

Amendment No. 269

Senate Amendment to Senate Bill No. 396	(BDR 38-443)
Proposed by: Senate Committee on Health and Human Services	
Amends: Summary: No 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) 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/BJF



Date: 4/15/2021

S.B. No. 396—Revises provisions relating to the purchasing of prescription drugs.
(BDR 38-443)



SENATE BILL NO. 396—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE COMMITTEE TO CONDUCT
AN INTERIM STUDY CONCERNING THE
COSTS OF PRESCRIPTION DRUGS)

MARCH 26, 2021

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the purchasing of prescription drugs.
(BDR 38-443)

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 prescription drugs; ~~authorizing for profit health benefit plans to participate in certain arrangements for the purchasing of prescription drugs;~~ authorizing ~~the Department of Health and Human Services~~ public agencies of this State to enter into agreements with certain entities in other jurisdictions for the collaborative purchasing of prescription drugs; exempting a contract between the Department of Health and Human Services and a pharmacy benefit manager or health maintenance organization entered into pursuant to such an agreement from certain requirements; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law ~~requires the Department of Health and Human Services to develop a list of preferred prescription drugs to be used for the Medicaid program and the Children's Health Insurance Program. (NRS 422.4025) Existing law additionally authorizes nonprofit health plans and certain public health plans to use the list of preferred prescription drugs developed by the Department as their formulary and obtain prescription drugs through the purchasing agreements negotiated by the Department. (NRS 287.012, 287.0433, 422.4025, 687B.407) Existing law authorizes the Department to enter into a contract with a pharmacy benefit manager or health maintenance organization to manage, direct and coordinate payments and rebates for prescription drugs or other services and payments relating to the provision of prescription drugs under the State Plan for Medicaid and the Children's Health Insurance Program. (NRS 422.4053)~~ authorizes a public agency of this State to enter into a joint or cooperative agreement with a public agency of this State or another state or the Federal Government to exercise any power, privilege or authority of the public agency. (NRS 277.110) Existing law additionally authorizes state agencies to cooperate with other public entities within or outside of this State to purchase prescription drugs, pharmaceutical services, or medical supplies and related services. (NRS 333.435)

Sections 3.3 and 3.6 of this bill additionally authorize public agencies in this State to enter into agreements for the purchase of prescription drugs, pharmaceutical services, or medical supplies and related services with private entities within or outside of this State. Sections 1 and 2 of this bill ~~additionally~~ authorize the Department of Health and Human Services to enter into ~~a contract with one or more public or private entities from the District of Columbia and other states and territories of the United States for the collaborative purchasing of prescription drugs. Sections 1 and 4 of this bill authorize for-profit health plans in this State to use the list of preferred prescription drugs developed by the Department as their formulary and participate in agreements negotiated by the Department or a pharmacy benefit manager, health maintenance organization or entity in another jurisdiction for the purchasing of prescription drugs.~~ such an agreement for the purchase of prescription drugs for Medicaid or the Children's Health Insurance Program.

Existing law imposes certain requirements concerning transparency, rebates and auditing on any contract between the Department and a pharmacy benefit manager or health maintenance organization to manage, direct and coordinate payments and rebates for prescription drugs or other services and payments relating to the provision of prescription drugs under the State Plan for Medicaid and the Children's Health Insurance Program. (NRS 422.4053, 422.4056) **Sections 2 and 3** of this bill exempt a contract between the Department and a pharmacy benefit manager or health maintenance organization entered into pursuant to an agreement for the collaborative purchasing of prescription drugs from those requirements.

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

Section 1. NRS 422.4025 is hereby amended to read as follows:

422.4025 1. The Department shall:

(a) By regulation, develop a list of preferred prescription drugs to be used for the Medicaid program and the Children's Health Insurance Program, and each public or nonprofit health benefit plan that elects to use the list of preferred prescription drugs as its formulary pursuant to NRS 287.012, 287.0433 or 687B.407; and

(b) Negotiate and enter into agreements to purchase the drugs included on the list of preferred prescription drugs on behalf of the health benefit plans described in paragraph (a) or enter into a contract pursuant to NRS 422.4053 with a pharmacy benefit manager, ~~for~~ health maintenance organization ~~or one or more public or private entities in this State, the District of Columbia or other jurisdictions~~ states or territories of the United States, as appropriate, to negotiate such agreements.

2. The Department shall, by regulation, establish a list of prescription drugs which must be excluded from any restrictions that are imposed by the Medicaid program 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) 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;

(b) Antirejection medications for organ transplants;

(c) Antihemophilic medications; and

(d) Any prescription drug which the Board identifies as appropriate for exclusion from any restrictions that are imposed by the Medicaid program on drugs that are on the list of preferred prescription drugs.

3. The regulations must provide that the Board 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 by the Medicaid program 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 by the Medicaid program 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 by the Medicaid program 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 list of preferred prescription drugs established pursuant to subsection 1 must include, without limitation, any prescription drug determined by the Board to be essential for treating sickle cell disease and its variants.

5. 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 Board reviews the product or the evidence.

6. On or before February 1 of each year, the Department shall:

(a) Compile a report concerning the agreements negotiated pursuant to paragraph (b) of subsection 1 and contracts entered into pursuant to NRS 422.4053 which must include, without limitation, the financial effects of obtaining prescription drugs through those agreements and contracts, in total and aggregated separately for agreements negotiated by the Department, contracts with a pharmacy benefit manager, ~~and~~ contracts with a health maintenance organization ~~and~~ *and contracts with public and private entities from this State, the District of Columbia and other states and territories of the United States;* and

(b) Post the report on an Internet website maintained by the Department and submit the report to the Director of the Legislative Counsel Bureau for transmittal to:

(1) In odd-numbered years, the Legislature; or

(2) In even-numbered years, the Legislative Commission.

Sec. 2. NRS 422.4053 is hereby amended to read as follows:

422.4053 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) A pharmacy benefit manager for the provision of any services described in subsection 1.

(b) A health maintenance organization pursuant to NRS 422.273 for the provision of any of the services described in subsection 1 for recipients of Medicaid or recipients of insurance through the Children's Health Insurance Program who receive coverage through a Medicaid managed care program.

(c) *One or more public or private entities from this State, the District of Columbia ~~and~~ or other states ~~and~~ or territories of the United States for the collaborative purchasing of prescription drugs ~~and~~ in accordance with subsection 3 of NRS 277.110. If such a contract requires the Department to enter into a contract with a pharmacy benefit manager or health maintenance organization for the provision of any of the services described in subsection 1, the contract is*

1 *not subject to the provisions of subsection 3, paragraph (b) of subsection 4 or*
2 *NRS 422.4056.*

3 3. ~~1A)~~ *Except as otherwise provided in paragraph (c) of subsection 2, a*
4 contract entered into pursuant to *paragraph (a) or (b) of subsection 2* must:

5 (a) Include the provisions required by NRS 422.4056; and

6 (b) Require the pharmacy benefit manager or health maintenance organization,
7 as applicable, to disclose to the Department any information relating to the services
8 covered by the contract, including, without limitation, information concerning
9 dispensing fees, measures for the control of costs, rebates collected and paid and
10 any fees and charges imposed by the pharmacy benefit manager or health
11 maintenance organization pursuant to the contract.

12 4. In addition to meeting the requirements of subsection 3, a contract entered
13 into pursuant to:

14 (a) Paragraph (a) of subsection 2 may require the pharmacy benefit manager to
15 provide the entire amount of any rebates received for the purchase of prescription
16 drugs, including, without limitation, rebates for the purchase of prescription drugs
17 by an entity other than the Department, to the Department.

18 (b) Paragraph (b) of subsection 2 must, *except as otherwise provided in*
19 *paragraph (c) of subsection 2*, require the health maintenance organization to
20 provide to the Department the entire amount of any rebates received for the
21 purchase of prescription drugs, including, without limitation, rebates for the
22 purchase of prescription drugs by an entity other than the Department, less an
23 administrative fee in an amount prescribed by the contract. The Department shall
24 adopt policies prescribing the maximum amount of such an administrative fee.

25 **Sec. 3.** NRS 422.4056 is hereby amended to read as follows:

26 422.4056 1. ~~Any)~~ *Except as otherwise provided in paragraph (c) of*
27 *subsection 2 of NRS 422.4053, any* contract between the Department and a
28 pharmacy benefit manager or health maintenance organization entered into
29 pursuant to NRS 422.4053 must require the pharmacy benefit manager or health
30 maintenance organization, as applicable, to:

31 (a) Submit to and cooperate with an annual audit by the Department to evaluate
32 the compliance of the pharmacy benefit manager or health maintenance
33 organization with the agreement and generally accepted accounting and business
34 practices. The audit must analyze all claims processed by the pharmacy benefit
35 manager or health maintenance organization pursuant to the agreement.

36 (b) Obtain from an independent accountant, at the expense of the pharmacy
37 benefit manager or health maintenance organization, as applicable, an annual audit
38 of internal controls to ensure the integrity of financial transactions and claims
39 processing.

40 2. The Department shall post the results of any audit conducted pursuant to
41 paragraph (a) of subsection 1 on an Internet website maintained by the Department.

42 **Sec. 3.3.** NRS 277.110 is hereby amended to read as follows:

43 277.110 Except as limited by NRS 280.105 and 711.175:

44 1. Any power, privilege or authority exercised or capable of exercise by a
45 public agency of this State, including, but not limited to, law enforcement, may be
46 exercised jointly with any other public agency of this State, and jointly with any
47 public agency of any other state or of the United States to the extent that the laws of
48 such other state or of the United States permit such joint exercise. Any agency of
49 this State when acting jointly with any other public agency may exercise all the
50 powers, privileges and authority conferred by NRS 277.080 to 277.180, inclusive,
51 upon a public agency.

2. Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of NRS 277.080 to 277.170, inclusive.

3. A public agency may enter into an agreement with any other public agency or private entity in this State, the District of Columbia or any other state or territory of the United States or any agency of the United States for the purchase of prescription drugs, pharmaceutical services, or medical supplies and related services to the extent that the laws applicable to each participating agency and entity permit such an agreement.

4. If it is reasonably foreseeable that a participating public agency will be required to:

(a) Expend more than \$25,000 to carry out ~~such~~ an agreement ~~that~~ described in this section, the agreement:

(1) Must be in writing.

(2) Becomes effective only upon ratification by appropriate ordinance, resolution or otherwise pursuant to law on the part of the governing bodies of the participating public agencies.

(b) Expend \$25,000 or less to carry out such an agreement, each participating public agency shall maintain written documentation of the terms of the agreement for at least 3 years after the date on which the agreement was entered into.

Sec. 3.6. NRS 333.435 is hereby amended to read as follows:

333.435 1. Except as otherwise provided in subsection 2, a using agency shall purchase prescription drugs, pharmaceutical services, or medical supplies and related services, or any combination thereof, only through the Purchasing Division.

2. A using agency may, on its own behalf or in cooperation with one or more other using agencies or in accordance with the provisions of subsection 3 of NRS 277.110, other governmental entities or private entities within or outside this State, purchase prescription drugs, pharmaceutical services, or medical supplies and related services from an entity other than the Purchasing Division if the using agency or using agencies or other governmental entities, as applicable, can obtain the best value for prescription drugs, pharmaceutical services, or medical supplies and related services from the other entity and the Purchasing Division is unable to match or exceed that best value in a timely manner.

3. If a using agency purchases prescription drugs, pharmaceutical services, or medical supplies and related services from an entity other than the Purchasing Division pursuant to subsection 2, the using agency shall report to the Purchasing Division, within 10 days after the initial purchase:

(a) The purchase price for the prescription drugs, pharmaceutical services, or medical supplies and related services; and

(b) The name, address and telephone number of the entity that sold the using agency the prescription drugs, pharmaceutical services, or medical supplies and related services.

Sec. 4. ~~[NRS 687B.407 is hereby amended to read as follows:~~

~~687B.407 1. A [nonprofit] health benefit plan may use the list of preferred prescription drugs developed by the Department of Health and Human Services pursuant to subsection 1 of NRS 422.4025 as its formulary and obtain prescription drugs through the purchasing agreements negotiated by the Department pursuant to that section by notifying the Department in the form prescribed by the Department.~~

~~2. As used in this section "health benefit plan" has the meaning ascribed to it in NRS 422.4021.]~~ **(Deleted by amendment.)**

Sec. 5. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

1 **Sec. 6.** This act becomes effective upon passage and approval.