Introduced by Representative Cordes of Bristol

Referred to Committee on

Date:

Subject: Health; health insurance; prescription drugs; pharmacy benefit managers; pharmacies; hospitals; 340B drug pricing program

Statement of purpose of bill as introduced: This bill proposes to prohibit a pharmacy benefit manager from requiring a person covered by a health insurance plan to pay more for a prescription drug than the National Average Drug Acquisition Cost of the drug plus a professional dispensing fee. The bill would require pharmacies to post a notice informing covered persons purchasing prescription drugs that they may ask the pharmacy staff to disclose certain information regarding their price options. The bill would require hospitals to report to the Green Mountain Care Board annually about their participation in the federal 340B drug pricing program. It would also require health insurers to inform covered persons annually of the actual amount their health insurance plan spent on prescription drugs on their behalf during the previous year and would require all entities participating in the 340B program to inform patients annually if their prescription drugs were purchased through the 340B program.

BILL AS INTRODUCED H.202

An act relating to increasing the transparency of prescription drug costs and spending

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

Sec. 1. 18 V.S.A. § 3612 is amended to read:

§ 3612. PROHIBITED PRACTICES

* * *

(e)(1)(A) A pharmacy benefit manager shall not require a covered person purchasing a covered prescription drug to pay an amount greater than the lesser of:

~~(A)~~(i) the cost-sharing amount under the terms of the health benefit plan, as determined in accordance with subdivision (2) of this subsection (e);

(~~B~~)(ii) the maximum allowable cost for the drug; ~~or~~

(~~C~~)(iii) the amount the covered person would pay for the drug, after application of any known discounts, if the covered person were paying the cash price; or

(iv) the current National Average Drug Acquisition Cost plus a professional dispensing fee in an amount equal to the professional dispensing fee in effect for the Vermont Medicaid program.

(B) As used in subdivision (A)(iii) of this subdivision (e)(1), "cash price" means the actual amount the individual would have paid if the individual had purchased the drug without coverage for the drug under any health benefit plan, which shall include the lowest possible price the individual would be able to obtain by using a drug discount card.

* * *

Sec. 2. 18 V.S.A. § 3632 is added to read:

§ 3632. DISCLOSURE OF AVAILABILITY OF COST INFORMATION

In order to assure covered persons that they are receiving the best available price, each pharmacy in this State shall post a notice informing covered persons purchasing prescription drugs that they may ask the pharmacy staff to disclose to them the following amounts, as set forth in subdivision 3612(e)(1) 1of this chapter:

(1) the cost-sharing amount under the terms of the covered person's health benefit plan;

(2) the maximum allowable cost for the drug;

(3) the amount the covered person would pay for the drug, after application of any known discounts, if the covered person were paying the cash price; and

(4) the current National Average Drug Acquisition Cost plus a professional dispensing fee in an amount equal to the professional dispensing fee in effect for the Vermont Medicaid program.

Sec. 3. 18 V.S.A. § 9406 is added to read:

§ 9406. REPORTING ON PARTICIPATION IN 340B DRUG PRICING PROGRAM

GMCB general comments/feedback on section 3:

- It would be helpful to specify the purpose of 340B transparency at the start of the bill. As we understand it, there are at least three potential goals to more transparency:
    - (1) To better understand how hospitals use 340B revenues to fund other hospital operations
    - (2) To better understand the financial impact of the 340B program on insurance plans
    - (3) To better understand the cumulative impact of the 340B program on patient cost-sharing

We suggest that each part of the legislation be written to more clearly address one of these (or any other) goals.

- The wording in this section, as it reads today, does not appear to violate federal 340B rules or confidentiality. However, we recommend that the committee work with legislative counsel to ensure that any submissions are aligned with public records exclusion in 1 V.S.A. If GMCB is required to post collected data to its website, consider adding "…subject to Public Records Act."
- It is not clear whether submission of this information – due annually on or before July 1st – is intended to be done along with, or as part of, the annual hospital budget and required documentation submission to the GMCB for the hospital budget review process. This could serve to streamline submission; however, it is important to note that the hospital budget review process is intended only to set hospitals' overall revenues and rate increases. GMCB does not regulate specific line items in a hospital's budget. If, in the future, the state legislature wanted to do more with 340B data than simply collect data for transparency purposes – if the legislature wanted to use data as the basis for regulation – it would have to do so outside of the hospital budget process.
- We'd include a requirement that hospitals attest/certify that information provided is true and accurate.
- This reporting, if submitted annually and merely posted to the GMCB website, would require minimal staff effort. However, an official analysis of the data collected pursuant to this bill would significantly increase the required level of effort.

Annually on or before July 1, each hospital participating in the federal 340B drug pricing program established by 42 U.S.C. § 256b shall submit to the Green Mountain Care Board a report detailing the hospital's participation in the program during the previous calendar year, which report shall be posted on the Green Mountain Care Board's website and which shall contain at least the following information:

(1) the aggregated acquisition cost for all prescription drugs that the hospital obtained through the 340B program during the previous calendar year;

(2) the aggregated payment amount that the hospital received for all prescription drugs obtained under the 340B program and dispensed to patients during the previous calendar year;

- We'd include patient cost-sharing in the total amount, to more fully see the value of the 340B program. Consider replacing the original text with the following statement: "The total amount reimbursed to the hospital for all drugs obtained under the 340B program and dispensed to patients during the previous calendar year, inclusive of patient cost-sharing."
- Consider also distinguishing between the total amount reimbursed by insurance companies versus the total amount reimbursed by patient cost-sharing.

(3) the aggregated payment amount that the hospital made to pharmacies with which the hospital contracted to dispense drugs to its patients under the 340B program during the previous calendar year;

(4) the aggregated payment amount that the hospital made to any other outside vendor for managing, administering, or facilitating any aspect of the hospital's 340B drug program during the previous calendar year;

- If a hospital only contracts with one or two 340B vendors, they might argue that their negotiated payments to their vendor(s) constitute a trade secret and warrant confidentiality. If GMCB agreed with their assessment, we would not be able to post this data publicly. We may only be able to publish it as part of a combined 'total expenses' value ((4) + (5)).

(5) all other expenses related to administering the 340B program, including staffing, operational, and administrative expenses, during the previous calendar year;

(6) the names of all vendors, including split billing vendors, contract pharmacies, and pharmacy benefit managers with which the hospital contracted to provide services associated with the hospital's 340B program participation during the previous calendar year;

(7) the number of claims for all prescription drugs the hospital obtained through the 340B program during the previous calendar year, including the total number of claims and the number of claims reported separately by payer type, including Medicare, private insurance, and uninsured;

- We'd also request submission of 340B claims as a percentage of all claims in order to better see the scope of the 340B program. Consider inserting the phrase: "...340B claims as a percentage of all outpatient pharmacy claims..."

(8) a description of the ways in which the hospital uses savings from its participation in the 340B program to benefit its community through programs and services funded in whole or in part by savings from the 340B program, including services that support community access to care that the hospital could not continue without these savings;

- Note: These are not savings. They are revenue – or profits – generated from re-sale of drugs purchased at discount from manufacturers. Consider replacing "savings" with different terminology.

- We'd add a listing of the community programs, total cost of each program in the year and the percentage of the program supported by 340B revenue.
- We'd require hospitals to provide detailed and quantitative data to support any claim that services that support community access to care could not continue without 340B revenue.

(9) a description of the hospital's internal review and oversight of its participation in the 340B program in compliance with the U.S. Department of Health and Human Services, Health Resources and Services Administration's 340B program rules and guidance; and

(10) such additional information as the Board may request.

Sec. 4. 18 V.S.A. § 9414b is added to read:

§ 9414b. ANNUAL PRESCRIPTION DRUG DISCLOSURES TO CONSUMERS

(a) Annually, within 6 months following the end of the plan year, a health insurer shall provide to each individual covered under a health insurance plan offered or administered by the health insurer a report of the total amount that the plan actually spent on prescription drugs for or on behalf of the covered individual during the previous plan year, net of all rebates and discounts. The health insurer shall send the prescription drug spending report to the covered individual at the same address to which the health insurer sends the covered individual's explanation of benefits.

(b) Annually, on or before March 1, each covered entity participating in the federal 340B drug pricing program established by 42 U.S.C. § 256b shall notify its patients if one or more of the prescription drugs prescribed for the patient by a health care professional affiliated with the covered entity was purchased through the 340B program. For a covered entity that is a hospital, the notice shall include information regarding how to access the report on the Green Mountain Care Board's website detailing the hospital's participation in the 340B program, including the ways in which the hospital uses savings from its participation in the 340B program to benefit its community.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2025, with the first report under Sec. 3 (18 V.S.A. § 9406) due on or before July 1, 2026