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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3646

02/20/2020 Authored by Gruenhagen, Urdahl and Hamilton The bill was read for the first time and referred to the Committee on Commerce

1.1 A bill for an act
1.2 relating to health; limiting cost-sharing for prescription drugs; prohibiting pharmacy
1.3 benefit managers and health carriers from sharing prescription information with
1.4 affiliated pharmacies for commercial purposes and from requiring the use of mail
1.5 order pharmacies in specified circumstances; requiring pharmacy benefit managers
1.6 and health carriers to include lower cost generic drugs and interchangeable
1.7 biological products in their formularies; requiring wholesalers to report information
1.8 on repackaged drugs; appropriating money; amending Minnesota Statutes 2019
1.9 Supplement, sections 62Q.48; 62W.02, by adding a subdivision; 62W.07; proposing
1.10 coding for new law in Minnesota Statutes, chapters 62W; 151.

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

1.12 Section 1. Minnesota Statutes 2019 Supplement, section 62Q.48, is amended to read:

1.13 62Q.48 COST-SHARING IN PRESCRIPTION INSULIN DRUGS.

1.14 Subdivision 1. Scope of coverage. This section applies to all health plans issued or
1.15 renewed to a Minnesota resident.

1.16 Subd. 2. Definitions. (a) For the purposes of this section, the terms defined in this
1.17 subdivision have the meanings given them.

1.18 (b) "Cost-sharing" means a deductible payment, co-payment, or coinsurance amount
1.19 imposed on an enrollee for a covered prescription legend drug in accordance with the terms
1.20 and conditions of the enrollee's health plan.

1.21 (c) "Legend drug" has the same meaning as in section 151.01, subdivision 17.

1.22 (d) "Prescription insulin drug" means a legend drug that contains insulin and is used to
1.23 treat diabetes.

2.1 ~~(e)~~ (d) "Net price" means the health plan company's cost for a ~~prescription insulin~~ legend  
 2.2 drug, including any rebates or discounts received by or accrued directly or indirectly to the  
 2.3 health plan company from a drug manufacturer or pharmacy benefit manager.

2.4 Subd. 3. **Cost-sharing limits.** (a) A health plan that imposes a cost-sharing requirement  
 2.5 on the coverage of a ~~prescription insulin~~ legend drug shall limit the total amount of  
 2.6 cost-sharing that an enrollee is required to pay at point of sale, including deductible payments  
 2.7 and the cost-sharing amounts charged once the deductible is met at an amount that does not  
 2.8 exceed the net price of the ~~prescription insulin~~ legend drug.

2.9 (b) Nothing in this section shall prevent a health plan company from imposing a  
 2.10 cost-sharing requirement that is less than the amount specified in paragraph (a).

2.11 Sec. 2. Minnesota Statutes 2019 Supplement, section 62W.02, is amended by adding a  
 2.12 subdivision to read:

2.13 Subd. 1a. **Affiliated pharmacy.** "Affiliated pharmacy" means a retail pharmacy, mail  
 2.14 order pharmacy, specialty pharmacy, or other network pharmacy in which a pharmacy  
 2.15 benefit manager or health carrier has an ownership interest or in which the pharmacy provider  
 2.16 has an ownership interest in the pharmacy benefit manager or health carrier.

2.17 Sec. 3. Minnesota Statutes 2019 Supplement, section 62W.07, is amended to read:

2.18 **62W.07 PHARMACY OWNERSHIP INTEREST; PHARMACY SERVICES.**

2.19 (a) A pharmacy benefit manager that has an ownership interest either directly or indirectly,  
 2.20 or through an affiliate or subsidiary, in a pharmacy must disclose to a plan sponsor that  
 2.21 contracts with the pharmacy benefit manager any difference between the amount paid to  
 2.22 that pharmacy and the amount charged to the plan sponsor.

2.23 (b) A pharmacy benefit manager or health carrier is prohibited from penalizing, requiring,  
 2.24 or providing financial incentives, including variations in premiums, deductibles, co-payments,  
 2.25 or coinsurance, to an enrollee as an incentive to use a ~~retail pharmacy, mail order pharmacy,~~  
 2.26 ~~specialty pharmacy, or other network pharmacy provider in which a pharmacy benefit~~  
 2.27 ~~manager has an ownership interest or in which the pharmacy provider has an ownership~~  
 2.28 ~~interest in the pharmacy benefit manager~~ an affiliated pharmacy.

2.29 (c) Paragraph (b) does not apply if the pharmacy benefit manager or health carrier offers  
 2.30 an enrollee the same financial incentives for using a network retail pharmacy, mail order  
 2.31 pharmacy, specialty pharmacy, or other network pharmacy in which the pharmacy benefit  
 2.32 manager has no ownership interest and the network pharmacy has agreed to accept the same

3.1 pricing terms, conditions, and requirements related to the cost of the prescription drug and  
3.2 the cost of dispensing the prescription drug that are in the agreement with a network  
3.3 pharmacy in which the pharmacy benefit manager has an ownership interest.

3.4 (d) A pharmacy benefit manager or health carrier is prohibited from imposing limits,  
3.5 including quantity limits or refill frequency limits, on an enrollee's access to medication  
3.6 that differ based solely on whether the ~~health carrier or pharmacy benefit manager has an~~  
3.7 ~~ownership interest in a pharmacy or the pharmacy has an ownership interest in the pharmacy~~  
3.8 ~~benefit manager~~ enrollee receives the medication from an affiliated pharmacy.

3.9 (e) Nothing in paragraph (d) shall be construed to prohibit a pharmacy benefit manager  
3.10 from imposing different limits, including quantity limits or refill frequency limits on an  
3.11 enrollee's access to medication based on whether the enrollee uses a mail order pharmacy  
3.12 or retail pharmacy so long as the enrollee has the option to use a mail order pharmacy or  
3.13 retail pharmacy with the same limits imposed in which the pharmacy benefit manager or  
3.14 health carrier does not have an ownership interest.

3.15 (f) A pharmacy benefit manager or health carrier must not prohibit an entity authorized  
3.16 to participate in the federal 340B Drug Pricing Program under section 340B of the Public  
3.17 Health Service Act, United States Code, title 42, chapter 6A, or a pharmacy under contract  
3.18 with such an entity to provide pharmacy services from participating in the pharmacy benefit  
3.19 manager's or health carrier's provider network. A pharmacy benefit manager or health carrier  
3.20 must not reimburse an entity or a pharmacy under contract with such an entity participating  
3.21 in the federal 340B Drug Pricing Program differently than other similarly situated pharmacies.  
3.22 A pharmacy benefit manager that contracts with a managed care plan or county-based  
3.23 purchasing plan under contract with the commissioner of human services under chapter  
3.24 256B or 256L must comply with this paragraph only if the entity or contracted pharmacy  
3.25 can identify all claims eligible for 340B drugs at the time of initial claims submission at the  
3.26 point of sale. This paragraph does not preclude a pharmacy benefit manager that contracts  
3.27 with a managed care plan or county-based purchasing plan under contract with the  
3.28 commissioner of human services under chapter 256B or 256L from reimbursing an entity  
3.29 or pharmacy identified in this paragraph at a lower rate for any prescription drug purchased  
3.30 by the entity or pharmacy through the federal 340B Drug Pricing Program.

3.31 (g) A pharmacy benefit manager or health carrier is prohibited from transferring or  
3.32 sharing prescription information containing patient-identifiable or prescriber-identifiable  
3.33 data to an affiliated pharmacy for any commercial purpose, except that this prescription  
3.34 information may be exchanged solely for the purposes of pharmacy reimbursement, formulary  
3.35 compliance, pharmacy care, or utilization review.

4.1 (h) A pharmacy benefit manager or health carrier is prohibited from requiring an enrollee  
 4.2 to use a mail order pharmacy if:

4.3 (1) the prescriber specifies in the prescription that face-to-face consultation with a  
 4.4 pharmacist is recommended for the safe and effective use of the prescription medication;  
 4.5 and

4.6 (2) the enrollee agrees with this recommendation and communicates this to the pharmacy  
 4.7 benefit manager or health carrier.

4.8 **Sec. 4. [62W.15] FORMULARY REQUIREMENTS.**

4.9 (a) A pharmacy benefit manager or health carrier that includes a brand-name drug or  
 4.10 reference biological product in its formulary must also include generically equivalent drugs  
 4.11 to the brand-name drug and interchangeable biological products to the reference biological  
 4.12 product, if:

4.13 (1) the cost to the enrollee for the generically equivalent drug or interchangeable  
 4.14 biological product is less than the cost to the enrollee of the brand-name drug or reference  
 4.15 biological product; or

4.16 (2) the total cost of the generically equivalent drug or interchangeable biological product  
 4.17 is less than the total cost of the brand-name drug or reference biological product.

4.18 (b) For purposes of this section:

4.19 (1) "reference biological product" means the single biological product for which the  
 4.20 United States Food and Drug Administration has approved an initial biological product  
 4.21 license application, against which other biological products are evaluated for licensure as  
 4.22 biosimilar products or interchangeable biological products; and

4.23 (2) "total cost" means the sum of payment by the pharmacy benefit manager or health  
 4.24 carrier to the drug manufacturer or wholesaler, any rebates and fees received from the drug  
 4.25 manufacturer or wholesaler, and any enrollee cost-sharing for the drug or biological product.

4.26 **Sec. 5. [151.485] REPACKAGED DRUGS.**

4.27 (a) Each wholesaler shall report to the board the following information, for each  
 4.28 prescription drug that it repackages for sale or distribution in Minnesota:

4.29 (1) the wholesaler's average acquisition cost for the prescription drug for the past calendar  
 4.30 year; and

5.1 (2) the wholesaler's average sale price to purchasers in Minnesota for the past calendar  
5.2 year.

5.3 A wholesaler shall report this information to the board annually, by February 1 of each year,  
5.4 beginning February 1, 2021, in the form and manner specified by the board, using the  
5.5 definitions of average acquisition cost and average sale price specified by the board.

5.6 (b) The board shall report to the chairs and ranking minority members of the legislative  
5.7 committees with jurisdiction over health and human services policy and finance, by April  
5.8 15 of each year, beginning April 15, 2021, summary results of the information reported by  
5.9 wholesalers under paragraph (a), for each therapeutic category of prescription drugs. The  
5.10 board shall include in the report an analysis of the extent to which the difference between  
5.11 each wholesaler's average sale price for each therapeutic category of prescription drugs and  
5.12 the wholesaler's average acquisition cost for that therapeutic category exceeds the board's  
5.13 estimate of reasonable costs to the wholesaler for repackaging the drugs.

5.14 (c) The board may contract with a third party to implement and administer this section.

5.15 Sec. 6. **APPROPRIATION; BOARD OF PHARMACY.**

5.16 \$..... is appropriated from the general fund to the Board of Pharmacy for the fiscal year  
5.17 ending June 30, 2021, to implement Minnesota Statutes, section 151.485.