SENATE BILL NO. 380–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 governing the reporting of data concerning the prices of prescription drugs. (BDR 40-445)

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; expanding the information that is reported under the program for tracking and reporting of information concerning the pricing of prescription drugs; requiring wholesalers to make a report; requiring certain reporting entities to affirm the accuracy of the information in the reports; revising requirements concerning the report of the Department of Health and Human Services on the pricing of prescription drugs; revising the authorized uses of certain administrative penalties; excluding certain information from protection as a trade secret; requiring an individual health insurer to publish notice if certain drugs are removed from its formulary; 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 and asthma in this State; and (2) a list of such prescription drugs that have been subject to a significant price increase. (NRS 439B.630) **Sections 1.3-4 and 9.5** of this bill define certain terms relating to prescription drugs. **Section 10** of this bill: (1) removes the requirement that the

Department compile a list of essential asthma and diabetes drugs and instead requires the Department to compile a list of prescription drugs with a wholesale acquisition cost that exceeds $40 for a course of therapy; and (2) revises the manner in which a significant price increase is determined.

Existing law requires a pharmacy benefit manager to report certain information concerning prescription drugs to the Department. (NRS 439B.645) **Section 13** of this bill revises and expands the information that a pharmacy benefit manager is required to report. **Section 6** of this bill requires a wholesaler of prescription drugs to report to the Department certain information concerning the drugs on the list of drugs with a wholesale acquisition cost that exceeds $40 for a course of therapy. **Section 16** of this bill requires the Department to adopt regulations establishing the form and manner in which wholesalers are required to report that information. **Sections 6 and 11-13** of this bill require a report submitted by a manufacturer, pharmacy benefit manager or wholesaler to be accompanied by statement signed under penalty of perjury affirming the accuracy of the information in the report.

Existing law provides that pharmacy benefit managers are not required to report information relating to prescription drug coverage that is a part of a plan regulated under the federal Employee Retirement Income Security Act, but that such a plan may require a pharmacy benefit manager to report that information by contract. (NRS 439B.645) In *Rutledge v. Pharm. Care Mgmt. Ass'n*, the United States Supreme Court held that states are authorized to impose general requirements governing pharmacy benefit managers on pharmacy benefit managers that manage such coverage. (141 S. Ct. 474, 481 (2020)) **Section 13** removes the exemption for such coverage from requirements for the reporting of information by pharmacy benefit managers, thereby requiring a pharmacy benefit manager to report information relating to such coverage regardless of whether they are required to do so by contract.

Existing law requires the Department to analyze the information reported concerning the prices of prescription drugs and compile a report concerning the reasons for and effect of the pricing. (NRS 439B.650) **Section 14** of this bill: (1) revises the information that must be included in that report; and (2) requires the Department to present the findings in the report at a public hearing.

Existing law authorizes the Department to impose an administrative penalty against a manufacturer, pharmacy benefit manager or nonprofit organization that fails to report required information. (NRS 439B.695) **Section 18** of this bill: (1) authorizes the imposition of an administrative penalty against a wholesaler that fails to report the information required by **section 6**; and (2) revises the manner in which the Department is authorized to use the money collected through those penalties.

Existing law excludes information reported by manufacturers, pharmaceutical sales representatives and pharmacy benefit managers from protection under trade secret law in this State. (NRS 600A.030) **Section 19** of this bill similarly excludes information reported by wholesalers from such protection.

Existing law requires an insurer that offers or issues a policy of individual health insurance to publish on an Internet website that is operated by the insurer and is 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 essential diabetes and asthma drugs compiled by the Department; and (2) have been removed or will be removed from the formulary during the current plan year or the next plan year. (NRS 689.405) **Section 19.5** of this bill revises that reference to instead refer to the list of prescription drugs with a wholesale acquisition cost that exceeds $40 for a course of therapy.

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

Section 1. Chapter 439B of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 to 8, inclusive, of this act.

Sec. 1.3. ***"National Drug Code" means the numerical code assigned to a prescription drug by the United States Food and Drug Administration.***

Sec. 1.6. ***1. "Rebate" means a discount or concession that affects the price of a prescription drug which is provided by the manufacture of the drug to:***

(a) A third party;

(b) A pharmacy benefit manager after the pharmacy benefit manager has processed a claim from a pharmacy, an institutional pharmacy, as defined in NRS 639.0085, or a pharmacist; or

(c) A wholesaler.

2. The term does not include a bona fide service fee, as defined in 42 C.F.R. § 447.502.

Sec. 2. ***"Third party" means:***

1. An insurer, as that term is defined in NRS 679B.540;

2. A health benefit plan, as that term is defined in NRS 687B.470, for employees which provides coverage for prescription drugs;

3. The Public Employees' Benefits Program established pursuant to subsection 1 of NRS 287.043;

4. A governing body of a county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency that provides health coverage to employees through a self-insurance reserve fund pursuant to NRS 287.010;

5. The Department, with regard to Medicaid and the Children's Health Insurance Program; and

6. Any other insurer or organization providing coverage of prescription drugs in accordance with state or federal law.

Sec. 3. (Deleted by amendment.)

Sec. 3.5. ***"WAC unit" means the lowest identifiable quantity of a prescription drug that is dispensed, excluding any diluent and without reference to volume measurements for liquids.***

Sec. 4. ***"Wholesaler" has the meaning ascribed to it in NRS 639.016.***

Sec. 5. (Deleted by amendment.)

Sec. 6. ***1. On or before April 1 of each year, a wholesaler that sells a prescription drug that appears on the most current list compiled by the Department pursuant to subsection 1 of***

NRS 439B.630 for use in this State shall prepare and submit to the Department, in the form prescribed by the Department:

(a) A report which includes the information prescribed by subsection 2; and

(b) A statement signed by the person responsible for compiling the report affirming, under penalty of perjury, the accuracy of the information in the report.

2. The report submitted pursuant to paragraph (a) of subsection 1 must include, for each drug described in subsection 1:

(a) The current wholesale acquisition cost of the drug and the minimum and maximum wholesale acquisition cost of the drug during the immediately preceding calendar year;

(b) The total volume in WAC units of the drug sold by the wholesaler for use in this State during the immediately preceding calendar year;

(c) The aggregate amount of rebates negotiated directly with the manufacturer of the drug for sales of the drug for use in this State during the immediately preceding calendar year;

(d) The aggregate amount of rebates negotiated with pharmacies, pharmacy benefit managers and other entities for sales of the drug for use in this State during the immediately preceding calendar year; and

(e) Any other information prescribed by regulation of the Department.

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 439B.600 is hereby amended to read as follows:

439B.600 As used in NRS 439B.600 to 439B.695, inclusive, ***and sections 1.3 to 8, inclusive, of this act,*** unless the context otherwise requires, the words and terms defined in NRS 439B.605 to 439B.620, inclusive, ***and sections 1.3 to 4, inclusive, of this act*** have the meanings ascribed to them in those sections.

Sec. 9.5. NRS 439B.620 is hereby amended to read as follows:

439B.620 "Wholesale acquisition cost" means the manufacturer's list price for a prescription drug ~~[to wholesalers or direct purchasers in the United States, not including any discounts, rebates or reductions in price, as reported in wholesale price guides or other publications of drug pricing data.]~~ ***with a unique National Drug Code.***

Sec. 10. 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.~~] ***with a wholesale acquisition cost that exceeds $40 for a course of therapy. As used in this subsection, "course of therapy" means:***

(a) Except as otherwise provided in paragraph (b), the recommended daily dosage of a prescription drug, as set forth on the label for the prescription drug approved by the United States Food and Drug Administration, for 30 days.

(b) If the normal course of treatment using a prescription drug is less than 30 days, the recommended daily dosage of a prescription drug, as set forth on the label for the prescription drug approved by the United States Food and Drug Administration, for the duration of the recommended course of treatment.

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]~~ ***Ten percent*** during the immediately preceding calendar year; or

(b) ~~[Twice the percentage increase in the Consumer Price Index, Medical Care Component]~~ ***Twenty percent*** during the immediately preceding 2 calendar years.

Sec. 11. NRS 439B.635 is hereby amended to read as follows:

439B.635 ***1.*** On or before April 1 of each year, the manufacturer of a prescription drug that appears on the most current list compiled by the Department pursuant to subsection 1 of NRS 439B.630 shall prepare and submit to the Department, in the form prescribed by the Department ~~[, a]~~ ***:***

(a) A report which ***includes the information prescribed by subsection 2; and***

(b) A statement signed by the person responsible for compiling the report under penalty of perjury affirming the accuracy of the information in the report.

2. The report submitted pursuant to paragraph (a) of subsection 1 must include ~~[:~~

~~1.]~~ ***, for each drug described in subsection 1:***

(a) The National Drug Code for the drug, reported in numeric form;

(b) The name, strength, dosage form and package size of the drug;

(c) The costs of producing the drug;

~~[2.]~~ ***(d)*** The total administrative expenditures relating to the drug, including marketing and advertising costs;

~~[3.]~~ ***(e)*** The profit that the manufacturer has earned from the drug and the percentage of the manufacturer's total profit for the period during which the manufacturer has marketed the drug for sale that is attributable to the drug;

~~[4.]~~ ***(f)*** The total amount of financial assistance that the manufacturer has provided through any patient prescription assistance program;

~~[5.]~~ ***(g)*** The cost associated with coupons provided directly to consumers and for programs to assist consumers in paying copayments, and the cost to the manufacturer attributable to the redemption of those coupons and the use of those programs;

~~[6.]~~ ***(h)*** The wholesale acquisition cost of the drug;

~~[7.]~~ ***(i)*** A history of any increases in the wholesale acquisition cost of the drug over the 5 years immediately preceding the date on which the report is submitted, including the amount of each such increase expressed as a percentage of the total wholesale acquisition cost of the drug, the month and year in which each increase became effective and any explanation for the increase;

~~[8.]~~ ***(j)*** The aggregate amount of all rebates that the manufacturer has provided to pharmacy benefit managers for sales of the drug within this State; ~~[and~~

~~9.]~~ ***(k) If the manufacturer acquired the intellectual property for the drug within the immediately preceding 5 years:***

(1) The name of the entity from which that intellectual property was acquired;

(2) The date of the acquisition and the purchase price;

(3) The wholesale acquisition cost at the time of the acquisition;

(4) The wholesale acquisition cost of the drug 1 year before the date of the acquisition; and

(5) The year that the drug was first made available for sale; and

(l) Any additional information prescribed by regulation of the Department for the purpose of analyzing the cost of prescription drugs that appear on the list compiled pursuant to subsection 1 of NRS 439B.630, trends in those costs and rebates available for such drugs.

Sec. 12. NRS 439B.640 is hereby amended to read as follows:

439B.640 ***1.*** On or before April 1 of a year in which a drug is included on the list compiled pursuant to subsection 2 of NRS 439B.630, the manufacturer of the drug shall submit to the Department ~~[a]~~ ***:***

(a) A report describing the reasons for the increase in the wholesale acquisition cost of the drug described in that subsection ~~[.]~~ ***; and***

(b) A statement signed by the person responsible for compiling the report under penalty of perjury affirming the accuracy of the information in the report.

2. The report ***submitted pursuant to paragraph (a) of subsection 1*** must include, without limitation:

~~[1.]~~ ***(a)*** A list of each factor that has contributed to the increase;

~~[2.]~~ ***(b)*** The percentage of the total increase that is attributable to each factor;

~~[3.]~~ ***(c)*** An explanation of the role of each factor in the increase; and

~~[4.]~~ ***(d)*** Any other information prescribed by regulation by the Department.

Sec. 13. NRS 439B.645 is hereby amended to read as follows:

439B.645 1. ~~[Except as otherwise provided in subsection 2, on]~~ ***On*** or before April 1 of each year, a pharmacy benefit manager shall submit to the Department ~~[a]~~ ***:***

(a) A report which includes ~~[:]~~ ***the information prescribed by subsection 2; and***

(b) A statement signed under penalty of perjury affirming the accuracy of the information in the report.

2. The report submitted pursuant to paragraph (a) of subsection 1 must include:

(a) ***The current wholesale acquisition cost of each drug included on the lists compiled by the Department pursuant to NRS 439B.630 and the minimum and maximum wholesale acquisition cost of each such drug during the immediately preceding year;***

(b) The total number of WAC units of each drug included on the list compiled by the Department pursuant to subsection 1 of NRS 439B.630 for which the pharmacy benefit manager negotiated directly with the manufacturer for purchases of the drug for use in in this State during the immediately preceding calendar year;

(c) The number of WAC units of each drug included on the list compiled by the Department pursuant to subsection 1 of NRS 439B.630 for which the pharmacy benefit manager negotiated directly with the manufacturer during the immediately preceding calendar year for purchases of the drug for use in this State by:

(1) Recipients of Medicare;

(2) Recipients of Medicaid;

(3) Persons covered by third parties that are governmental entities which are not described in subparagraph (1) or (2);

(4) Persons covered by commercial insurers;

(5) Persons covered by third parties other than those described in subparagraphs (1) to (4), inclusive;

(d) The ~~[~~total~~]~~ ***aggregate*** amount of ~~[~~all~~]~~ ***the*** rebates ~~[~~, discounts and other price concessions~~]~~ that the pharmacy benefit manager negotiated with manufacturers during the immediately preceding calendar year for ***purchases of*** prescription drugs included on the list compiled by the Department pursuant to subsection 1 of NRS 439B.630 ~~[~~;~~]~~ ***for use in this State, in total for the list compiled by the Department pursuant to subsection 1 of that section and for each drug*** ~~[~~;

~~(b)~~] ***included on the list compiled pursuant to subsection 1 of that section;***

(e) The ~~[~~total~~]~~ ***aggregate*** amount of ~~[~~all~~]~~ ***the*** rebates described in paragraph ~~[~~(a)~~]~~ ***(d)*** that were retained by the pharmacy benefit manager ~~[~~; and

~~(c)~~] ***, in total for each list compiled by the Department pursuant to NRS 439B.630 and for each drug included on the list compiled pursuant to subsection 1 of that section;***

(f) The ~~[~~total~~]~~ ***aggregate*** amount of ~~[~~all~~]~~ ***the*** rebates described in paragraph ~~[~~(a)~~]~~ ***(d)*** that were negotiated for purchases of ~~[~~such~~]~~ ***prescription*** drugs for use by ~~[~~:

~~(1) Recipients of Medicare;~~

~~(2) Recipients of Medicaid;~~

~~(3) Persons covered by third parties that are governmental entities which are not described in subparagraph (1) or (2);~~

~~(4) Persons covered by third parties that are not governmental entities; and~~

~~(5) Persons covered by a plan described in subsection 2 to the extent required by a contract entered into pursuant to subsection 3.~~

~~2. Except as otherwise provided in subsection 3, the requirements of this section do not apply to the coverage of prescription drugs under a plan that is subject to the Employee Retirement Income Security Act of 1974 or any information relating to such coverage.~~

~~3. A plan described in subsection 2 may, by contract, require a pharmacy benefit manager that manages the coverage of prescription drugs under the plan to comply with the requirements of this section.~~] ***persons in each category listed in paragraph (c), in total for each list compiled by the Department pursuant to NRS 439B.630 and for each drug included on the list compiled pursuant to subsection 1 of that section;***

(g) The amount of discounts, dispensing fees or other fees that the pharmacy benefit manager negotiated with pharmacies, prescription drug networks or pharmacy services administrative organizations during the immediately preceding calendar year for purchases of prescription drugs included on each list compiled by

the Department pursuant to NRS 439B.630 for use in this State, in total for each list and for each drug included on the list compiled pursuant to subsection 1 of that section;

(h) The amount of discounts, dispensing fees or other fees described in paragraph (g) which were negotiated for purchases of prescription drugs for use by persons in each category prescribed by paragraph (c), in total for each list compiled by the Department pursuant to NRS 439B.630 and for each drug included on the list compiled pursuant to subsection 1 of that section; and

(i) Any other information prescribed by regulation of the Department.

Sec. 14. NRS 439B.650 is hereby amended to read as follows:

439B.650 On or before June 1 of each year, the Department shall ~~[analyze]~~ ***:***

1. Analyze the information submitted pursuant to NRS 439B.635, 439B.640 and 439B.645 ***and section 6 of this act*** 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 report:***

(a) Must include, without limitation, a separate analysis of the information reported by manufacturers, pharmacy benefit managers and wholesalers, the reasons for any increases in ~~[those]~~ ***the*** prices ***of prescription drugs in this State*** and the effect of those prices on overall spending on prescription drugs ***, insurance premiums and cost-sharing*** in this State ~~[. The report may]~~ ***; and***

(b) May include, without limitation, opportunities for persons and entities in this State to lower the cost of ***prescription*** drugs ~~[for the treatment of asthma and diabetes]~~ while maintaining access to such drugs.

2. Present the findings in the report at a public hearing.

Sec. 15. NRS 439B.670 is hereby amended to read as follows:

439B.670 1. Except as otherwise provided in subsection 2***,*** ~~[and subsection 3 of NRS 439B.660,]~~ the Department shall:

(a) Place or cause to be placed on the Internet website maintained by the Department:

(1) The information provided by each pharmacy pursuant to NRS 439B.655;

(2) The information compiled by a nonprofit organization pursuant to NRS 439B.665 if such a report is submitted pursuant to paragraph (b) of subsection 1 of that section;

(3) The lists of prescription drugs compiled by the Department pursuant to NRS 439B.630;

(4) The wholesale acquisition cost of each prescription drug***,*** ***as*** reported pursuant to NRS 439B.635 ~~[;]~~ ***and 439B.645 and section 6 of this act;*** and

(5) The reports compiled by the Department pursuant to NRS 439B.650 and 439B.660.

(b) Ensure that the information placed on the Internet website maintained by the Department pursuant to paragraph (a) is organized so that each individual pharmacy, manufacturer and nonprofit organization has its own separate entry on that website; and

(c) Ensure that the usual and customary price that each pharmacy charges for each prescription drug that is on the list prepared pursuant to NRS 439B.625 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 NRS 439B.675; and

(2) Is updated not less frequently than once each 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 pharmacy charges to the general public for a drug, as described in 42 C.F.R. § 447.512.

Sec. 16. NRS 439B.685 is hereby amended to read as follows:

439B.685 The Department shall adopt such regulations as it determines to be necessary or advisable to carry out the provisions of NRS 439B.600 to 439B.695, inclusive ~~.~~ ***, and sections 1.3 to 8,***

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, prescription drugs and nonprofit organizations including, without limitation, the information made available on the Department's Internet website pursuant to NRS 439B.670, the Department is unable to guarantee the accuracy of such information;

(b) If a consumer follows an Internet link from the Internet website maintained by the Department to an Internet website not maintained by the Department, the Department is unable to guarantee the accuracy of any information made available on that Internet website; and

(c) The Department advises consumers to contact a pharmacy, manufacturer or nonprofit organization directly to verify the accuracy of any information regarding the pharmacy, a prescription drug manufactured by the manufacturer or the nonprofit organization, as applicable, which is made available to consumers pursuant to NRS 439B.600 to 439B.695, inclusive ~~[,]~~ ***, and sections 1.3 to 8, inclusive, of this act;***

2. Procedures adopted to direct consumers who have questions regarding the program described in NRS 439B.600 to 439B.695, inclusive, ***and sections 1.3 to 8, inclusive, of this act*** to contact the Office for Consumer Health Assistance of the Department;

3. Provisions in accordance with which the Department will allow an Internet link to the information made available on the Department's Internet website pursuant to NRS 439B.670 to be placed on other Internet websites managed or maintained by other persons and entities, including, without limitation, Internet websites managed or maintained by:

(a) Other governmental entities, including, without limitation, the State Board of Pharmacy and the Office of the Governor; and

(b) Nonprofit organizations and advocacy groups;

4. Procedures pursuant to which consumers, pharmacies, manufacturers and nonprofit organizations may report to the Department that information made available to consumers pursuant to NRS 439B.600 to 439B.695, inclusive, ***and sections 1.3 to 8, inclusive, of this act*** is inaccurate;

5. The form and manner in which pharmacies are to provide to the Department the information described in NRS 439B.655; ~~[and]~~

6. The form and manner in which manufacturers are to provide to the Department the information described in NRS 439B.635, 439B.640 and 439B.660;

7. The form and manner in which pharmacy benefit managers are to provide to the Department the information described in NRS 439B.645;

8. The form and manner in which pharmaceutical sales representatives are to provide to the Department the information described in NRS 439B.660;

9. The form and manner in which nonprofit organizations are to provide to the Department the information described in NRS 439B.665, if required; ~~[and]~~

10. ***The form and manner in which wholesalers are to provide the Department with the information described in section 6 of this act; and***

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

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

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

Sec. 17. (Deleted by amendment.)

Sec. 18. 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 wholesaler fails to provide to the Department the information required by section 6 of this act or*** 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 ***, wholesaler*** 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 ***, wholesaler*** 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]~~ ***:***

(a) For purposes relating to improvement of transparency concerning the costs of prescription drugs, including, without limitation, the administration of NRS 439B.600 to 439B.695, inclusive, and sections 1.3 to 8, inclusive, of this act; and

(b) To establish and carry out programs to provide education concerning ~~[asthma and diabetes and prevent those]~~ ***chronic*** diseases.

Sec. 19. 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 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) 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) 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 ~~[,]~~ ***or information that a wholesaler is required to report pursuant to section 6 of this act,*** to the extent that such information is required to be disclosed by those sections.

Sec. 19.5. 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. 20. Notwithstanding the provisions of NRS 218D.430 and 218D.435, a committee, other than the Assembly Standing Committee on Ways and Means and the Senate Standing Committee on Finance, may vote on this act before the expiration of the period prescribed for the return of a fiscal note in NRS 218D.475. This section applies retroactively from and after March 22, 2021.