failed to put into effect the system required by NRS 695C.260 for:

(1) Resolving complaints in a manner reasonably to dispose of valid complaints; and

(2) Conducting external reviews of adverse determinations that comply with the provisions of NRS 695G.241 to 695G.310, inclusive;

(h) The health maintenance organization or any person on its behalf has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

(i) The continued operation of the health maintenance organization would be hazardous to its enrollees or creditors or to the general public;

(j) The health maintenance organization fails to provide the coverage required by NRS 695C.1691; or

(k) The health maintenance organization has otherwise failed to comply substantially with the provisions of this chapter.

2. A certificate of authority must be suspended or revoked only after compliance with the requirements of NRS 695C.340.

3. If the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of that suspension, enroll any additional groups or new individual contracts, unless those groups or persons were contracted for before the date of suspension.

4. If the certificate of authority of a health maintenance organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation of any kind. The Commissioner may, by written order, permit such further operation of the organization as the Commissioner may find to be in the best interest of enrollees to the end that enrollees are afforded the greatest practical opportunity to obtain continuing coverage for health care.

***Sec. 12.*** **Chapter 695F of NRS is hereby amended by adding thereto a new section to read as follows:**

***1. A prepaid limited health service organization that offers or issues an evidence of coverage shall not implement a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug.***

***2. As used in this section, "copayment accumulator program" means a program that prevents a payment made by use of a copay assistance coupon, copay savings program or other payment assistance program offered by a third party from applying towards the deductible or maximum out-of-pocket spending of the enrollee.***

***Sec. 13.*** **Chapter 695G of NRS is hereby amended by adding thereto a new section to read as follows:**

***1. A managed care organization that offers or issues a health care plan shall not implement a copayment accumulator program for any drug for which there is not a less expensive alternative or generic drug.***

***2. As used in this section, "copayment accumulator program" means a program that prevents a payment made by use of a copay assistance coupon, copay savings program or other payment assistance program offered by a third party from applying towards the deductible or maximum out-of-pocket spending of the insured.***

***Sec. 14.*** **NRS 695G.090 is hereby amended to read as follows:**

695G.090 1. Except as otherwise provided in subsection 3, the provisions of this chapter apply to each organization and insurer that operates as a managed care organization and may include, without limitation, an insurer that issues a policy of health insurance, an insurer that issues a policy of individual or group health insurance, a carrier serving small employers, a fraternal benefit society, a hospital or medical service corporation and a health maintenance organization.

2. In addition to the provisions of this chapter, each managed care organization shall comply with:

(a) The provisions of chapter 686A of NRS, including all obligations and remedies set forth therein; and

(b) Any other applicable provision of this title.

3. The provisions of NRS 695G.164, 695G.1645, 695G.167, 695G.200 to 695G.230, inclusive, and 695G.430 ***and section 13 of this act*** do not apply to a managed care organization that provides health care services to recipients of Medicaid under the State Plan for Medicaid or insurance pursuant to the Children's Health Insurance Program pursuant to a contract with the Division of Health Care Financing and Policy of the Department of Health and Human Services. This subsection does not exempt a managed care organization from any provision of this chapter for services provided pursuant to any other contract.

***Sec. 15.*** **NRS 422.4023 is hereby amended to read as follows:**

422.4023 "Pharmacy benefit manager" ~~[has the meaning ascribed to it in NRS 683A.174.]~~ ***means an entity, including, without limitation, any authorized subcontractor of the entity, that contracts with or is employed by the Department and manages the provision of prescription drugs for the Department under the State Plan for Medicaid or the Children's Health Insurance Program.***

~~[Sec. 2.]~~ ***Sec. 16.*** 1. The amendatory provisions of section 1 of this act apply to a contract existing on July 1, 2021, for a pharmacy benefit manager to manage a pharmacy benefits plan for a third party to the extent that the amendatory provisions of section 1 of this act do not conflict with the terms of the contract. To the extent that a conflict exists, the provisions of the contract control.

2. As used in this section:

(a) "Pharmacy benefit manager" has the meaning ascribed to it in NRS 683A.174.

(b) "Pharmacy benefits plan" has the meaning ascribed to it in NRS 683A.175.

(c) "Third party" has the meaning ascribed to it in NRS 683A.176.

~~[Sec. 3.]~~ ***Sec. 17.*** This act becomes effective on July 1, 2021.