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
3/9/2021 7:56 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely ☐ Amendment Cycle Extended ☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

FLOOR SUBSTITUTE
FOR
SENATE BILL NO. 734

By: McCortney and Hicks of the Senate

and

McEntire of the House

FLOOR SUBSTITUTE

An Act relating to prescription drugs; declaring purpose of act; stating legislative findings; defining terms; prohibiting certain entities from purchasing or distributing certain prescription drugs in excess of certain rate; authorizing ERISA plans to participate in pricing program; requiring ERISA plans notify Insurance Commissioner of participation in plan; requiring Director of Office of Management and Enterprise Services to provide certain prescription drug information to Commissioner; requiring Commissioner to create list of certain drugs and publish on its website; requiring Commissioner to determine reference rate for certain drugs using 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

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

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

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

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

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

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

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

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

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

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

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

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

As used in this act:

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

2. "Health plan" means a plan that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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