

1 S.176

2 Introduced by Senators Kitchel and Bartlett

3 Referred to Committee on

4 Date:

5 Subject: Health; prescription drugs; Medicaid; health insurance; statewide drug  
6 formulary

7 Statement of purpose: This bill proposes to establish a statewide prescription  
8 drug formulary.

9 An act relating to establishing a statewide prescription drug formulary

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 18 V.S.A. chapter 91, subchapter 4 is added to read:

12 Subchapter 4. Statewide Prescription Drug Formulary

13 § 4635. STATEWIDE PREFERRED DRUG LIST

14 (a) The drug utilization and review board established in connection with  
15 Vermont's Medicaid program shall develop and maintain a preferred drug list  
16 applicable to all health benefit plans covering Vermont lives.

17 (b)(1) The drug utilization review board's selection of drugs for inclusion  
18 on the preferred drug list shall be based upon evidence-based considerations of  
19 clinical efficacy, adverse side effects, safety, appropriate clinical trials, and  
20 cost-effectiveness. In this subchapter, "evidence-based" shall have the same

1 meaning as in section 4622 of this title. The director of the office of Vermont  
2 health access shall provide the board with evidence-based information about  
3 clinical efficacy, adverse side effects, safety, and appropriate clinical trials, and  
4 shall provide information about cost-effectiveness of available drugs in the  
5 same therapeutic class. Health benefit plans covering Vermont lives may also  
6 submit evidence-based information listed in this subdivision to the board for its  
7 consideration.

8 (2) The board may identify separate drugs within the same therapeutic  
9 class as preferred for health insurance plans and for state public assistance  
10 programs to reflect differences in available manufacturer rebates and  
11 discounts.

12 (3) The board shall meet at least quarterly. The board shall comply with  
13 the requirements of subchapter 2 of chapter 5 of Title 1 (open meetings) and  
14 subchapter 3 of chapter 5 of Title 1 (open records), except that the board may  
15 go into executive session to discuss drug alternatives and receive information  
16 on the relative price, net of any rebates, of a drug under discussion and the  
17 drug price in comparison to the prices, net of any rebates, of alternative drugs  
18 available in the same class to determine cost-effectiveness, and in order to  
19 comply with subsection 2002(c) of Title 33 to consider information relating to  
20 a pharmaceutical rebate or to supplemental rebate agreements, which is  
21 protected from disclosure by federal law or the terms and conditions required

1 by the Centers for Medicare and Medicaid Services as a condition of rebate  
2 authorization under the Medicaid program.

3 (4) To the extent feasible, the board shall review all drug classes  
4 included in the preferred drug list at least every 12 months, and may make  
5 additions to or deletions from the preferred drug list.

6 (5) The program shall establish board procedures for the timely review  
7 of prescription drugs newly approved by the federal Food and Drug  
8 Administration, including procedures for the review of newly approved  
9 prescription drugs in emergency circumstances.

10 (6) Members of the board shall receive per diem compensation and  
11 reimbursement of expenses in accordance with section 1010 of Title 32.

12 (c) As used in this section:

13 (1) "Health benefit plan" means a health benefit plan with prescription  
14 drug coverage offered or administered by a health insurer, as defined by  
15 section 9402 of this title, and the out-of-state counterparts to such plans. The  
16 term includes:

17 (A) any state public assistance program with a health benefit plan  
18 that provides coverage of prescription drugs;

19 (B) any health benefit plan offered by or on behalf of the state of  
20 Vermont or any instrumentality of the state providing coverage for government  
21 employees and their dependents; and

1           (C) any insured or self-insured health benefit plan that agrees to  
2 participate in the preferred drug list.

3           (2) “State public assistance program” includes the Medicaid program,  
4 the Vermont health access plan, VPharm, VermontRx, the state children’s  
5 health insurance program, the state of Vermont AIDS medication assistance  
6 program, the general assistance program, the pharmacy discount plan program,  
7 and the out-of-state counterparts to such programs.

8           Sec. 2. 1 V.S.A. § 313(a)(9) is amended to read:

9           (9) Information relating to a pharmaceutical rebate or to supplemental  
10 rebate agreements, which is protected from disclosure by federal law or the  
11 terms and conditions required by the Centers for Medicare and Medicaid  
12 Services as a condition of rebate authorization under the Medicaid program,  
13 considered pursuant to ~~33 V.S.A. §§ 1998(f)(2)~~ 18 V.S.A. § 4635(b)(3) and  
14 2002(e) 33 V.S.A. § 2002(c).

15           Sec. 3. 8 V.S.A. § 4080f(c)(1)(D) is amended to read:

16           (D) prescription drug coverage without a deductible, \$10.00  
17 co-payments for generic drugs, \$30.00 co-payments for drugs on the preferred  
18 drug list established pursuant to section 4635 of Title 18, and \$50.00  
19 co-payments for nonpreferred drugs;

1 Sec. 4. 8 V.S.A. § 4088e is amended to read:

2 § 4088e. NOTICE OF PREFERRED DRUG LIST CHANGES

3 On a periodic basis, no less than once per calendar year, a health insurer as  
4 defined in subdivisions 9471(2)(A), (C), and (D) of Title 18 shall notify  
5 beneficiaries of changes in pharmaceutical coverage and provide access to the  
6 preferred drug list established and maintained by the insurer pursuant to  
7 section 4635 of Title 18.

8 Sec. 5. 33 V.S.A. § 1903a(c)(10) is amended to read:

9 (10) participation in the pharmacy best practices and cost-control  
10 program under subchapter 5 of chapter 19 of this title, including the multi-state  
11 purchasing pool, and the statewide preferred drug list established pursuant to  
12 section 4635 of Title 18.

13 Sec. 6. 33 V.S.A. § 1998 is amended to read:

14 § 1998. PHARMACY BEST PRACTICES AND COST CONTROL  
15 PROGRAM ESTABLISHED

16 (a) The director of the office of Vermont health access shall establish and  
17 maintain a pharmacy best practices and cost control program designed to  
18 reduce the cost of providing prescription drugs, while maintaining high quality  
19 in prescription drug therapies. The program shall include:

20 (1) ~~Use of an evidence based preferred list of covered prescription drugs~~  
21 ~~that identifies preferred choices within therapeutic classes for particular~~

1 ~~diseases and conditions, including generic alternatives and over-the-counter~~  
2 ~~drugs.~~

3       ~~(2)~~ Utilization review procedures, including a prior authorization review  
4 process.

5       ~~(3)~~(2) Any strategy designed to negotiate with pharmaceutical  
6 manufacturers to lower the cost of prescription drugs for program participants,  
7 including a supplemental rebate program.

8       ~~(4)~~(3) Alternative pricing mechanisms, including consideration of using  
9 maximum allowable cost pricing for generic and other prescription drugs.

10       ~~(5)~~(4) Alternative coverage terms, including consideration of providing  
11 coverage of over-the-counter drugs where cost-effective in comparison to  
12 prescription drugs, and authorizing coverage of dosages capable of permitting  
13 the consumer to split each pill if cost-effective and medically appropriate for  
14 the consumer.

15       ~~(6)~~(5) A simple, uniform prescription form, designed to implement the  
16 preferred drug list established pursuant to section 4635 of Title 18, and to  
17 enable prescribers and consumers to request an exception to the preferred drug  
18 list choice with a minimum of cost and time to prescribers, pharmacists, and  
19 consumers.

20       ~~(7)~~(6) A joint pharmaceuticals purchasing consortium as provided for in  
21 subdivision (c)(1) of this section.



1 ~~section 4622 of Title 18. The director shall provide the board with evidence-~~  
2 ~~based information about clinical efficacy, adverse side effects, safety,~~  
3 ~~appropriate clinical trials, and shall provide information about cost-~~  
4 ~~effectiveness of available drugs in the same therapeutic class.~~

5 ~~(2) The board shall meet at least quarterly. The board shall comply with~~  
6 ~~the requirements of subchapter 2 of chapter 5 of Title 1 (open meetings) and~~  
7 ~~subchapter 3 of chapter 5 of Title 1 (open records), except that the board may~~  
8 ~~go into executive session to discuss drug alternatives and receive information~~  
9 ~~on the relative price, net of any rebates, of a drug under discussion and the~~  
10 ~~drug price in comparison to the prices, net of any rebates, of alternative drugs~~  
11 ~~available in the same class to determine cost effectiveness, and in order to~~  
12 ~~comply with subsection 2002(c) of this title to consider information relating to~~  
13 ~~a pharmaceutical rebate or to supplemental rebate agreements, which is~~  
14 ~~protected from disclosure by federal law or the terms and conditions required~~  
15 ~~by the Centers for Medicare and Medicaid Services as a condition of rebate~~  
16 ~~authorization under the Medicaid program.~~

17 ~~(3) To the extent feasible, the board shall review all drug classes~~  
18 ~~included in the preferred drug list at least every 12 months, and may~~  
19 ~~recommend that the director make additions to or deletions from the preferred~~  
20 ~~drug list.~~

1           ~~(4) The program shall establish board procedures for the timely review~~  
2 ~~of prescription drugs newly approved by the federal Food and Drug~~  
3 ~~Administration, including procedures for the review of newly approved~~  
4 ~~prescription drugs in emergency circumstances.~~

5           ~~(5) Members of the board shall receive per diem compensation and~~  
6 ~~reimbursement of expenses in accordance with section 1010 of Title 32.~~

7           ~~(6)~~ The director shall encourage participation in the joint purchasing  
8 consortium by inviting representatives of the programs and entities specified in  
9 subdivision (c)(1) of this section to participate as observers or nonvoting  
10 members in the drug utilization review board, and by inviting the  
11 representatives to use the preferred drug list established pursuant to section  
12 4635 of Title 18 in connection with the plans' prescription drug coverage.

13           (g) The office shall seek assistance from entities conducting independent  
14 research into the effectiveness of prescription drugs to provide technical and  
15 clinical support in the development and the administration of the preferred  
16 drug list pursuant to section 4635 of Title 18 and the evidence-based education  
17 program established in subchapter 2 of chapter 91 of Title 18.

18       Sec. 7. 33 V.S.A. § 1999(a)(1) is amended to read:

19           (a)(1) The pharmacy best practices and cost control program shall authorize  
20 pharmacy benefit coverage when a patient's health care provider prescribes a  
21 prescription drug not on the preferred drug list established pursuant to section

1 4635 of Title 18, or a prescription drug which is not the list's preferred choice,  
2 if either of the circumstances set forth in subdivision (2) or (3) of this  
3 subsection applies.

4 Sec. 8. 33 V.S.A. § 2001 is amended to read:

5 § 2001. LEGISLATIVE OVERSIGHT

6 (a) In connection with the pharmacy best practices and cost control  
7 program pursuant to this subchapter and the statewide preferred drug list  
8 pursuant to subchapter 4 of chapter 91 of Title 18, the director of the office of  
9 Vermont health access shall report for review by the health access oversight  
10 committee, prior to initial implementation, and prior to any subsequent  
11 modifications:

12 (1) the compilation that constitutes the preferred drug list or list of drugs  
13 subject to prior authorization or any other utilization review procedures;

14 (2) any utilization review procedures, including any prior authorization  
15 procedures; and

16 (3) the procedures by which drugs will be identified as preferred on the  
17 preferred drug list, and the procedures by which drugs will be selected for prior  
18 authorization or any other utilization review procedure.

19 (b) The health access oversight committee shall closely monitor  
20 implementation of the preferred drug list and utilization review procedures to  
21 ensure that the consumer protection standards enacted pursuant to section 1999

1 of this title are not diminished as a result of implementing the preferred drug  
2 list and the utilization review procedures, including any unnecessary delay in  
3 access to appropriate medications. The committee shall ensure that all affected  
4 interests, including consumers, health care providers, pharmacists and others  
5 with pharmaceutical expertise have an opportunity to comment on the  
6 preferred drug list and procedures reviewed under this subsection.

7 (c) The director of the office of Vermont health access shall report  
8 quarterly to the health access oversight committee concerning the following  
9 aspects of the pharmacy best practices and cost control program and the  
10 statewide preferred drug list:

11 (1) the efforts undertaken to educate health care providers about the  
12 preferred drug list and the program's utilization review procedures;

13 (2) the number of prior authorization requests made; and

14 (3) the number of utilization review events (other than prior  
15 authorization requests).

16 (d) [Repealed.]

17 (e)(1) [Repealed.]

18 \* \* \*

19 Sec. 9. 33 V.S.A. § 2002(a) is amended to read:

20 (a) The director of the office of Vermont health access, separately or in  
21 concert with the authorized representatives of any participating health benefit

1 plan, shall use the preferred drug list ~~authorized by the pharmacy best practices~~  
2 ~~and cost control program~~ established pursuant to section 4635 of Title 18 to  
3 negotiate with pharmaceutical companies for the payment to the director of  
4 supplemental rebates or price discounts for Medicaid and for any other state  
5 public assistance health benefit plans designated by the director, in addition to  
6 those required by Title XIX of the Social Security Act. The director may also  
7 use the preferred drug list to negotiate for the payment of rebates or price  
8 discounts in connection with drugs covered under any other participating  
9 health benefit plan within or outside this state, provided that such negotiations  
10 and any subsequent agreement shall comply with the provisions of 42 U.S.C.  
11 § 1396r-8. The program, or such portions of the program as the director shall  
12 designate, shall constitute a state pharmaceutical assistance program under  
13 42 U.S.C. § 1396r-8(c)(1)(C).

14 Sec. 10. 33 V.S.A. § 2076(a) is amended to read:

15 (a) All public pharmaceutical assistance programs shall provide coverage  
16 for those over-the-counter pharmaceuticals on the preferred drug list developed  
17 ~~under section 1998 of this title~~ pursuant to section 4635 of Title 18, provided  
18 the pharmaceuticals are authorized as part of the medical treatment of a  
19 specific disease or condition, and they are a less costly, medically appropriate  
20 substitute for currently covered pharmaceuticals.

