State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 289

01/22/2019 Authored by Mann, Halverson, Howard, Cantrell, Freiberg and others
The bill was read for the first time and referred to the Committee on Commerce
03/11/2019 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Policy
03/14/2019 Adoption of Report: Re-referred to the Committee on Ways and Means

A bill for an act

relating to health care; requiring the reporting of the cost of prescription drugs that are used to treat diabetes; proposing coding for new law in Minnesota Statutes, chapter 62J.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[62J.84] DIABETES DRUG COST TRANSPARENCY.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Manufacturer" means any manufacturer that is required to be licensed under section 151.252.

(c) "Pharmacy" has the meaning provided in section 151.01, subdivision 2.

(d) "Pharmacy benefit manager" has the meaning provided in section 151.71, subdivision 1.

(e) "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 for the most recent month for which information is available, as reported in wholesale price guides or other publications of drug pricing data.

Subd. 2. **Commissioner's duties.** (a) By February 1 of each year beginning February 1, 2020, the commissioner shall compile a list of prescription drugs that the commissioner determines to be essential for treating diabetes in Minnesota, including all forms of insulin, all oral diabetes medications, and all noninsulin injectable medications marketed for sale in Minnesota and the wholesale acquisition cost of each drug on the list.

(b) By March 1 of each year beginning March 1, 2020, the commissioner shall compile a list using the list described in paragraph (a) of drugs that have been subject to an increase in the wholesale acquisition cost of a percentage equal to or greater than:

(1) the percentage increase in the All-Items Consumer Price Index during the immediately preceding calendar year; or

(2) the average annual percentage increase in the All-Items Consumer Price Index during the immediately preceding two calendar years.

Subd. 3. **Manufacturer's duties.** (a) By April 1 of each year beginning April 1, 2020, the manufacturer of each prescription drug included in the most current list compiled by the commissioner under subdivision 2, paragraph (a), shall prepare and submit to the commissioner in a format prescribed by the commissioner, a report that includes the following for each drug listed:

(1) the costs of producing the drug, excluding research and development costs and including the total nonresearch and development administrative expenditures relating to the drug, including marketing and advertising costs;

(2) the total amount of financial assistance that the manufacturer has provided through any patient prescription assistance program, including the number of patients who received financial assistance, the total amounts of prescription drugs listed under subdivision 2, paragraph (a), provided to these patients, and the average length of time patients received financial assistance from a patient prescription assistance program;

(3) the cost associated with coupons provided directly to consumers and for programs to assist consumers in paying co-payments, and the cost to the manufacturer attributable to the redemption of those coupons and the use of those programs. Costs reported under this clause shall include information on the numbers of patients who redeemed coupons or received financial assistance from a co-payment assistance program, the numbers of prescriptions filled using a coupon, the number of prescriptions filled using a co-payment assistance program, the amounts of prescription drugs listed under subdivision 2, paragraph (a), provided to patients who redeemed coupons, and the amounts of prescription drugs listed under subdivision 2, paragraph (a), provided to patients who received financial assistance from a co-payment assistance program;

(4) the aggregate amount of all rebates and all other fees that the manufacturer has provided to pharmacy benefit managers for sales of the drug within Minnesota; and

(5) any additional information deemed necessary by the commissioner for the purpose of analyzing the cost of drugs that are included in the list described in subdivision 2, paragraph (a).

(b) By April 1 of each year beginning April 1, 2020, for each drug that is included in the list compiled by the commissioner under subdivision 2, paragraph (b), the manufacturer shall submit to the commissioner a report describing the reasons for the increase in the wholesale acquisition cost of the drug listed. The report must include:

(1) a list of each factor that has contributed to the increase;

(2) the percentage of the total increase that is attributable to each factor;

(3) an explanation of the role of each factor in the increase; and

(4) any additional information deemed necessary by the commissioner.

Subd. 4. **Pharmacy benefit manager duties.** By May 1 of each year beginning May 1, 2020, each pharmacy benefit manager shall submit to the commissioner a report that includes:

(1) the total amount of rebates and all other fees that the pharmacy benefit manager received from manufacturers during the preceding calendar year for all of the pharmacy benefit manager's health plan company clients and for each health plan company client, for prescription drugs included in the list compiled by the commissioner under subdivision 2, paragraph (a). The total amount of rebates must include any utilization discounts the pharmacy benefit manager received from a manufacturer;

(2) the total amount of all rebates and all other fees under clause (1) that were retained by the pharmacy benefit manager;

(3) the total amount of all rebates and all other fees under clause (1) that were received for purchases of drugs for use by:

(i) recipients of Medicare;

(ii) recipients of medical assistance;

(iii) persons covered by third-party payers that are governmental entities that are not included in item (i) or (ii);

(iv) persons covered by third parties that are not governmental entities; and

(v) persons covered by a health plan described under paragraph (b) if the health plan requires the pharmacy benefit manager to comply;

(4) the percentage of rebates that were retained by the pharmacy benefit manager, and the percentage of all other fees that were retained by the pharmacy benefit manager, for prescription drugs included in the list compiled by the commissioner under subdivision 2, paragraph (a); and

(5) the highest, lowest, and mean total retained rebate and fees percentages for prescription drugs included in the list compiled by the commissioner under subdivision 2, paragraph (a), for all of the pharmacy benefit manager's health plan company clients and for each health plan company client.

Subd. 5. **Health plan company's duties.** Each health plan company as part of the rate approval process under section 62A.02 shall submit to the commissioner of commerce the following information regarding the prescription drugs included on the list compiled by the commissioner under subdivision 2, paragraph (a):

(1) the percentage of the premium attributable to these prescription drugs for the prior plan year;

(2) the percentage of premium attributable to costs for these prescription drugs for the plan year for which the rate approval is submitted;

(3) the year-over-year change, as a percentage, in total spending for these prescription drugs;

(4) the year-over-year change in per-member, per-month plan costs for these prescription drugs compared to other components of the health care premium;

(5) the year-over-year change in average plan enrollee annual cost-sharing for these prescription drugs;

(6) information on its use of a pharmacy benefit manager, if any, and which components of the prescription drug benefit is managed by the pharmacy benefit manager;

(7) total rebates and discounts for the prescription drugs received from the pharmacy benefit manager;

(8) a description of how pharmacy benefit manager discounts impact plan decisions regarding patient cost-sharing amounts; and

(9) total amount of administrative fees paid to pharmacy benefit managers for the previous plan year for these prescription drugs.

Subd. 6. **Pharmacy duties.** By May 1 of each year beginning May 1, 2020, each pharmacy licensed under chapter 151 shall submit to the commissioner a report that includes

the following information regarding the prescription drugs included on the list compiled by the commissioner under subdivision 2, paragraph (a):

(1) total payment received from pharmacy benefit managers for these prescription drugs during the previous calendar year;

(2) total payments received from health plans for these prescription drugs during the previous calendar year;

(3) total payments made to wholesalers, distributors, or manufacturers, to purchase drugs during the previous calendar year; and

(4) total fees paid to pharmacy benefit managers for these prescription drugs during the previous calendar year.

Subd. 7. **Report.** (a) By June 1 of each year beginning June 1, 2020, the commissioner shall analyze the information submitted under subdivisions 2, 3, and 4 and submit a report to the legislature on the price of prescription drugs that appear on the most current lists pursuant to subdivision 2, the reasons for any increases in those prices, the extent to which rebates and other fees paid to pharmacy benefit managers contribute to price increases for the prescription drugs that appear on the most current lists pursuant to subdivision 2, and the effect of those prices on overall spending on prescription drugs in Minnesota. The commissioner may include recommendations on how to lower the cost of drugs used for the treatment of diabetes while maintaining access to the drugs.

(b) The commissioner shall make the report described in paragraph (a) available to the public.