

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 734, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator McCortney

McCortney-CB-FS-Req#1957
3/4/2021 4:05 PM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 734

6 By: McCortney and Hicks of the
7 Senate

8 and

9 McEntire of the House

10 FLOOR SUBSTITUTE

11 An Act relating to prescription drugs; declaring
12 purpose of act; stating legislative findings;
13 defining terms; prohibiting certain entities from
14 purchasing or distributing certain prescription drugs
15 in excess of certain rate; authorizing ERISA plans to
16 participate in pricing program; requiring ERISA plans
17 notify Insurance Commissioner of participation in
18 plan; requiring Director of Office of Management and
19 Enterprise Services to provide certain prescription
20 drug information to Commissioner; requiring
21 Commissioner to create list of certain drugs and
22 publish on its website; requiring Commissioner to
23 determine reference rate for certain drugs using
24 certain information; providing for calculation of
certain drug prices; specifying factors Commissioner
shall consider when creating list of drugs;
authorizing certain pharmacies to charge certain fee
at certain rate; authorizing Commissioner to
promulgate rules; requiring certain entities maintain
registered agent and office in state; requiring
certain monies be used to reduce drug costs to
certain persons; requiring certain entities submit
report on certain monies to Commissioner;
establishing fine for violations of act; authorizing
Attorney General to enforce provisions of act;
establishing affirmative defense to enforcement
action under act; prohibiting certain entities from

1 withdrawing drugs from sale or distribution in
2 certain circumstance; requiring certain entities
3 notify Commissioner and Attorney General of intent to
4 withdraw certain drug from sale and distribution;
5 requiring Commissioner assess certain penalties;
6 specifying amount of penalties to be assessed;
7 prohibiting certain entities from refusing to
8 negotiate drug prices with purchasers; providing for
9 noncodification; providing for codification; and
10 providing an effective date.

11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. NEW LAW A new section of law not to be
13 codified in the Oklahoma Statutes reads as follows:

14 The purpose of this act is to protect the safety, health and
15 economic well-being of the people of this state by safeguarding them
16 from the negative and harmful impact of excessive prices for
17 prescription drugs. By enacting this act, the Legislature finds
18 that:

19 1. Excessive prices negatively impact the ability of the people
20 of this state to obtain prescription drugs and price increases that
21 exceed reasonable levels thereby endanger the health and safety of
22 the people of this state to maintain or acquire good health;

23 2. Excessive prices for prescription drugs threaten the
24 economic well-being of the people of this state and endanger their
25 ability to pay for other necessary and essential goods and services
26 including housing, food and utilities;

1 3. Excessive prices for prescription drugs contribute
2 significantly to a dramatic and unsustainable rise in health care
3 costs and health insurance that threaten the overall ability of the
4 people of this state to obtain health coverage and maintain or
5 acquire good health;

6 4. Excessive prices for prescription drugs contribute
7 significantly to rising state costs for health care provided and
8 paid for through health insurance programs for public employees
9 including employees of the state, municipalities and counties,
10 school districts, institutions of higher education and retirees
11 whose health care costs are funded by public programs, thereby
12 threatening the ability of the state to fund those programs
13 adequately and further threatening the ability of the state to fund
14 other programs necessary for the public good and safety, such as
15 public education and public safety;

16 5. Because the costs of prescription drugs and health insurance
17 are tax-deductible, excessive costs for prescription drugs result in
18 a reduction in the tax base and a resultant reduction in state
19 revenue;

20 6. The costs to consumers, health plans and the state for
21 prescription drug coverage is higher than the costs in other
22 countries because the prices charged by manufacturers and
23 distributors of drugs in this state are higher; and
24

1 7. Based on paragraphs 1 through 6 of this section, the
2 Legislature finds that excessive prices for prescription drugs
3 threaten the safety and well-being of the people of this state and
4 finds it is necessary to act in order to protect the people of this
5 state from the negative impact of excessive costs.

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 7410 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in this act:

10 1. "ERISA plan" means a plan qualified under the Employee
11 Retirement Income Security Act of 1974, as amended;

12 2. "Health plan" means a plan that:

13 a. provides benefits for medical or surgical expenses
14 incurred as a result of a health condition, accident
15 or sickness, and

16 b. is offered by any insurance company, group hospital
17 service corporation, the State and Education Employees
18 Group Insurance Board or health maintenance
19 organization that delivers or issues for delivery an
20 individual, group, blanket or franchise insurance
21 policy or insurance agreement, a group hospital
22 service contract, or an evidence of coverage, or, to
23 the extent permitted by the Employee Retirement Income
24 Security Act of 1974, 29 U.S.C., Section 1001 et seq.,

1 as amended, by a multiple employer welfare arrangement
2 as defined in Section 3 of the Employee Retirement
3 Income Security Act of 1974, or any other analogous
4 benefit arrangement, whether the payment is fixed or
5 by indemnity;

6 3. "Participating ERISA plan" means an ERISA plan, as defined
7 in this section, that has elected to participate in the requirements
8 and restrictions of this act pursuant to Section 4 of this act;

9 4. "Prescription drug" means a drug which may be dispensed only
10 upon prescription by a health care professional authorized by his or
11 her licensing authority and which is approved for safety and
12 effectiveness as a prescription drug under Section 505 or 507 of the
13 Federal Food, Drug and Cosmetic Act (52 Stat. 1040 (1938), 21
14 U.S.C.A., Section 301);

15 5. "Referenced drugs" means prescription drugs subject to a
16 referenced rate;

17 6. "Referenced rate" means the maximum rate established by the
18 Insurance Commissioner utilizing the wholesale acquisition cost and
19 other pricing data specified in Section 5 of this act;

20 7. "State entity" means any agency of state government that
21 purchases prescription drugs on behalf of the state for a person
22 whose health care is paid wholly or in part by the state including
23 any agent, vendor, fiscal agent, contractor or other party acting on
24 behalf of the state. State entity shall not include the medical

1 assistance program established under 42 U.S.C. Section 1396 et seq.,
2 as amended; and

3 8. "Wholesale acquisition cost" has the meaning stated in 42
4 U.S.C. Section 395w-3a, as amended.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 7411 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 A. It is a violation of this act for a state entity, health
9 plan or participating ERISA plan to purchase referenced drugs to be
10 dispensed, delivered or shipped to a consumer in the state, whether
11 directly or through a distributor, for a cost higher than the
12 referenced rate determined pursuant to Section 5 of this act.

13 B. It is a violation of this act for a retail pharmacy licensed
14 by the State Board of Pharmacy in this state to purchase for sale or
15 distribution referenced drugs for a cost that exceeds the referenced
16 rate to a person whose health care is provided by a state entity,
17 health plan or participating ERISA plan.

18 SECTION 4. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 7412 of Title 36, unless there
20 is created a duplication in numbering, reads as follows:

21 An ERISA plan may elect to participate in the provisions of this
22 act. Any ERISA plan that desires its purchase of prescription drugs
23 to be subject to the prohibition provided in Section 3 of this act

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1 shall notify the Insurance Commissioner in writing, on a form
2 provided by the Commissioner, by July 1 of each year.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 7413 of Title 36, unless there
5 is created a duplication in numbering, reads as follows:

6 A. By April 1 of each calendar year, the Director of the Office
7 of Management and Enterprise Services, shall transmit to the
8 Insurance Commissioner a list of the two hundred fifty most costly
9 prescription drugs for the previous calendar year based upon net
10 price multiplied by utilization. For each of these prescription
11 drugs, the Director shall also provide the total net spent on each
12 of those drugs.

13 B. By November 1 of each year, the Commissioner shall create
14 and publish on the website of the Insurance Department, a list of
15 Two hundred fifty referenced drugs that shall be subject to the
16 referenced rate, as defined in Section 2 of this act, using the
17 information provided by the Director in subsection A of this
18 section.

19 C. The Commissioner shall determine the referenced rate by
20 comparing the wholesale acquisition cost to the cost from the:

21 1. Ontario Ministry of Health and Long-Term Care, and most
22 recently published on the Ontario Drug Benefit Formulary;

23 2. Régie de l'Assurance Maladie du Québec, and most recently
24 published on the Quebec Public Drug Programs List of Medications;

1 3. British Columbia Ministry of Health, and most recently
2 published on the BC Pharmacare Formulary; and

3 4. Alberta Ministry of Health, and most recently published on
4 the Alberta Drug Benefit List.

5 D. The referenced rate for each prescription drug shall be
6 calculated as the lowest cost among those resources and the
7 wholesale acquisition cost. If a specific referenced drug is not
8 included within the resources listed in subsection C of this
9 section, the Commissioner shall utilize the ceiling price for drugs,
10 as reported by the Government of Canada Patented Medicine Prices
11 Review Board, for the purpose of determining the referenced rate.

12 E. A retail pharmacy licensed by the State Board of Pharmacy
13 that purchased referenced drugs to be dispensed, delivered or
14 shipped to a consumer in this state, pursuant to this section, shall
15 be authorized to charge a professional dispensing fee, to be paid by
16 the state entity providing health care or health plan of the
17 consumer. Beginning November 1, 2021, the fee shall be in the
18 amount of twelve dollars (\$12.00), to be increased annually by a
19 percentage equal to the previous year's increase in the national
20 Consumer Price Index.

21 F. The Commissioner shall calculate annually the expected
22 savings of subjecting prescription drugs to the referenced rate.
23 The Commissioner shall consult with the Director and the Chair of
24 the State Board of Pharmacy in making this calculation.

1 G. The Commissioner shall promulgate rules and regulations to
2 implement the provisions of this section.

3 SECTION 6. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 7415 of Title 36, unless there
5 is created a duplication in numbering, reads as follows:

6 Any entity that sells, distributes, delivers or offers for sale
7 any prescription drug in the state is required to maintain a
8 registered agent and office within the state.

9 SECTION 7. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 7416 of Title 36, unless there
11 is created a duplication in numbering, reads as follows:

12 A. Any savings generated as a result of the requirements in
13 Section 5 of this act shall be used to reduce costs to consumers.
14 Any state entity, health plan or participating ERISA plan shall
15 calculate its savings and utilize the savings to directly reduce
16 costs for its members.

17 B. No later than April 1 of each calendar year, each state
18 entity, health plan and participating ERISA plan subject to the
19 provisions of this act shall submit a report describing the
20 documented savings for each referenced drug for the previous
21 calendar year and how those savings were used to comply with the
22 provisions of subsection A of this section.

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1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7417 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 Each violation of the provisions of this act shall be subject to
5 a fine of One Thousand Dollars (\$1,000.00), except as provided in
6 Section 9 of this act, to be placed in the State Insurance
7 Commissioner Revolving Fund, created pursuant to Section 307.3 of
8 Title 36 of the Oklahoma Statutes. Each individual transaction in
9 violation of Section 3 of this act shall be considered a separate
10 violation. The Attorney General is authorized to enforce the
11 provisions of this act on behalf of any state entity or consumers of
12 prescription drugs. The refusal of a manufacturer or distributor to
13 negotiate in good faith as described in subsection D of Section 9 of
14 this act shall be a valid affirmative defense in any enforcement
15 action brought under this section.

16 SECTION 9. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 7418 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. It shall be a violation of this act for any manufacturer or
20 distributor of a referenced drug to withdraw that drug from sale or
21 distribution within this state for the purpose of avoiding the
22 impact of the rate limitations set forth in Section 3 of this act.

23 B. Any manufacturer that intends to withdraw a referenced drug
24 from sale or distribution from within the state shall provide notice

1 of withdrawal in writing to the Insurance Commissioner and to the
2 Attorney General one-hundred eighty (180) days prior to initiating
3 the withdrawal.

4 C. The Commissioner shall assess a penalty on any manufacturer
5 or distributor that it determines has withdrawn a referenced drug
6 from distribution or sale in the state in violation of subsection A
7 or B of this section. With respect to each referenced drug for
8 which the Commissioner determines has been withdrawn from the market
9 in violation of these subsections, the penalty shall be equal to the
10 greater of:

- 11 1. Five Hundred Thousand Dollars (\$500,000.00); or
- 12 2. The amount of annual savings determined by the Commissioner,
13 as provided in subsection E of Section 5 of this act.

14 D. It shall be a violation of this act for any manufacturer or
15 distributor of a referenced drug to refuse to negotiate in good
16 faith with any payor or seller of prescription drugs a price that is
17 within the referenced rate determined pursuant to Section 5 of this
18 act.

19 E. The Commissioner shall assess a penalty on any manufacturer
20 or distributor that it determines has failed to negotiate in good
21 faith, in violation of subsection D of this section. With respect
22 to each referenced drug for which the Commissioner has determined
23 the manufacturer or distributor has failed to negotiate in good
24 faith, the penalty shall be equal to the greater of:

1 1. Five Hundred Thousand Dollars (\$500,000.00); or

2 2. The amount of annual savings determined by the Commissioner,
3 as provided in subsection E of Section 5 of this act.

4 SECTION 10. This act shall become effective November 1, 2021.

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