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FIRST REPRINT **S.B. 539**

EMERGENCY REQUEST OF SENATE MINORITY LEADER

SENATE BILL NO. 539–SENATORS ROBERSON, GANSERT, KIECKHEFER, HARRIS, HARDY; GOICOECHEA, GUSTAVSON, HAMMOND, SETTELMEYER, ATKINSON, CANCELA, CANNIZZARO, DENIS, FARLEY, FORD, MANENDO, PARKS, RATTI, SEGERBLOM, SPEARMAN AND WOODHOUSE

MAY 16, 2017

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to prescription drugs. (BDR 40-1217)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to prescription drugs; requiring the Department of Health and Human Services to compile certain lists of certain prescription drugs that are used to treat diabetes; requiring the manufacturer of a drug included on such lists and a pharmacy benefit manager to provide certain information to the Department; requiring the Department to compile a report based on such information; requiring a manufacturer of prescription drugs to submit a list of each pharmaceutical sales representative who markets prescription drugs to certain persons in this State; prohibiting a pharmaceutical sales representative who is not included on such a list from marketing prescription drugs on behalf of a manufacturer; requiring each pharmaceutical sales representative included on such a list to report certain information to the Department; requiring certain nonprofit organizations to report to the Department certain information concerning certain contributions and benefits received from drug manufacturers, insurers and pharmacy benefit managers or trade and advocacy groups for such entities; requiring the Department to place certain information on its Internet website; authorizing the Department to impose an administrative penalty in certain circumstances; providing that certain information does not constitute a trade secret; imposing certain requirements on a pharmacy benefit manager; requiring a private school to allow a pupil to keep and self-administer certain drugs; requiring certain insurers to provide certain notice to insureds; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the organization with the largest membership in this State which represents the interests of retail merchants to prepare a list of not less than 100 prescription drugs most commonly prescribed to residents of this State. (NRS 439.905) Existing law also requires the Department of Health and Human Services to place on the Internet website maintained by the Department certain information reported by pharmacies concerning the prices charged by the pharmacies for drugs that appear on that list. (NRS 439.915) **Section 3.6** of this bill requires the Department to compile: (1) a list of prescription drugs that the Department determines to be essential for treating diabetes in this State; and (2) a list of such prescription drugs that have been subject to a significant price increase within the immediately preceding 2 calendar years. **Section 3.8** of this bill requires the manufacturer of a prescription drug included on the list of essential diabetes drugs to submit to the Department an annual report that contains certain information concerning the cost of the drug. **Section 4** of this bill requires the manufacturer of a drug included on the list of essential diabetes drugs that have undergone a substantial cost increase to submit to the Department a report concerning the reasons for the cost increase. **Section 4.2** of this bill requires a pharmacy benefit manager to report certain information concerning essential diabetes drugs to the Department. **Section 9** of this bill provides that any information that a manufacturer of an essential diabetes drug, a pharmacy benefit manager or a pharmaceutical sales representative is required to report is not a trade secret. **Section 4.3** of this bill requires the Department to analyze the information submitted by such manufacturers and compile a report concerning the reasons for and effect of the pricing of essential diabetes drugs.

Section 4.9 of this bill requires a nonprofit organization that advocates for patients or funds medical research in this State to post on its Internet website or, if the nonprofit organization does not maintain an Internet website, submit to the Department certain information concerning payments, donations and anything else of value that the organization receives from manufacturers of prescription drugs, certain third parties or pharmacy benefit managers or trade or advocacy groups for such entities. **Section 6** of this bill requires the Department to place on the Internet website maintained by the Department: (1) the information and lists compiled by the Department pursuant to **sections 3.6, 4.3 and 4.6**; and (2) the information submitted to the Department pursuant to **sections 3.8 and 4.9**. **Section 6.5** of this bill provides that the Department is not liable for any act, omission, error or technical problem that results in the failure to provide information or the provision of any incorrect information placed on the Internet website of the Department. **Section 7** of this bill requires the Department to adopt any necessary regulations concerning the reporting of information by manufacturers and nonprofit organizations for inclusion on the Internet website of the Department. **Section 26.3** of this bill requires an insurer that offers or issues a policy of individual health insurance and uses a formulary to provide, during each open enrollment period, a notice of any drugs on the list of essential diabetes drugs that have been removed from the formulary or will be removed from the formulary during the current plan year or the next plan year.

Section 4.6 of this bill requires a manufacturer to provide to the Department a list of each pharmaceutical sales representative who markets prescription drugs to providers of health care, pharmacies, medical facilities and insurers in this State on behalf of the manufacturer. **Section 4.6** also prohibits a person who is not included on such a list from marketing prescription drugs on behalf of a manufacturer to providers of health care, pharmacies, medical facilities and insurers. Additionally, **section 4.6** requires each pharmaceutical sales representative who is included on such a list to submit an annual report to the Department. Finally, **section 4.6** requires the Department to compile an annual report based on the information

submitted by pharmaceutical sales representatives. **Section 8** of this bill authorizes the Department to impose an administrative penalty against a manufacturer, pharmacy benefit manager, nonprofit organization or pharmaceutical sales representative who fails to provide the information required by **sections 3.8, 4, 4.2, 4.6 and 4.9**.

Upon the submission of a written request, existing law requires a public school to allow a pupil who has asthma, anaphylaxis or diabetes to carry and self-administer medication to treat his or her disorder while the pupil is on the grounds of a public school, participating in an activity sponsored by a public school or on a school bus. (NRS 392.425) Willful failure to carry out this requirement is grounds to suspend, demote, dismiss or refuse to reemploy a teacher or administrator. (NRS 391.750) **Section 8.6** of this bill: (1) imposes similar requirements for private schools; and (2) makes a willful violation of those requirements a misdemeanor. **Section 19** of this bill provides that a pharmacy benefit manager has a fiduciary duty to an insurer with which the pharmacy benefit manager has entered into a contract to manage prescription drug coverage.

Section 20 of this bill prohibits a pharmacy benefit manager from engaging in certain trade practices.

Federal law prohibits states from regulating an employee benefit plan established under the Employee Retirement Income Security Act of 1974. (29 U.S.C. § 1144) **Section 17** of this bill provides that the requirements that this bill imposes upon pharmacy benefit managers and insurers do not apply to the management or provision of prescription drug benefits included in such a plan unless the plan requires compliance with those provisions.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 439 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4.9, inclusive, of this act.

Sec. 2. ***"Manufacturer" has the meaning ascribed to it in NRS 639.009.***

Sec. 3. ***"Pharmacy" means every store or shop licensed by the State Board of Pharmacy where drugs, controlled substances, poisons, medicines or chemicals are stored or possessed, or dispensed or sold at retail, or displayed for sale at retail, or where prescriptions are compounded or dispensed. The term does not include an institutional pharmacy as defined in NRS 639.0085.***

Sec. 3.2. ***"Pharmacy benefit manager" has the meaning ascribed to it in section 14.5 of this act.***

Sec. 3.4. ***"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, as reported in wholesale price guides or other publications of drug pricing data.***

Sec. 3.6. ***On or before February 1 of each year, the Department shall compile:***

1. A list of prescription drugs that the Department determines to be essential for treating diabetes in this State and the wholesale acquisition cost of each such drug on the list. The list must include, without limitation, all forms of insulin and biguanides marketed for sale in this State.

2. A list of prescription drugs described in subsection 1 that have been subject to an increase in the wholesale acquisition cost of a percentage equal to or greater than:

(a) The percentage increase in the Consumer Price Index, Medical Care Component during the immediately preceding calendar year; or

(b) Twice the percentage increase in the Consumer Price Index, Medical Care Component during the immediately preceding 2 calendar years.

Sec. 3.8. *On or before April 1 of each year, the manufacturer of a prescription drug that appears on the most current list compiled by the Department pursuant to subsection 1 of section 3.6 of this act shall prepare and submit to the Department, in the form prescribed by the Department, a report which must include:*

1. The costs of producing the drug;

2. The total administrative expenditures relating to the drug, including marketing and advertising costs;

3. The profit that the manufacturer has earned from the drug and the percentage of the manufacturer's total profit for the period during which the manufacturer has marketed the drug for sale that is attributable to the drug;

4. The total amount of financial assistance that the manufacturer has provided through any patient prescription assistance program;

5. The cost associated with coupons provided directly to consumers and for programs to assist consumers in paying copayments, and the cost to the manufacturer attributable to the redemption of those coupons and the use of those programs;

6. The wholesale acquisition cost of the drug;

7. A history of any increases in the wholesale acquisition cost of the drug over the 5 years immediately preceding the date on which the report is submitted, including the amount of each such increase expressed as a percentage of the total wholesale acquisition cost of the drug, the month and year in which each increase became effective and any explanation for the increase;

8. The aggregate amount of all rebates that the manufacturer has provided to pharmacy benefit managers for sales of the drug within this State; and

9. Any additional information prescribed by regulation of the Department for the purpose of analyzing the cost of prescription

drugs that appear on the list compiled pursuant to subsection 1 of section 3.6 of this act, trends in those costs and rebates available for such drugs.

Sec. 4. *On or before April 1 of a year in which a drug is included on the list compiled pursuant to subsection 2 of section 3.6 of this act, the manufacturer of the drug shall submit to the Department a report describing the reasons for the increase in the wholesale acquisition cost of the drug described in that subsection. The report must include, without limitation:*

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 other information prescribed by regulation by the Department.

Sec. 4.2. *1. Except as otherwise provided in subsection 2, on or before April 1 of each year, a pharmacy benefit manager shall submit to the Department a report which includes:*

(a) The total amount of all rebates that the pharmacy benefit manager negotiated with manufacturers during the immediately preceding calendar year for prescription drugs included on the list compiled by the Department pursuant to subsection 1 of section 3.6 of this act;

(b) The total amount of all rebates described in paragraph (a) that were retained by the pharmacy benefit manager; and

(c) The total amount of all rebates described in paragraph (a) that were negotiated for purchases of such drugs for use by:

(1) Recipients of Medicare;

(2) Recipients of Medicaid;

(3) Persons covered by third parties that are governmental entities which are not described in subparagraph (1) or (2);

(4) Persons covered by third parties that are not governmental entities; and

(5) Persons covered by a plan described in subsection 2 to the extent required by a contract entered into pursuant to subsection 3.

2. Except as otherwise provided in subsection 3, the requirements of this section do not apply to the coverage of prescription drugs under a plan that is subject to the Employee Retirement Income Security Act of 1974 or any information relating to such coverage.

3. A plan described in subsection 2 may, by contract, require a pharmacy benefit manager that manages the coverage of

prescription drugs under the plan to comply with the requirements of this section.

Sec. 4.3. *On or before June 1 of each year, the Department shall analyze the information submitted pursuant to sections 3.8, 4 and 4.2 of this act and compile a report on the price of the prescription drugs that appear on the most current lists compiled by the Department pursuant to section 3.6 of this act, the reasons for any increases in those prices and the effect of those prices on overall spending on prescription drugs in this State. The report may include, without limitation, opportunities for persons and entities in this State to lower the cost of drugs for the treatment of diabetes while maintaining access to such drugs.*

Sec. 4.6. *1. A manufacturer of a prescription drug shall provide to the Department a list of each pharmaceutical sales representative who markets prescription drugs on behalf of the manufacturer to providers of health care licensed, certified or registered in this State, pharmacies or employees thereof, operators or employees of medical facilities or persons licensed or certified under the provisions of title 57 of NRS and update the list at least annually.*

2. The Department shall provide electronic access to the most recent list provided by each manufacturer pursuant to subsection 1 to each provider of health care licensed, certified or registered in this State, operator of a pharmacy, operator of a medical facility or person licensed or certified under the provisions of title 57 for the purposes of ensuring compliance with the requirements of subsection 3. This subsection must not be construed to impose any duty on a provider of health care, operator of a pharmacy, operator of a medical facility or person licensed or certified under the provisions of title 57 to ensure such compliance.

3. A person who is not included on a current list submitted pursuant to subsection 1 shall not market prescription drugs on behalf of a manufacturer:

(a) To any provider of health care licensed, certified or registered in this State, pharmacy or employee thereof, operator or employee of a medical facility or person licensed or certified under the provisions of title 57 of NRS; or

(b) For sale to any resident of this State.

4. On or before March 1 of each year, each person who was included on a list of pharmaceutical sales representatives submitted pursuant to subsection 1 at any time during the immediately preceding calendar year shall submit to the Department a report, which must include, for the immediately preceding calendar year:

(a) A list of providers of health care licensed, certified or registered in this State, pharmacies and employees thereof, operators and employees of medical facilities and persons licensed or certified under the provisions of title 57 of NRS to whom the pharmaceutical sales representative provided:

(1) Any type of compensation with a value that exceeds $10; or

(2) Total compensation with a value that exceeds $100 in aggregate; and

(b) The name and manufacturer of each prescription drug for which the pharmaceutical sales representative provided a free sample to a provider of health care licensed, certified or registered in this State, pharmacy or employee thereof, operator or employee of a medical facility or person licensed or certified under the provisions of title 57 of NRS and the name of each such person to whom a free sample was provided.

5. The Department shall analyze annually the information submitted pursuant to subsection 4 and compile a report on the activities of pharmaceutical sales representatives in this State. Any information contained in such a report that is derived from a list provided pursuant to subsection 1 or a report submitted pursuant to subsection 3 must be reported in aggregate and in a manner that does not reveal the identity of any person or entity. On or before June 1 of each year, the Department shall:

(a) Post the report on the Internet website maintained by the Department; and

(b) Submit the report to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the Legislative Committee on Health Care and, in even-numbered years, the next regular session of the Legislature.

6. As used in this section:

(a) "Medical facility" has the meaning ascribed to it in NRS 629.026.

(b) "Pharmaceutical sales representative" means a person who markets prescription drugs to providers of health care licensed, certified or registered in this State, pharmacies or employees thereof, operators or employees of medical facilities or persons licensed or certified under the provisions of title 57 of NRS.

(c) "Provider of health care" has the meaning ascribed to it in NRS 629.031.

Sec. 4.9. *1. On or before February 1 of each year, a nonprofit organization that advocates on behalf of patients or funds medical research in this State and has received a payment, donation, subsidy or anything else of value from a manufacturer, third party or pharmacy benefit manager or a trade or advocacy*

group for manufacturers, third parties or pharmacy benefit managers during the immediately preceding calendar year shall:

(a) Compile a report which includes:

(1) For each such contribution, the amount of the contribution and the manufacturer, third party or pharmacy benefit manager or group that provided the payment, donation, subsidy or other contribution; and

(2) The percentage of the total gross income of the organization during the immediately preceding calendar year attributable to payments, donations, subsidies or other contributions from each manufacturer, third party, pharmacy benefit manager or group; and

(b) Except as otherwise provided in this paragraph, post the report on an Internet website that is maintained by the nonprofit organization and accessible to the public. If the nonprofit organization does not maintain an Internet website that is accessible to the public, the nonprofit organization shall submit the report compiled pursuant to paragraph (a) to the Department.

2. As used in this section, "third party" means:

(a) An insurer, as that term is defined in NRS 679B.540;

(b) A health benefit plan, as that term is defined in NRS 689A.540, for employees which provides coverage for prescription drugs;

(c) A participating public agency, as that term is defined in NRS 287.04052, and any other local governmental agency of the State of Nevada which provides a system of health insurance for the benefit of its officers and employees, and the dependents of officers and employees, pursuant to chapter 287 of NRS; or

(d) Any other insurer or organization that provides health coverage or benefits in accordance with state or federal law.

➥ The term does not include an insurer that provides coverage under a policy of casualty or property insurance.

Sec. 5. NRS 439.900 is hereby amended to read as follows:

439.900 As used in NRS 439.900 to 439.940, inclusive, ***and sections 2 to 4.9, inclusive, of this act,*** unless the context otherwise requires, ~~[~~"pharmacy" means every store or shop licensed by the State Board of Pharmacy where drugs, controlled substances, poisons, medicines or chemicals are stored or possessed, or dispensed or sold at retail, or displayed for sale at retail, or where prescriptions are compounded or dispensed. The term does not include an institutional pharmacy as defined in NRS 639.0085.~~]~~ ***the words and terms defined in sections 2 to 3.4, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 6. NRS 439.915 is hereby amended to read as follows:

439.915 1. Except as otherwise provided in subsection 2 ~~[,]~~ ***and subsection 3 of section 4.6 of this act,*** the Department shall:

(a) Place or cause to be placed on the Internet website maintained by the Department ~~[the]~~ ***:***

(1) The information provided by each pharmacy pursuant to NRS 439.910;

(2) The information compiled by a nonprofit organization pursuant to section 4.9 of this act if such a report is submitted pursuant to paragraph (b) of subsection 1 of that section;

(3) The lists of prescription drugs compiled by the Department pursuant to section 3.6 of this act;

(4) The wholesale acquisition cost of each prescription drug reported pursuant to section 3.8 of this act; and

(5) The reports compiled by the Department pursuant to sections 4.3 and 4.6 of this act.

(b) Ensure that the information ~~[provided by each pharmacy pursuant to NRS 439.910 and]~~ placed on the Internet website maintained by the Department ***pursuant to paragraph (a)*** is organized so that each individual pharmacy ***, manufacturer and nonprofit organization*** has its own separate entry on that website; and

(c) Ensure that the usual and customary price that each pharmacy charges for each prescription drug that is on the list prepared pursuant to NRS 439.905 and that is stocked by the pharmacy:

(1) Is presented on the Internet website maintained by the Department in a manner which complies with the requirements of NRS 439.920; and

(2) Is updated not less frequently than once each calendar quarter.

➥ Nothing in this subsection prohibits the Department from determining the usual and customary price that a pharmacy charges for a prescription drug by extracting or otherwise obtaining such information from claims reported by pharmacies to the Medicaid program.

2. If a pharmacy is part of a larger company or corporation or a chain of pharmacies or retail stores, the Department may present the pricing information pertaining to such a pharmacy in such a manner that the pricing information is combined with the pricing information relative to other pharmacies that are part of the same company, corporation or chain, to the extent that the pricing information does not differ among those pharmacies.

3. The Department may establish additional or alternative procedures by which a consumer who is unable to access the

Internet or is otherwise unable to receive the information described in subsection 1 in the manner in which it is presented by the Department may obtain that information:

(a) In the form of paper records;

(b) Through the use of a telephonic system; or

(c) Using other methods or technologies designed specifically to assist consumers who are hearing impaired or visually impaired.

4. As used in this section, "usual and customary price" means the usual and customary charges that a ~~[provider]~~ ***pharmacy*** charges to the general public for a drug, as described in 42 C.F.R. § ~~[447.331.]~~ ***447.512.***

Sec. 6.5. NRS 439.925 is hereby amended to read as follows:

439.925 The Department and its members, officers and employees are not liable civilly or criminally for any act, omission, error or technical problem that results in:

1. The failure to provide to consumers information regarding a pharmacy, ***prescription drug or nonprofit organization,*** including, without limitation, the ~~[prices charged by the pharmacy for the prescription drugs and generic equivalents that are on the list prepared pursuant to NRS 439.905; or]~~ ***information made available on the Department's Internet website pursuant to NRS 439.915; or***

2. The providing to consumers of incorrect information regarding a pharmacy, ***prescription drug or nonprofit organization,*** including, without limitation, the ~~[prices charged by the pharmacy for the prescription drugs and generic equivalents that are on the list prepared pursuant to NRS 439.905.]~~ ***information made available on the Department's Internet website pursuant to NRS 439.915.***

Sec. 7. NRS 439.930 is hereby amended to read as follows:

439.930 The Department shall adopt such regulations as it determines to be necessary or advisable to carry out the provisions of NRS 439.900 to 439.940, inclusive ~~[.]~~ ***, and sections 2 to 4.9, inclusive, of this act.*** Such regulations must provide for, without limitation:

1. Notice to consumers stating that:

(a) Although the Department will strive to ensure that consumers receive accurate information regarding pharmacies, ***prescription drugs and nonprofit organizations*** including, without limitation, the ~~[prices charged by those pharmacies for the prescription drugs and generic equivalents that are on the list prepared pursuant to NRS 439.905,]~~ ***information made available on the Department's Internet website pursuant to NRS 439.915,*** the Department is unable to guarantee the accuracy of such information;

(b) If a consumer follows an Internet link from the Internet website maintained by the Department to an Internet website ***not*** maintained by ~~[a pharmacy,]~~ ***the Department,*** the Department is

unable to guarantee the accuracy of any information made available on ~~[~~the~~]~~ ***that*** Internet website ***;*** ~~[~~maintained by the pharmacy;~~]~~ and

(c) The Department advises consumers to contact a pharmacy ***, manufacturer or nonprofit organization*** directly to verify the accuracy of any information regarding the pharmacy ***, a prescription drug manufactured by the manufacturer or the nonprofit organization, as applicable,*** which is made available to consumers pursuant to NRS 439.900 to 439.940, inclusive ~~[~~,~~]~~ ***, and sections 2 to 4.9, inclusive, of this act;***

2. Procedures adopted to direct consumers who have questions regarding the program described in NRS 439.900 to 439.940, inclusive, ***and sections 2 to 4.9, inclusive, of this act*** to contact the Office for Consumer Health Assistance of the Department;

3. Provisions in accordance with which the Department will allow an Internet link to the information ~~[~~provided by each pharmacy pursuant to NRS 439.910 and~~]~~ made available on the Department's Internet website ***pursuant to NRS 439.915*** to be placed on other Internet websites managed or maintained by other persons and entities, including, without limitation, Internet websites managed or maintained by:

(a) Other governmental entities, including, without limitation, the State Board of Pharmacy and the Office of the Governor; and

(b) Nonprofit organizations and advocacy groups;

4. Procedures pursuant to which consumers ***,*** ~~[~~and~~]~~ pharmacies ***, manufacturers and nonprofit organizations*** may report to the Department that information made available to consumers pursuant to NRS 439.900 to 439.940, inclusive, ***and sections 2 to 4.9, inclusive, of this act*** is inaccurate;

5. The form and manner in which pharmacies are to provide to the Department the information described in NRS 439.910; and

6. ***The form and manner in which manufacturers are to provide to the Department the information described in sections 3.8, 4 and 4.6 of this act;***

7. The form and manner in which pharmacy benefit managers are to provide to the Department the information described in section 4.2 of this act;

8. The form and manner in which pharmaceutical sales representatives are to provide to the Department the information described in section 4.6 of this act;

9. The form and manner in which nonprofit organizations are to provide to the Department the information described in section 4.9 of this act, if required; and

10. Standards and criteria pursuant to which the Department may remove from its Internet website information regarding a pharmacy or an Internet link to the Internet website maintained by a

pharmacy, or both, if the Department determines that the pharmacy has:

(a) Ceased to be licensed and in good standing pursuant to chapter 639 of NRS; or

(b) Engaged in a pattern of providing to consumers information that is false or would be misleading to reasonably informed persons.

Sec. 7.5. NRS 439.935 is hereby amended to read as follows:

439.935 1. On or before July 1 of each odd-numbered year, the Department shall make a determination of whether sufficient money is available and authorized for expenditure to fund one or more components of the programs and other duties of the Department relating to NRS 439.900 to 439.940, inclusive ~~[.]~~ ***, and sections 2 to 4.9, inclusive, of this act.***

2. The Department shall temporarily suspend any components of the program or duties of the Department for which it determines pursuant to subsection 1 that sufficient money is not available.

3. The Department may apply for and accept any available grants and may accept any bequests, devises, donations or gifts from any public or private source to carry out the provisions of NRS 439.900 to 439.940, inclusive ~~[.]~~ ***, and sections 2 to 4.9, inclusive, of this act.***

Sec. 8. NRS 439.940 is hereby amended to read as follows:

439.940 ***1.*** If a pharmacy that is licensed under the provisions of chapter 639 of NRS and is located within the State of Nevada fails to provide to the Department the information required to be provided pursuant to NRS 439.910 or fails to provide such information on a timely basis, and the failure was not caused by excusable neglect, technical problems or other extenuating circumstances, the Department may impose against the pharmacy an administrative penalty of not more than $500 for each day of such failure.

2. If a manufacturer fails to provide to the Department the information required by section 3.8, 4 or 4.6 of this act, a pharmacy benefit manager fails to provide to the Department the information required by section 4.2 of this act, a nonprofit organization fails to post or provide to the Department, as applicable, the information required by section 4.9 of this act or a manufacturer, pharmacy benefit manager or nonprofit organization fails to post or provide, as applicable, such information on a timely basis, and the failure was not caused by excusable neglect, technical problems or other extenuating circumstances, the Department may impose against the manufacturer, pharmacy benefit manager or nonprofit organization, as applicable, an administrative penalty of not more than $5,000 for each day of such failure.

3. If a pharmaceutical sales representative fails to comply with the requirements of section 4.6 of this act, the Department may impose against the pharmaceutical sales representative an administrative penalty of not more than $500 for each day of such failure.

4. Any money collected as administrative penalties pursuant to this section must be accounted for separately and used by the Department to establish and carry out programs to provide education concerning diabetes and prevent diabetes.

Sec. 8.6. Chapter 394 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The parent or legal guardian of a pupil who has asthma, anaphylaxis or diabetes may submit a written request to the principal or, if applicable, the school nurse of the private school in which the pupil is enrolled to allow the pupil to self-administer medication for the treatment of the pupil's asthma, anaphylaxis or diabetes while the pupil is on the grounds of the private school, participating in an activity sponsored by the private school or on a school bus.

2. A private school shall establish protocols for containing blood-borne pathogens and the handling and disposal of needles, medical devices and other medical waste and provide a copy of these protocols and procedures to the parent or guardian of a pupil who requests permission for the pupil to self-administer medication pursuant to subsection 1.

3. A written request made pursuant to subsection 1 must include:

(a) A signed statement of a physician indicating that the pupil has asthma, anaphylaxis or diabetes and is capable of self-administration of the medication while the pupil is on the grounds of the private school, participating in an activity sponsored by the private school or on a school bus;

(b) A written treatment plan prepared by the physician pursuant to which the pupil will manage his or her asthma, anaphylaxis or diabetes if the pupil experiences an asthmatic attack, anaphylactic shock or diabetic episode while on the grounds of the private school, participating in an activity sponsored by the private school or on a school bus; and

(c) A signed statement of the parent or legal guardian:

(1) Indicating that the parent or legal guardian grants permission for the pupil to self-administer the medication while the pupil is on the grounds of the private school, participating in an activity sponsored by the private school or on a school bus;

(2) Acknowledging that the parent or legal guardian is aware of and understands the provisions of subsections 4 and 5;

(3) Acknowledging the receipt of the protocols provided pursuant to subsection 2;

(4) Acknowledging that the protocols established pursuant to subsection 2 have been explained to the pupil who will self-administer the medication and that he or she has agreed to comply with the protocols; and

(5) Acknowledging that authorization to self-administer medication pursuant to this section may be revoked if the pupil fails to comply with the protocols established pursuant to subsection 2.

4. The provisions of this section do not create a duty for the private school in which the pupil is enrolled, or an employee or agent thereof, that is in addition to those duties otherwise required in the course of service or employment.

5. If a pupil is granted authorization pursuant to this section to self-administer medication, the governing body of the private school in which the pupil is enrolled, the private school and any employee or agent thereof, are immune from liability for the injury to or death of:

(a) The pupil as a result of self-administration of a medication pursuant to this section or the failure of the pupil to self-administer such a medication; and

(b) Any other person as a result of exposure to or injury caused by needles, medical devices or other medical waste from the self-administration of medication by a pupil pursuant to this section.

6. Upon receipt of a request that complies with subsection 3, the principal or, if applicable, the school nurse of the private school in which the pupil is enrolled shall provide written authorization for the pupil to carry and self-administer medication to treat his or her asthma, anaphylaxis or diabetes while the pupil is on the grounds of the private school, participating in an activity sponsored by the private school or on a school bus. The written authorization must be filed with the principal or, if applicable, the school nurse of the private school in which the pupil is enrolled and must include:

(a) The name and purpose of the medication which the pupil is authorized to self-administer;

(b) The prescribed dosage and the duration of the prescription;

(c) The times or circumstances, or both, during which the medication is required or recommended for self-administration;

(d) The side effects that may occur from an administration of the medication;

(e) The name and telephone number of the pupil's physician and the name and telephone number of the person to contact in the case of a medical emergency concerning the pupil; and

(f) The procedures for the handling and disposal of needles, medical devices and other medical waste.

7. The written authorization provided pursuant to subsection 6 is valid for 1 school year. If a parent or legal guardian submits a written request that complies with subsection 3, the principal or, if applicable, the school nurse of the private school in which the pupil is enrolled shall renew and, if necessary, revise the written authorization.

8. If a parent or legal guardian of a pupil who is authorized pursuant to this section to carry medication on his or her person provides to the principal or, if applicable, the school nurse of the private school in which the pupil is enrolled doses of the medication in addition to the dosage that the pupil carries on his or her person, the principal or, if applicable, the school nurse shall ensure that the additional medication is:

(a) Stored on the premises of the private school in a location that is secure; and

(b) Readily available if the pupil experiences an asthmatic attack, anaphylactic shock or diabetic episode during school hours.

9. An employee of a private school who willfully violates any provision of this section is guilty of a misdemeanor.

10. As used in this section:

(a) "Medication" has the meaning ascribed to it in NRS 392.425.

(b) "Physician" has the meaning ascribed to it in NRS 392.425.

(c) "Self-administer" has the meaning ascribed to it in NRS 392.425.

Sec. 9. NRS 600A.030 is hereby amended to read as follows:

600A.030 As used in this chapter, unless the context otherwise requires:

1. "Improper means" includes, without limitation:

(a) Theft;

(b) Bribery;

(c) Misrepresentation;

(d) Willful breach or willful inducement of a breach of a duty to maintain secrecy;

(e) Willful breach or willful inducement of a breach of a duty imposed by common law, statute, contract, license, protective order or other court or administrative order; and

(f) Espionage through electronic or other means.

2. "Misappropriation" means:

(a) Acquisition of the trade secret of another by a person by improper means;

(b) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(c) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(1) Used improper means to acquire knowledge of the trade secret;

(2) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:

(I) Derived from or through a person who had used improper means to acquire it;

(II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(III) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(3) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

3. "Owner" means the person who holds legal or equitable title to a trade secret.

4. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

5. "Trade secret" ~~[means]~~ ***:***

(a) Means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that:

~~[(a)]~~ ***(1)*** Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and

~~[(b)]~~ ***(2)*** Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) Does not include any information that a manufacturer is required to report pursuant to section 3.8 or 4 of this act, information that a pharmaceutical sales representative is required to report pursuant to section 4.6 of this act or information that a pharmacy benefit manager is required to report pursuant to

section 4.2 of this act, to the extent that such information is required to be disclosed by those sections.

Sec. 10. Chapter 683A of NRS is hereby amended by adding thereto the provisions set forth as sections 11 to 21, inclusive, of this act.

Sec. 11. (Deleted by amendment.)

Sec. 12. ***As used in sections 12 to 21, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 13 to 16, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 13. ***"Covered person" means a person who is covered by a pharmacy benefits plan.***

Sec. 14. ***"Pharmacy" has the meaning ascribed to it in NRS 639.012.***

Sec. 14.5. ***"Pharmacy benefit manager" means an entity that contracts with or is employed by a third party and manages the pharmacy benefits plan provided by the third party.***

Sec. 15. ***"Pharmacy benefits plan" means coverage of prescription drugs provided by a third party.***

Sec. 16. ***"Third party" means:***

1. An insurer, as that term is defined in NRS 679B.540;

2. A health benefit plan, as that term is defined in NRS 689A.540, for employees which provides a pharmacy benefits plan;

3. A participating public agency, as that term is defined in NRS 287.04052, and any other local governmental agency of the State of Nevada which provides a system of health insurance for the benefit of its officers and employees, and the dependents of officers and employees, pursuant to chapter 287 of NRS; or

4. Any other insurer or organization that provides health coverage or benefits or coverage of prescription drugs as part of workers' compensation insurance in accordance with state or federal law.

➥ The term does not include an insurer that provides coverage under a policy of casualty or property insurance.

Sec. 17. ***1. Except as otherwise provided in subsection 2, the requirements of sections 12 to 21, inclusive, of this act and any regulations adopted by the Commissioner pursuant thereto do not apply to the coverage of prescription drugs under a plan that is subject to the Employee Retirement Income Security Act of 1974 or any information relating to such coverage.***

2. A plan described in subsection 1 may, by contract, require a pharmacy benefit manager that manages the coverage of prescription drugs under the plan to comply with the requirements

of sections 12 to 21, inclusive, of this act and any regulations adopted by the Commissioner pursuant thereto.

Sec. 18. (Deleted by amendment.)

Sec. 19. ***A pharmacy benefit manager has a fiduciary duty to a third party with which the pharmacy benefit manager has entered into a contract to manage the pharmacy benefits plan of the third party and shall notify the third party in writing of any activity, policy or practice of the pharmacy benefit manager that presents a conflict of interest that interferes with the ability of the pharmacy benefit manager to discharge that fiduciary duty.***

Sec. 20. ***1. A pharmacy benefit manager shall not:***

(a) Prohibit a pharmacist or pharmacy from providing information to a covered person concerning the amount of any copayment or coinsurance for a prescription drug or informing a covered person concerning the clinical efficacy of a less expensive alternative drug;

(b) Penalize a pharmacist or pharmacy for providing the information described in paragraph (a) or selling a less expensive alternative drug to a covered person;

(c) Prohibit a pharmacy from offering or providing delivery services directly to a covered person as an ancillary service of the pharmacy; or

(d) If the pharmacy benefit manager manages a pharmacy benefits plan that provides coverage through a network plan, charge a copayment or coinsurance for a prescription drug in an amount that is greater than the total amount paid to a pharmacy that is in the network of providers under contract with the third party.

2. As used in this section, "network plan" means a health benefit plan offered by a health carrier under which the financing and delivery of medical care is provided, in whole or in part, through a defined set of providers under contract with the carrier. The term does not include an arrangement for the financing of premiums.

Sec. 21. (Deleted by amendment.)

Sec. 22. (Deleted by amendment.)

Sec. 23. (Deleted by amendment.)

Sec. 24. (Deleted by amendment.)

Sec. 25. (Deleted by amendment.)

Sec. 26. (Deleted by amendment.)

Sec. 26.3. NRS 689A.405 is hereby amended to read as follows:

689A.405 1. An insurer that offers or issues a policy of health insurance which provides coverage for prescription drugs shall include with any summary, certificate or evidence of that

coverage provided to an insured, notice of whether a formulary is used and, if so, of the opportunity to secure information regarding the formulary from the insurer pursuant to subsection 2. The notice required by this subsection must:

(a) Be in a language that is easily understood and in a format that is easy to understand;

(b) Include an explanation of what a formulary is; and

(c) If a formulary is used, include:

(1) An explanation of:

(I) How often the contents of the formulary are reviewed; and

(II) The procedure and criteria for determining which prescription drugs are included in and excluded from the formulary; and

(2) The telephone number of the insurer for making a request for information regarding the formulary pursuant to subsection 2.

2. If an insurer offers or issues a policy of health insurance which provides coverage for prescription drugs and a formulary is used, the insurer shall:

(a) Provide to any insured or participating provider of health care, upon request:

(1) Information regarding whether a specific drug is included in the formulary.

(2) Access to the most current list of prescription drugs in the formulary, organized by major therapeutic category, with an indication of whether any listed drugs are preferred over other listed drugs. If more than one formulary is maintained, the insurer shall notify the requester that a choice of formulary lists is available.

(b) Notify each person who requests information regarding the formulary, that the inclusion of a drug in the formulary does not guarantee that a provider of health care will prescribe that drug for a particular medical condition.

(c) During each period for open enrollment, publish on an Internet website that is operated by the insurer and accessible to the public or include in any enrollment materials distributed by the insurer a notice of all prescription drugs that:

(1) Are included on the most recent list of drugs that are essential for treating diabetes in this State compiled by the Department of Health and Human Services pursuant to subsection 1 of section 3.6 of this act; and

(2) Have been removed or will be removed from the formulary during the current plan year or the next plan year.

(d) Update the notice required by paragraph (c) throughout the period for open enrollment.

Sec. 26.6. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

Sec. 26.9. 1. Notwithstanding any other provision of this act to the contrary:

(a) On or before November 1, 2017, the Department of Health and Human Services shall place on the Internet website maintained by the Department the information prescribed by section 3.6 of this act.

(b) On or before July 1, 2018:

(1) The manufacturer of a drug included on the list:

(I) Described in subsection 1 of section 3.6 of this act shall submit to the Department a report which includes the information prescribed by section 3.8 of this act.

(II) Described in subsection 2 of section 3.6 of this act shall submit to the Department a report which includes the information prescribed by section 4 of this act.

(2) A pharmacy benefit manager shall submit to the Department a report which includes the information prescribed by section 4.2 of this act.

(c) On or before September 1, 2018, the Department shall analyze the reports submitted pursuant to paragraph (b) and compile and post on the Internet website maintained by the Department the initial report required by section 4.3 of this act.

2. As used in this section:

(a) "Manufacturer" has the meaning ascribed to it in section 2 of this act.

(b) "Pharmacy benefit manager" has the meaning ascribed to it in section 14.5 of this act.

Sec. 27. 1. The provisions of sections 19 and 20 of this act do not apply to any contract existing on January 1, 2018, for the pharmacy benefit manager to manage a pharmacy benefits plan for a third party until the contract is renewed.

2. As used in this section:

(a) "Pharmacy benefit manager" has the meaning ascribed to it in section 14.5 of this act.

(b) "Pharmacy benefits plan" has the meaning ascribed to it in section 15 of this act.

(c) "Third party" has the meaning ascribed to it in section 16 of this act.

Sec. 28. 1. This section and section 26.9 of this act become effective upon passage and approval.

2. Section 8.6 of this act becomes effective on July 1, 2017.

3. Sections 1 to 6.5, inclusive, 7.5, 8, 9 and 26.6 of this act become effective upon passage and approval for the purpose of

adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act and on October 1, 2017, for all other purposes.

4. Sections 10 to 26.3, inclusive, and 27 of this act become effective upon passage and approval for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act and on January 1, 2018, for all other purposes.

5. Section 7 of this act becomes effective upon passage and approval for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act and on May 1, 2018, for all other purposes.

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