S.175

Introduced by Senators Ashe, Ayer, Lyons, Pearson, and Sirotkin

Referred to Committee on

Date:

Subject: Health; prescription drugs; importation; Green Mountain Care Board; Attorney General; bulk purchasing; health insurance; cost containment

Statement of purpose of bill as introduced: This bill proposes to establish a program to allow wholesale importation of prescription drugs from Canada into Vermont. It would create a bulk purchasing program for prescription drugs through the ~~Department of Health~~Agency of Human Services and require prescription drug manufacturers to provide notice before introducing new, high-cost drugs to the market. The bill would also require health insurers to provide information about the impact of prescription drug spending on premium rates as part of the Green Mountain Care Board's rate review process and direct the Board to publish an annual report demonstrating the overall impact of drug costs on health insurance premiums.

An act relating to the wholesale importation of prescription drugs into Vermont, bulk purchasing, and the impact of prescription drug costs on health insurance premiums

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

* * * Wholesale Importation Program * * *

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

Subchapter 4. Wholesale Prescription Drug Importation Program

§ 4651. WHOLESALE IMPORTATION PROGRAM FOR PRESCRIPTION DRUGS; DESIGN

(a) The Agency of Human Services, in consultation with interested stakeholders and appropriate federal officials, shall ~~design~~ examine the design and feasibility of a wholesale prescription drug importation program that complies with the applicable requirements of 21 U.S.C. § 384, including the requirements regarding safety and cost savings. The Agency of Human Services shall evaluate a program design ~~shall~~that:

(1) designates a State agency that shall either become a licensed drug wholesaler or contract with a licensed drug wholesaler in order to seek federal certification and approval to import safe prescription drugs and provide significant prescription drug cost savings to Vermont consumers;

(2) uses Canadian prescription drug suppliers regulated under the laws of Canada or of one or more Canadian provinces, or both;

(3) ensures that only prescription drugs meeting the U.S. Food and Drug Administration's safety, effectiveness, and other standards shall be imported by or on behalf of the State;

(4) imports only those prescription drugs expected to generate substantial savings for Vermont consumers;

(5) ensures that the program complies with the tracking and tracing requirements of 21 U.S.C. §§ 360eee and 360eee-1 to the extent feasible and practical prior to imported drugs coming into the possession of the State wholesaler and that it complies fully after imported drugs are in the possession of the State wholesaler;

(6) prohibits the distribution, dispensing, or sale of imported products outside Vermont's borders;

(7) establishes a fee on each prescription or establish another financing mechanism to ensure that the program is funded adequately in a manner that does not jeopardize significant consumer savings; and

(8) includes a robust audit function.

(b) On or before January 1, 2019, the Secretary of Human Services shall ~~submit the proposed design for~~ report on the feasibility of implementing a wholesale prescription drug importation program to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance.

§ 4652. MONITORING FOR ANTICOMPETITIVE BEHAVIOR

The Agency of Human Services shall consult with the Office of the Attorney General to identify the potential, and to monitor, for anticompetitive

behavior in industries that would be affected by a wholesale prescription drug importation program.

§ 4653. REQUEST FOR FEDERAL CERTIFICATION

On or before July 1, 2019, the Agency of Human Services shall submit a formal request to the Secretary of the U.S. Department of Health and Human Services for certification of the State's wholesale prescription drug importation program provided that the Agency of Human Services has determined that such a program is legally and operationally feasible and would provide cost savings to Vermonters.

§ 4654. IMPLEMENTATION PROVISIONS

Upon certification and approval by the Secretary of the U.S. Department of Health and Human Services, the Agency of Human Services shall begin implementation of the wholesale prescription drug importation program and shall begin operating the program within six months following the date of the Secretary's approval. As part of the implementation process, the Agency of Human Services shall, in accordance with State procurement and contract laws, rules, and procedures as appropriate:

(1) become licensed as a wholesaler or enter into a contract with a Vermont-licensed wholesaler;

(2) contract with one or more Vermont-licensed distributors;

(3) contract with one or more licensed and regulated Canadian suppliers;

(4) engage with health insurance plans, employers, pharmacies, health care providers, and consumers;

(5) develop a registration process for health insurance plans, pharmacies, and prescription drug-administering health care providers who are willing to participate in the program;

(6) create a publicly available source for listing the prices of imported prescription drug products that shall be made available to all participating entities and consumers;

(7) create an outreach and marketing plan to generate program awareness;

(8) starting in the weeks before the program becomes operational, create and staff a hotline to answer questions and address the needs of consumers, employers, health insurance plans, pharmacies, health care providers, and other affected sectors;

(9) establish the audit function and a two-year audit work-plan cycle; and

(10) conduct any other activities that the Agency determines to be important for successful implementation of the program.

§ 4655. ANNUAL REPORTING

(a) If a wholesale prescription drug importation program is implemented, the Agency of Human Services shall ~~A~~annually report on or before January 15~~,~~

~~the Agency of Human Services shall, report~~ to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance regarding the operation of the wholesale prescription drug importation program during the previous calendar year, including:

(1) which prescription drugs were included in the wholesale importation program;

(2) the number of participating pharmacies, health care providers, and health insurance plans;

(3) the number of prescriptions dispensed through the program;

(4) the estimated savings to consumers, health plans, employers, and the State during the previous calendar year and to date;

(5) information regarding implementation of the audit plan and audit findings; and

(6) any other information the Secretary of Human Services deems relevant.

(b) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section.

* * * Bulk Purchasing of Prescription Drugs * * *

Sec. 2. 18 V.S.A. chapter 91, subchapter 5 is added to read:

Subchapter 5. Bulk Purchasing

§ 4671. DEFINITIONS

As used in this subchapter:

(1) "Pharmacy benefit manager" shall have the same meaning as in section 9471 of this title.

(2) "Prescription drug claims processor" means a person who does one or more of the following:

(A) processes and pays prescription drug claims;

(B) adjudicates pharmacy claims;

(C) transmits prescription drug prices and claims data between pharmacies and the bulk purchasing program established in this subchapter; or

(D) processes payments to pharmacies related to the bulk purchasing program established in this subchapter.

§ 4672. PRESCRIPTION DRUG BULK PURCHASING PROGRAM

(a) Purposes. The Agency of Human Services, in consultation with interested stakeholders and appropriate federal officials, shall examine the feasibility of a prescription drug bulk purchasing program. Upon determining that such a program is feasible and would result in cost savings to consumers or the State, and subject to the provisions of this subchapter, the Agency of Human Services may establish, within the Agency or by means of contract, ~~There is established~~ a bulk purchasing program for prescription drugs in the ~~Department of Health~~Agency of Human Services for the purposes of:

(1) purchasing prescription drugs or reimbursing pharmacies for prescription drugs, or both, in order to receive discounted prices and rebates;

(2) making prescription drugs available at the lowest possible cost to participants in the program; and

(3) maximizing the purchasing power of prescription drug consumers in this State in order to negotiate the lowest possible prices for these consumers.

(b) Administration. The ~~Department of Health~~Agency or contractor shall administer the program by:

(1) negotiating price discounts and rebates on prescription drugs with prescription drug manufacturers;

(2) purchasing prescription drugs on behalf of participants in the program;

(3) determining program prices and reimbursing pharmacies for prescription drugs;

(4) developing a system for allocating and distributing among program participants the program's operational costs and any rebates obtained;

(5) cooperating with other states or regional consortia in the bulk purchase of prescription drugs; and

(6) establishing terms and conditions for pharmacies to enroll in the program.

(c) Contracts. The Agency ~~Department~~ may enter into contracts with pharmacy benefit managers or prescription drug claims processors, or both.

(d) Application process.

(1) The Agency ~~Department~~ shall create and distribute an application for enrollment in the program.

(2) The Agency ~~Department~~ may charge a participant a nominal fee to:

(A) process the application for enrollment in the program; and

(B) produce and distribute identification cards for the program.

(e) Program prices.

(1) The Agency ~~Department~~ shall calculate and transmit to each enrolled pharmacy the program price for each prescription drug included in the program.

(2) An enrolled pharmacy shall charge a program participant the program price for a prescription drug if the participant presents a valid program identification card.

(f) Enrollment.

(1) Subject to subdivision (2) of this subsection and notwithstanding any other provision of law to the contrary, the Agency ~~Department~~ shall automatically enroll in the program all consumers receiving prescription drugs through any other State agency or department.

(2) Notwithstanding subdivision (1) of this subsection, if another State agency or department demonstrates to the Agency ~~Department~~ that program enrollment would result in a net increase in costs to either the State or the consumers, the other agency or department shall be exempt from automatic enrollment in the bulk purchasing program established in this subchapter.

§ 4673. FEDERAL WAIVER

If a federal waiver is necessary to enable the participation of any Vermont consumer in ~~a~~the bulk purchasing program established pursuant to~~in~~ this subchapter, the Agency ~~Department~~ shall take all necessary steps to obtain the waiver, and any other State agency or department that provides prescription drugs to Vermont consumers shall cooperate with the Agency ~~Department~~ in obtaining the waiver.

§ 4674. RULES

The Agency ~~Department~~ shall adopt rules pursuant to 3 V.S.A. chapter 25 as needed to carry out the purposes of this subchapter. At a minimum, the rules shall address:

(1) the enrollment of pharmacies in the program; and

(2) the issuance of prescription drug identification cards to participants in the program.

§ 4675. REPORTING REQUIREMENTS

(a) Annually on or before January 15, the ~~Department of Health~~Agency of Human Services shall provide a report on the progress of program implementation to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance.

(b) Each report shall include the following information:

(1) the number of participants in the program during the previous calendar year and the number of participants the Agency ~~Department~~ anticipates for the upcoming calendar year;

(2) the number of participants for whom the program has purchased prescription drugs during the previous calendar year and to date, as well as the number of participants for whom the program expects to purchase prescription drugs during the upcoming calendar year;

(3) the total and average individual savings on prescription drug prices for participants for the previous calendar year and to date, as well as the projected total and average individual savings on prescription drug prices for participants during the upcoming calendar year;

(4) progress toward expanding the program; and

(5) any recommendations for legislation that the Agency ~~Department~~ ~~feels~~determines are necessary to implement the program further and to expand program participation.

* * * Health Insurance Plan Reporting * * *

Sec. 3. 8 V.S.A. § 4062 is amended to read:

§ 4062. FILING AND APPROVAL OF POLICY FORMS AND PREMIUMS

* * *

(b)(1) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall file a plain language summary of the proposed rate. All summaries shall include a brief justification of any rate increase requested, the information that the Secretary of the U.S. Department of Health and Human Services (HHS) requires for rate increases over 10 percent, and any other information required by the Board. The plain language summary shall be in the format required by the Secretary of HHS pursuant to the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and shall include notification of the public comment period established in subsection (c) of this section. In addition, the insurer shall post the summaries on its website.

(2)(A) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall disclose to the Board:

(i) for all covered prescription drugs, including generic drugs, brand-name drugs excluding specialty drugs, and specialty drugs dispensed at a pharmacy, network pharmacy, or mail-order pharmacy for outpatient use:

(I) the percentage of the premium rate attributable to prescription drug costs for the prior year for each category of prescription drugs;

(II) the year-over-year increase or decrease, expressed as a percentage, in per-member, per-month total health plan spending on each category of prescription drugs; and

(III) the year-over-year increase or decrease in per-member, per-month costs for prescription drugs compared to other components of the premium rate; and

(ii) the specialty tier formulary list.

(B) The insurer shall provide, if available, the percentage of the premium rate attributable to prescription drugs administered by a health care provider in an outpatient setting that are part of the medical benefit as separate from the pharmacy benefit.

(C) The insurer shall include information on its use of a pharmacy benefit manager, if any, including which components of the prescription drug coverage described in subdivisions (A) and (B) of this subdivision (2) are managed by the pharmacy benefit manager, as well as the name of the pharmacy benefit manager or managers used.

(c)(1) The Board shall provide information to the public on the Board's website about the public availability of the filings and summaries required under this section.

(2)(A) ~~Beginning no later than January 1, 2014, the~~ The Board shall post the rate filings pursuant to subsection (a) of this section and summaries pursuant to subsection (b) of this section on the Board's website within five calendar days ~~of~~ following filing. The Board shall also establish a mechanism by which members of the public may request to be notified automatically each time a proposed rate is filed with the Board.

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Sec. 4. 18 V.S.A. § 4636 is added to read:

§ 4636. IMPACT OF PRESCRIPTION DRUG COSTS ON HEALTH INSURANCE PREMIUMS; REPORT

(a) Each health insurer with more than 200 covered lives in this State shall report to the Green Mountain Care Board, for all covered prescription drugs, including generic drugs, brand-name drugs, and specialty drugs provided in an outpatient setting or sold in a retail setting:

(1) the 25 most frequently prescribed drugs and the average wholesale price for each drug;

(2) the 25 most costly drugs by total plan spending and the average wholesale price for each drug; and

(3) the 25 drugs with the highest year-over-year price increases and the average wholesale price for each drug.

(b) The Green Mountain Care Board shall compile the information reported pursuant to subsection (a) of this section into a consumer-friendly report that demonstrates the overall impact of drug costs on health insurance premiums. The data in the report shall be aggregated and shall not reveal information as specific to a particular health benefit plan.

(c) The Board shall publish the report required pursuant to subsection (b) of this section on its website on or before January 1 of each year. Information provided to the Board pursuant to this section is exempt from inspection and copying under the Public Records Act and shall be kept confidential except to the extent it is aggregated and included in the report described in subsection (b) of this section.

* * * Notice of New High-Cost Drugs * * *

Sec. 5. 18 V.S.A. § 4637 is added to read:

§ 4637. NOTICE OF INTRODUCTION OF NEW HIGH-COST PRESCRIPTION DRUGS

(a) As used in this section:

(1) "Manufacturer" shall have the same meaning as "pharmaceutical manufacturer" in section 4631a of this title.

(2) "Prescription drug" means a drug as defined in 21 U.S.C. § 321.

(b) A prescription drug manufacturer shall notify the Office of the Attorney General in writing if it is introducing a new prescription drug to market at a wholesale acquisition cost that exceeds the threshold set for a specialty drug under the Medicare Part D program. The manufacturer shall provide the written notice within three calendar days following the release of the drug in the commercial market. A manufacturer may make the notification pending approval by the U.S. Food and Drug Administration (FDA) if commercial availability is expected within three calendar days following the approval.

(c) Not later than 30 calendar days following notification pursuant to subsection (b) of this section, the manufacturer shall provide all of the following information to the Office of the Attorney General in a format that the Office prescribes:

(1) a description of the marketing and pricing plans used in the launch of the new drug in the United States and internationally;

(2) the estimated volume of patients who may be prescribed the drug;

(3) whether the drug was granted breakthrough therapy designation or priority review by the FDA prior to final approval; and

(4) the date and price of acquisition if the drug was not developed by the manufacturer.

(d) The manufacturer may limit the information reported pursuant to subsection (c) of this section to that which is otherwise in the public domain or publicly available.

(e) The Office of the Attorney General shall publish on its website at least quarterly the information reported to it pursuant to this section. The information shall be published in a manner that identifies the information that is disclosed on a per-drug basis and shall not be aggregated in a manner that would not allow identification of the drug.

(f) The Attorney General may bring an action in the Civil Division of the Superior Court, Washington County for injunctive relief, costs, and attorney's fees and to impose on a manufacturer that fails to provide the information required by subsection (c) of this section a civil penalty of not more than $1,000.00 per day for every day after the notification period described in subsection (b) of this section that the required information is not reported. In any action brought pursuant to this section, the Attorney General shall have the same authority to investigate and to obtain remedies as if the action were brought under the Consumer Protection Act, 9 V.S.A. chapter 63.

* * * Effective Date * * *

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.