

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 to enter into  
agreements with certain entities in other jurisdictions for  
the collaborative purchasing of prescription drugs;  
exempting a contract between the Department 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:**

1 Existing law requires the Department of Health and Human Services to develop  
2 a list of preferred prescription drugs to be used for the Medicaid program and the  
3 Children's Health Insurance Program. (NRS 422.4025) Existing law additionally  
4 authorizes nonprofit health plans and certain public health plans to use the list of  
5 preferred prescription drugs developed by the Department as their formulary and  
6 obtain prescription drugs through the purchasing agreements negotiated by the  
7 Department. (NRS 287.012, 287.0433, 422.4025, 687B.407) Existing law  
8 authorizes the Department to enter into a contract with a pharmacy benefit manager  
9 or health maintenance organization to manage, direct and coordinate payments and  
10 rebates for prescription drugs or other services and payments relating to the  
11 provision of prescription drugs under the State Plan for Medicaid and the



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Children's Health Insurance Program. (NRS 422.4053) **Sections 1 and 2** of this bill additionally authorize the Department 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.

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.

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

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**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 other jurisdictions 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;



1 (b) Antirejection medications for organ transplants;

2 (c) Antihemophilic medications; and

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

7 3. The regulations must provide that the Board makes the final  
8 determination of:

9 (a) Whether a class of therapeutic prescription drugs is included  
10 on the list of preferred prescription drugs and is excluded from any  
11 restrictions that are imposed by the Medicaid program on drugs that  
12 are on the list of preferred prescription drugs;

13 (b) Which therapeutically equivalent prescription drugs will be  
14 reviewed for inclusion on the list of preferred prescription drugs and  
15 for exclusion from any restrictions that are imposed by the Medicaid  
16 program on drugs that are on the list of preferred prescription drugs;  
17 and

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

23 4. The list of preferred prescription drugs established pursuant  
24 to subsection 1 must include, without limitation, any prescription  
25 drug determined by the Board to be essential for treating sickle cell  
26 disease and its variants.

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

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

34 (a) Compile a report concerning the agreements negotiated  
35 pursuant to paragraph (b) of subsection 1 and contracts entered into  
36 pursuant to NRS 422.4053 which must include, without limitation,  
37 the financial effects of obtaining prescription drugs through those  
38 agreements and contracts, in total and aggregated separately for  
39 agreements negotiated by the Department, contracts with a  
40 pharmacy benefit manager , ~~and~~ contracts with a health  
41 maintenance organization ~~and~~ *and contracts with public and private*  
42 *entities from the District of Columbia and other states and*  
43 *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 the District of Columbia and other states and territories of the United States for the collaborative purchasing of prescription drugs. 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 not subject to the provisions of subsection 3, paragraph (b) of subsection 4 or NRS 422.4056.*

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

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

(b) Require the pharmacy benefit manager or health maintenance organization, as applicable, 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 or health maintenance organization pursuant to the contract.

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

(a) Paragraph (a) of subsection 2 may require the pharmacy benefit manager to provide the entire amount of any rebates received for the purchase of prescription drugs, including, without



1 limitation, rebates for the purchase of prescription drugs by an entity  
2 other than the Department, to the Department.

3 (b) Paragraph (b) of subsection 2 must , *except as otherwise*  
4 *provided in paragraph (c) of subsection 2*, require the health  
5 maintenance organization to provide to the Department the entire  
6 amount of any rebates received for the purchase of prescription  
7 drugs, including, without limitation, rebates for the purchase of  
8 prescription drugs by an entity other than the Department, less an  
9 administrative fee in an amount prescribed by the contract. The  
10 Department shall adopt policies prescribing the maximum amount  
11 of such an administrative fee.

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

13 422.4056 1. ~~Any~~ *Except as otherwise provided in*  
14 *paragraph (c) of subsection 2 of NRS 422.4053*, any contract  
15 between the Department and a pharmacy benefit manager or health  
16 maintenance organization entered into pursuant to NRS 422.4053  
17 must require the pharmacy benefit manager or health maintenance  
18 organization, as applicable, to:

19 (a) Submit to and cooperate with an annual audit by the  
20 Department to evaluate the compliance of the pharmacy benefit  
21 manager or health maintenance organization with the agreement and  
22 generally accepted accounting and business practices. The audit  
23 must analyze all claims processed by the pharmacy benefit manager  
24 or health maintenance organization pursuant to the agreement.

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

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

32 **Sec. 4.** NRS 687B.407 is hereby amended to read as follows:

33 687B.407 1. A ~~nonprofit~~ health benefit plan may use the  
34 list of preferred prescription drugs developed by the Department of  
35 Health and Human Services pursuant to subsection 1 of NRS  
36 422.4025 as its formulary and obtain prescription drugs through the  
37 purchasing agreements negotiated by the Department pursuant to  
38 that section by notifying the Department in the form prescribed by  
39 the Department.

40 2. As used in this section "health benefit plan" has the meaning  
41 ascribed to it in NRS 422.4021.

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



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

