Case No. 81844

IN THE SUPREME COURT OF NEVADA

THE NEVADA INDEPENDENT,

Appellant,

vs.

RICHARD WHITLEY, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE NEVADA DEPARTMENT OF HEALTH AND HUMAN SERVICES; THE STATE OF NEVADA, EX REL. DEPARTMENT OF HEALTH AND HUMAN SERVICES; and SANOFI-AVENTIS U.S. LLC,

Respondents.

District Court Case No. A-19-799939-W, Department XIV

ADDENDUM TO RESPONDENT SANOFI-AVENTIS U.S. LLC'S ANSWERING BRIEF

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 26th day of April, 2021, service of the foregoing **ADDENDUM TO RESPONDENT SANOFI-AVENTIS U.S. LLC'S ANSWERING BRIEF** was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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Kazee, Inc. v. Callender

United States District Court for the Eastern District of Texas, Sherman Division

March 2, 2020, Decided; March 2, 2020, Filed

CIVIL ACTION NO. 4:19-CV-31-SDJ

Reporter
2020 U.S. Dist. LEXIS 36105 *; 2020 WL 994832

KAZEE, INC. v. DR. DAVID L. CALLENDER, in his official capacity as President of the University of Texas Medical Branch, and TODD LEACH, in his official capacity as Chief Information Officer of the University of Texas Medical Branch

Prior History: *KaZee, Inc. v. Callender, 2019 U.S. Dist. LEXIS 200403, 2019 WL 5901238 (E.D. Tex., July 26, 2019)*

Counsel: **[*1]** For Kazee, Inc., Plaintiff: Joshua M Russ, Tyler J Bexley, Peter Dermot Marketos, Reese Marketos LLP, Dallas, TX.

For Todd Leach, in his official capacity as Chief Information Officer of the University of Texas Medical Branch, Dr. David L Callender, in his official capacity as President of the University of Texas Medical Branch, Defendants: Graig Joseph Alvarez, LEAD ATTORNEY, Alvarez Stauffer Bremer PLLC, Houston, TX; Kara Kristin Stauffer Lindquist, Alvarez Stauffer Bremer PLLC, Houston, TX.

Judges: SEAN D. JORDAN, UNITED STATES DISTRICT JUDGE.

Opinion by: SEAN D. JORDAN

Opinion

MEMORANDUM OPINION & ORDER ADOPTING THE FACTUAL FINDINGS AND LEGAL CONCLUSIONS OF MAGISTRATE'S REPORT AND RECOMMENDATION

Before the Court is Defendants Dr. David L. Callender and Todd Leach's Motion to Dismiss. (Dkt. #10). The Magistrate Judge entered a report and recommendation that the motion be denied. (Dkt. #37). The Defendants filed objections, (Dkt. #38), to which KaZee responded in support, (Dkt. #39). The Court, having conducted a *de novo* review of the motion and the record, adopts the factual findings and legal conclusions of the report under the reasoning set forth herein.

I. Factual & Procedural Background

KaZee, Inc., provides information-technology **[*2]** products and services to the healthcare industry, including its "PEARL" system, an electronic medical records software program. KaZee agreed to license PEARL to the University of Texas Medical Branch at Galveston ("UTMB") for use at member sites within its Correctional Managed Health Care Program ("CMHCP"). The parties entered into a "Master License" agreement (the "Agreement") that set out, among other things, the type of license, scope of use allowed under the license, and methods of terminating the license.[1]

After implementing PEARL at the agreed-upon CMHCP sites, KaZee became aware of alleged use of PEARL at other sites not within the CMHCP. In response to KaZee's inquiry about such use, UTMB acknowledged that its legal department initially agreed that the "current license can only be used for [the] UTMB/TDCJ/TT project [at the CMHCP sites] unless there is another agreement in place" and provided a list of sites that had used PEARL. KaZee asserted that UTMB's use of PEARL at certain sites was unauthorized, that such use constituted a material breach of the Agreement, and that the breach could be cured by paying $20 million in licensing fees.

KaZee negotiated with UTMB to resolve the **[*3]** dispute while allowing UTMB to continue using PEARL for several years. Unable to come to an agreement, KaZee filed suit against UTMB for breach of contract under state law and copyright infringement under *17 U.S.C. § 501*.[2] In a motion to dismiss, UTMB asserted sovereign immunity against both claims and failure to exhaust administrative remedies in the State Office of Administrative Hearings ("SOAH") as to the breach of contract claim. Shortly thereafter, the parties entered into a Tolling Agreement dismissing the lawsuit without prejudice and tolling KaZee's claims until 30 days after the completion of administrative proceedings in SOAH.

Without filing a notice of claim in SOAH, KaZee resumed its efforts to negotiate payment for the allegedly unauthorized use of PEARL. When negotiations between KaZee and UTMB failed again, KaZee sent UTMB a letter asserting that UTMB's unauthorized use of PEARL constituted a material breach of the Agreement. The letter further stated that, unless UTMB paid KaZee $20 million within 60 days for licensing fees allegedly owed to KaZee as a result of UTMB's unauthorized use of PEARL, the Agreement would be terminated. **[*4]** UTMB responded by contesting KaZee's assertion of a breach by unauthorized use, rejecting KaZee's related contention that it was owed licensing fees, and arguing that any claims KaZee might assert arising under the Agreement must be filed with SOAH rather than in federal court pursuant to the Agreement and the Tolling Agreement.

After 60 days passed without payment of the demanded licensing fees, KaZee filed this suit against Dr. David L. Callender, in his official capacity as President of UTMB, and Todd Leach, in his official capacity as Chief Information Officer of UTMB. KaZee asserts a copyright-infringement claim under *17 U.S.C. § 501*, and a misappropriation-of-trade-secrets claim in violation of *18 U.S.C. § 1836* (the *Defend Trade Secrets Act* ("DTSA")). KaZee seeks preliminary and permanent injunctive relief against UTMB's ongoing use of PEARL. Defendants answered with a motion to dismiss, invoking sovereign immunity and challenging both this Court's subject-matter jurisdiction and the claims' sufficiency. The Magistrate Judge issued a report and recommendation counseling denial of the Defendants' motion, to which Defendants objected and KaZee replied in support.

II. Defendants' *Rule 12(b)(1)* Motion

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[1] UTMB entered into the Agreement with Medical Information Management Systems, Inc. ("MIMS"). UTMB later entered into a Maintenance Agreement and a Source Code Agreement with Business Computer Applications, Inc. ("BCA"). KaZee is the successor-in-interest of both MIMS and BCA.

[2] *KaZee, Inc. v. University of Texas Medical Branch at Galveston*, Civil Action No. 4:18-CV-53 (E.D. Tex. Jan. 19, 2018).

KaZee asserts that UTMB's **[*5]** ongoing use of PEARL constitutes copyright infringement and misappropriation of trade secrets and warrants preliminary and permanent injunctive relief. Defendants contest the claims and the relief sought, in part, through a Rule 12(b)(1) motion to dismiss, in which Defendants present three arguments. First, Defendants urge the Court to dismiss KaZee's claims for lack of subject-matter jurisdiction because the facts alleged constitute breach of contract under state law rather than federal copyright infringement or federal misappropriation of trade secrets. Second, Defendants maintain that KaZee's claims should be dismissed under the forum non conveniens doctrine because the claims arise under the Agreement and thus must be brought before SOAH pursuant to the dispute-resolution provision therein. And, third, irrespective of how they are characterized, Defendants assert that KaZee's claims are barred because Defendants are entitled to sovereign immunity.

Defendants' Rule 12(b)(1) arguments fail. KaZee asserts federal claims over which this Court has subject-matter jurisdiction. Thus, there is no basis to dismiss the claims to allow filing in SOAH. And the claims may proceed against the Defendants under the *Ex parte* ***[*6]*** *Young* exception to sovereign immunity. Defendants' Rule 12(b)(1) motion is DENIED.

A. *Rule 12(b)(1)* Legal Standards

Article III of the Constitution requires a federal court to establish its subject-matter jurisdiction before exercising the judicial power of the United States. U.S. CONST. art. III ("The judicial Power shall extend to all Cases . . . [and] to Controversies."); *see also, e.g.,* Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583, 119 S.Ct. 1563, 143 L.Ed. 2d 760 (1999). This limit on a court's power is so essential to maintaining constitutional and statutory boundaries that it "must be policed by the courts on their own initiative even at the highest level." Ruhrgas, 526 U.S. at 583.

Federal Rule of Civil Procedure 12(b)(1) provides a procedural vehicle to challenge a court's subject-matter jurisdiction over a pending suit. A court should consider a jurisdictional attack under Rule 12(b)(1) before any attack on the merits to avoid premature dismissal with prejudice. Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam). When doing so, a court may consider the complaint, undisputed facts in the record, and disputed facts resolved by the court. *Id.* The moving party carries the burden of proving that the plaintiff "cannot prove any set of facts in support of his claim that would entitle plaintiff to relief." *Id.*

B. Subject-Matter Jurisdiction

KaZee asserts that the Court has subject-matter jurisdiction over the claims at issue because its copyright-infringement **[*7]** claim under *17 U.S.C. § 501*, and its misappropriation-of-trade-secrets claim under 18 U.S.C. § 1836, both invoke federal-question jurisdiction.[3] Defendants argue that KaZee's claims arise under the Agreement, sound in state law, and cannot support federal-question jurisdiction.

1. Copyright infringement

A federal district court has subject-matter jurisdiction over actions "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Relevant here, a district court has exclusive jurisdiction over actions arising under the Copyright Act. *Id.* § 1338(a); Goodman v. Lee, 815 F.2d 1030, 1031 (5th Cir. 1987). An action arises under the Copyright Act "if and only if":

(1) the complaint seeks a remedy expressly granted by the Act;
(2) the complaint asserts a claim requiring construction of the Act; or
(3) the complaint presents a case where a distinctive policy of the Act requires that federal principles control the disposition of the claim.

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[3] KaZee does not rely upon diversity jurisdiction, nor could it. Defendants are citizens of Texas, and KaZee has its primary place of business in Texas.

Goodman, 815 F.2d at 1031 (quoting T.B. Harms Co. v. Eliscu, 339 F.2d 823, 824 (2d Cir. 1964) [hereinafter "*T.B. Harms* test"]).

The *T.B. Harms* test guides a court's determination of jurisdiction "for claims of infringement arising from, or in the context of, an alleged contractual breach[.]" Bassett v. Mashantucket Pequot Tribe, 204 F.3d 343, 355 (2d Cir. 2000). The test "focuse[s] on whether and how a complaint implicates the Copyright Act." Id. at 348. Simply put, "[w]hen a complaint alleges a **[*8]** claim or seeks a remedy provided by the Copyright Act, federal jurisdiction is properly invoked." Id. at 355. Although it is "well-established" that not all actions with complaints referring to the Copyright Act arise under the Act, id. at 347 (citing T.B. Harms, 339 F.2d at 824), copyright infringement claims do "characteristically arise where the defendant held a license to exploit the plaintiff's copyright, but is alleged to have forfeited the license by breaching the terms of the licensing contract and thus to infringe in any further exploitation." *Id.*

Applying the T.B. Harms test to this action, it is clear that KaZee's copyright-infringement claim arises under the Copyright Act. The complaint alleges an ongoing violation of the Act and seeks a remedy expressly granted by the Act—an injunction against further allegedly infringing use of PEARL. *See* 17 U.S.C. § 502(a) (authorizing a court to "grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright"). "Because the complaint alleges the defendants violated the Copyright Act and seeks the injunctive remedy provided by the Act, under the rule of T.B. Harms, the action falls within the jurisdictional grant of Section 1338." Bassett, 204 F.3d at 355-56; *accord* 3 MELVILLE **[*9]** B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 12.01[A][1][a] (2019) [hereinafter NIMMER] ("[N]otwithstanding the existence of a contractual relationship between the parties, if the defendant's conduct is alleged to be without authority under such contract and further to constitute an act of statutory copyright infringement, then federal jurisdiction will be invoked."); *see also id.* ("The prototypical case invoking federal jurisdiction is an action for infringement of a statutory copyright."). Therefore, this Court has subject-matter jurisdiction over the copyright-infringement claim.[4]

Defendants' contrary arguments are unavailing. Defendants contend that the copyright-infringement claim may not proceed until the Court first adjudicates whether UTMB previously breached the Agreement and, if so, whether that breach entitled KaZee to unilaterally terminate the Agreement. This argument turns on a misunderstanding of the governing law. As discussed, the *T.B. Harms* test governs the issue of whether a claim "arises under" the Copyright Act. *See* Bassett, 204 F.3d at 347. The Fifth Circuit has adopted that test, *see* Goodman, 815 F.2d at 1031, and courts have repeatedly **[*10]** applied it, *see supra* note 4. Under the *T.B. Harms* test, the adjudication of some underlying contract issues does not preclude federal jurisdiction. *See* Bassett, 204 F.3d at 350 n.4 ("As only a federal court can adjudicate a claim of infringement and award copyright remedies, to deny jurisdiction because the defendant will contest only contract issues is essentially to deny plaintiff's claim."); NIMMER, § 12.01[A][1][a] ("Because the federal courts have exclusive jurisdiction to determine statutory infringement, they . . . may likewise pass on other questions of contract law."); *see also* Stross v. Redfin Corp., 730 F. App'x 198, 202-03 (5th Cir. 2018)

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[4] Courts within this circuit and beyond have adopted the T.B. Harms test and applied it accordingly. *See, e.g.,* Scandinavian Satellite Sys., AS v. Prime TV Ltd., 291 F.3d 839, 844, 351 U.S. App. D.C. 431 (D.C. Cir. 2002) (adopting the *T.B. Harms* test and acknowledging its reaffirmance in *Bassett*); Bassett, 204 F.3d at 350 n.4 (noting that the *T.B. Harms* test "require[s] federal courts to accept all cases in which the complaint seeks a remedy provided by the Copyright Act"); DEA Specialties Co. v. DeLeon, No. 5:14-CV-634, 2014 U.S. Dist. LEXIS 123049, 2014 WL 4385967, at *3 (W.D. Tex. Sept. 4, 2014) ("[Plaintiff's] allegations are sufficient to allege a claim arising under the Copyright Act. [Plaintiff] asserts a claim directly under the Copyright Act for copyright infringement and seeks a declaration of willful infringement, an injunction against continued copying and use, damages pursuant to 17 U.S.C. § 504, and attorney's fees under the Copyright Act."); Daniel Wilson Prods., Inc. v. Time-Life Films, Inc., 736 F. Supp. 40, 43 (S.D.N.Y. 1990) ("Where a complaint alleges a federally conferred right, such as a copyright, a trademark or a patent, then alleges violations of that right and requests remedies provided by federal statute, this should be enough to confer federal jurisdiction. The fact that such a claim arises in the context of a disruption of contractual arrangements and presents certain contract issues should not remove it from that jurisdiction."); *cf.* T.B. Harms, 339 F.2d at 824 (dismissing an action for lack of subject-matter jurisdiction where no claim of copyright infringement was asserted and no relief provided by the Copyright Act was sought); Butler v. Cont'l Airlines, Inc., No. 4:01-CV-2194, 2001 U.S. Dist. LEXIS 20295, 2001 WL 1509545, at *4 (S.D. Tex. Nov. 19, 2001) (same).

(per curiam) ("This is a copyright case, not a contracts case. The right to bring a copyright infringement claim comes from federal copyright law . . . [and] does not depend on state contract law. . . . The two claims are distinct.").[5]

KaZee asserts a claim for copyright infringement and requests remedies expressly granted by the Copyright Act, including injunctive relief. Under the controlling *T.B. Harms* test, this Court has subject-matter jurisdiction over that claim.

2. Federal misappropriation [*11] of trade secrets

Relying upon the same arguments asserted as to KaZee's copyright-infringement claim, Defendants assert that the Court lacks subject-matter jurisdiction over KaZee's misappropriation-of-trade-secrets claim. Defendants' argument is similarly unavailing.

Under the "well-pleaded complaint" rule, a suit arises under federal law when a complaint shows that the cause of action is based on federal law. *Vaden v. Discover Bank, 556 U.S. 49, 60, 129 S.Ct. 1262, 173 L.Ed.2d 206 (2009)* (quoting *Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149, 152, 29 S.Ct. 42, 53 L.Ed. 126 (1908))*. Here, KaZee brings a misappropriation-of-trade-secrets claim under the DTSA. S. 1890, 114th Cong. § 2 (2016) (codified as *18 U.S.C. § 1831, et seq.*). The DTSA establishes a private cause of action for misappropriation of trade secrets, *see* *18 U.S.C. § 1836*, and provides that "[t]he district courts of the United States shall have original jurisdiction of civil actions brought under this section," *id.* *§ 1836(c)*. Because KaZee brings an action under this section, the Court has subject-matter jurisdiction over the claim. *See, e.g.,* *PHAZR, Inc. v. Ramakrishna, No. 3:19-CV-1188, 2019 U.S. Dist. LEXIS 186741, 2019 WL 5578578, at *1 (N.D. Tex. Oct. 28, 2019)* ("In a case that is before this Court under federal question jurisdiction, [plaintiff's] Trade Secrets Act claim is the only federal cause of action."); *SPBS, Inc. v. Mobley, No. 4:18-CV-391, 2018 U.S. Dist. LEXIS 148881, 2018 WL 4185522, at *11 n.5 (E.D. Tex. Aug. 31, 2018)* ("[T]he Court has federal question jurisdiction based on [the plaintiff's] **[*12]** DTSA claim.").

C. Forum Non Conveniens

Defendants insist that KaZee's claims "arise under" the Agreement. For that reason, Defendants urge the Court to dismiss the claims pursuant to the doctrine of forum non conveniens in accordance with the language of the Agreement mandating that claims "arising under" it be resolved through the dispute-resolution process set forth in *Texas Government Code section 2260, et seq.* Because the claims do not arise under the Agreement, as explained herein, the Defendants' request lacks merit and is denied.

D. Sovereign Immunity

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[5] Defendants' contrary view is premised on the now-rejected *Schoenberg* test. In *Schoenberg*, the Second Circuit replaced the *T.B. Harms* test with a three-stage analysis of whether the infringement claim is merely "incidental" to a contract claim, or instead involves a breach of a condition or covenant of a contract licensing or assigning a copyright that is sufficient for the claim to arise under the Copyright Act. *Schoenberg v. Shapolsky Publishers, 971 F.2d 926, 932-33 (2nd Cir. 1992)* (internal citations omitted). The *Schoenberg* test was later rejected by the Second Circuit itself in *Bassett, see generally* *204 F.3d 343*, and has not been accepted by circuits across the country that have adopted and continue to use the *T.B. Harms* test, *see* *id. at 350* (collecting cases). *See also* *Hartman v. Bago Luma Collections, Inc., Civil Action No. 5:03-cv-00465, 2004 U.S. Dist. LEXIS 2725, 2004 WL 377523, at *2-4 (W.D. Tex. Feb. 12, 2004)*, *report and recommendation adopted*, No. 5:03-CV-465 (W.D. Tex. Mar. 9, 2004) (Dkt. #60) ("In the instant case, defendant[s] clearly predicate[] [their] motion to dismiss on the outdated *Schoenberg* test, urging that the essence of plaintiff's complaint is a contract dispute.")

Defendants also maintain that all of KaZee's claims are barred because Defendants are entitled to sovereign immunity. Although Defendants enjoy sovereign immunity, that immunity is subject to the *Ex parte Young* exception in this case. 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908).

It is well-established that the Eleventh Amendment immunizes nonconsenting states from suit by individuals in federal court. *See, e.g.,* Alden v. Maine, 527 U.S. 706, 748, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999); McCarthy ex rel. Travis v. Hawkins, 381 F.3d 407, 412 (5th Cir. 2004). Because states must act through their officials, they too are entitled to such immunity when acting in their official capacity. McCarthy, 381 F.3d at 414 (stating that "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office" and the state itself). Defendants **[*13]** are state officials that have been sued in their official capacities. Thus, Defendants are entitled to immunity. *See, e.g.,* Nelson v. Univ. of Tex. at Dall., 491 F. Supp. 2d 672, 676 (N.D. Tex. 2007) (finding immunity for similar University of Texas at Dallas officials).

Defendants' immunity, however, is subject to an exception under Ex parte Young. 209 U.S. at 123. *Ex parte Young* "ensures that state officials do not employ the Eleventh Amendment as a means of avoiding compliance with federal law." P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 146, 113 S.Ct. 684, 121 L.Ed.2d 605 (1993). *Ex parte Young* applies to "a suit against a state official when that suit seeks only prospective injunctive relief in order to end a continuing violation of federal law." Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 73, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996) (internal quotation marks omitted). When determining whether *Ex parte Young* applies, "a court need only conduct a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." Va. Office for Prot. & Advocacy v. Stewart, 563 U.S. 247, 255, 131 S.Ct. 1632, 179 L.Ed.2d 675 (2011) (quoting Verizon Md. Inc. v. Pub. Serv. Comm'n., 535 U.S. 635, 645, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002) (citations and internal quotation marks omitted)).

KaZee's complaint satisfies that inquiry. KaZee is suing state officials in their official capacity, alleging ongoing violations of federal law. Specifically, KaZee alleges that Defendants "continue to infringe on KaZee's copyrighted work by improperly using PEARL and refusing to return or destroy KaZee's intellectual **[*14]** property," (Dkt. #1 at 11), and that Defendants "continue to misappropriate KaZee's trade secrets by improperly using PEARL and refusing to return or destroy KaZee's intellectual property," *id.* KaZee requests only injunctive relief to halt these alleged ongoing violations of federal law. KaZee therefore meets the *Ex parte Young* exception, and its claims may proceed against Defendants.

The Court is mindful of the need for caution in applying *Ex parte Young* to maintain "the balance of fidelity to federal law with respect for states as sovereign entities," Nelson, 491 F. Supp. 2d at 676, and to avoid upsetting "the central role autonomous States play in our federal system," Va. Office, 563 U.S. at 255. But "no such encroachment is occasioned by straightforwardly applying *Ex parte Young* to allow this suit." Id. at 255. Indeed, courts have regularly applied *Ex parte Young* to such claims against state university officials. *See, e.g.,* Mobile Active Def., Inc. v. L.A. Unified Sch. Dist., No. 2:15-CV-8762, 2016 U.S. Dist. LEXIS 188342, 2016 WL 7444876, at *3 (C.D. Cal. Apr. 6, 2016) (citing Pennington Seed, Inc. v. Produce Exch. No 299, 457 F.3d 1334, 1342 (Fed. Cir. 2006)) ("Under the *Ex parte Young* doctrine, claims to enjoin state officials from violating copyright laws are not barred by the Eleventh Amendment.").[6]

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[6] *See also* InfoMath, Inc. v. Univ. of Ark., 633 F. Supp. 2d 674, 681 (E.D. Ark. 2007) (denying state university officials' motion to dismiss asserting immunity against a copyright infringement claim on the basis of *Ex parte Young*); Rescue Training Assocs., Inc. v. La. State Univ. & Agric. & Mech. Coll., No. 05-81146-CIV, 2006 U.S. Dist. LEXIS 109148, 2006 WL 8433702, at *2 (S.D. Fla. Oct. 4, 2006) (same); Hairston v. N.C. Agr. & Tech. State Univ., No. 1:04-CV-1203, 2005 U.S. Dist. LEXIS 20442, 2005 WL 2136923, at *8 (M.D.N.C. Aug. 5, 2005) **[*15]** , *report and recommendation adopted*, No. 1:04-CV-1203, 2006 U.S. Dist. LEXIS 109371 (M.D.N.C. Jan. 17, 2006) (Dkt. #31) ("Plaintiff sufficiently alleges an ongoing violation of federal copyright law by Defendants [university officials], and the *Ex Parte Young* doctrine therefore applies to his copyright infringement claim seeking prospective injunctive relief from Defendants."); Salerno v. City Univ. of N.Y., 191 F. Supp. 2d 352, 357 (S.D.N.Y. 2001) ("Plaintiffs in this suit seek a prospective injunction [under the Copyright Act] to prevent a state official from violating federal law, which is precisely the type of relief which the *Ex Parte Young* exception was created to provide.").

Defendants oppose application of *Ex parte Young* for reasons generally related to their attempt to recast KaZee's pleadings. First, Defendants insist that KaZee cannot allege ongoing violations of federal law until the issue of past breach of contract is adjudicated. Defendants misunderstand the requirements of *Ex parte Young*. To invoke that exception, a party must simply show that the "complaint *alleges* an ongoing violation of federal law." *Va. Office, 563 U.S. at 255* (emphasis added). KaZee plainly made such allegations in the complaint as to both copyright infringement and misappropriation of trade secrets, and KaZee directed those allegations toward the Defendants as the state officials in charge of UTMB's use of PEARL. Nonetheless, Defendants urge the Court to withhold application of *Ex parte Young* until KaZee has *proved* some of its underlying allegations. The law does not support the additional burden Defendants attempt to impose upon the application of *Ex parte Young*.

Relatedly, Defendants suggest that KaZee attempts to use *Ex parte Young* to obtain retrospective relief for past conduct—the alleged use of PEARL at unauthorized locations—rather **[*16]** than relief against any ongoing violation of federal law. Defendants misread KaZee's pleadings. To be sure, "*Young* has been focused on cases in which a violation of federal law by a state official is ongoing as opposed to cases in which federal law has been violated at one time or over a period of time in the past." *Papasan v. Allain, 478 U.S. 265, 277-78, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986)*. Here, KaZee alleges ongoing infringement of its copyright-protected materials and misappropriation of its trade secrets through UTMB's continued use of PEARL. The illegal action subject to the requested injunction, as alleged, is UTMB's current use of PEARL without the authority bestowed by a license. It is not UTMB's alleged prior use of PEARL at unauthorized locations. The mere fact that adjudication of KaZee's claims may involve interpretation of the Agreement and reference to past conduct does not mean that KaZee's claims do not allege ongoing violation of federal law. Likewise, it does not mean that the injunctive relief that KaZee seeks is effectively a monetary reward for past wrongs. KaZee's complaint makes no request for any monetary relief whatsoever. It requests an injunction. That KaZee may have made monetary demands for alleged prior unauthorized use of PEARL **[*17]** is irrelevant to this analysis because KaZee makes no such demands in its complaint. For these reasons, *Ex parte Young* applies, and KaZee's claims may proceed against the Defendants.[7]

III. DEFENDANTS' *RULE 12(B)(6)* MOTION

Defendants also contend that KaZee fails to allege facts sufficient to state a claim for copyright infringement or for misappropriation of trade secrets. Because KaZee's pleadings provide sufficient allegations, the Defendants' arguments are without merit and their *Rule 12(b)(6)* motion is DENIED.

A. *Rule 12(b)(6)* Legal Standards

Under the relaxed pleading standards of *Federal Rule of Civil Procedure 8(a)(2)*, a complaint need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Where a defendant contends that a plaintiff has failed to meet this standard, *Rule 12(b)(6)* provides a mechanism to challenge the legal sufficiency of a claim early in litigation. To survive a motion to dismiss brought under *Rule 12(b)(6)*, a plaintiff must plead in its complaint only "enough facts to state a claim for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)*. Although a probability that the defendant is liable is not required, the plausibility standard demands "more than a sheer possibility." *Ashcroft v. Iqbal, 556 U.S. 662, 687, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)*. The facts plead are entitled to a **[*18]** presumption of truth and to construction in a light most favorable to the plaintiff, but legal conclusions that lack factual support are not entitled to the same. *Id. at 678*.

To determine whether the plaintiff has plead enough to "nudge[] their claims across the line from conceivable to plausible," a court draws on its own "judicial experience and common sense." *Twombly, 550 U.S. at 574*. This

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[7] Defendants further contend that KaZee's *ultra vires* argument cannot be a basis for avoiding Defendants' sovereign immunity. But KaZee made no such argument, rendering Defendants' *ultra vires* discussion irrelevant.

threshold is surpassed when "a plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal, 556 U.S. at 687* (citing *Twombly, 550 U.S at 556*). *Rule 12(b)(6)* motions are thus "viewed with disfavor and rarely granted." *Lormand v. US Unwired, Inc., 565 F.3d 228, 232 (5th Cir. 2009)* (quoting *Test Masters Educ. Servs., Inc. v. Singh, 428 F.3d 559, 570 (5th Cir. 2005))* (internal quotation marks omitted).

B. Copyright Infringement

To prove a copyright infringement claim, a plaintiff must establish "(1) ownership of a valid copyright; (2) factual copying; and (3) substantial similarity." *Nola Spice Designs, L.L.C. v. Haydel Enters., 783 F.3d 527, 549 (5th Cir. 2015)* (quoting *Armour v. Knowles, 512 F.3d 147, 152 (5th Cir. 2007)* (per curiam) (internal quotation marks omitted)). As to the first element, a "certificate of registration, if timely obtained, is prima facie evidence both that a copyright is valid and that the registrant owns the copyright." *Gen. Universal Sys., Inc. v. Lee, 379 F.3d 131, 141 (5th Cir. 2004)*. KaZee alleges that "PEARL was registered with the United States Copyright Office in 1990 and given copyright registration **[*19]** number TXU568967," and that it is the owner of that valid copyright. (Dkt. #1 at 5). Defendants do not dispute KaZee's ownership of the copyright or its validity.

The second element inquires into the issue of copying, and the third compares the similarity of the copyrighted material and allegedly infringing material. It is a relatively rare case that presents direct evidence of copying, so most proceed with circumstantial evidence of access to and substantial similarity with the copyright-protected material. *See, e.g., Kepner-Tregoe, Inc. v. Leadership Software, Inc., 12 F.3d 527, 532 (5th Cir. 1994)*. This, however, is a case that involves direct evidence of copying. It is beyond dispute that KaZee provided UTMB the source code and other copyrighted materials through the Agreement and that UTMB then used those materials to implement PEARL. This is sufficient evidence of direct copying to survive Defendants' *Rule 12(b)(6)* challenge. *See, e.g., Rogers v. Koons, 960 F.2d 301, 307 (2d Cir. 1992)* (finding direct copying where there was evidence of the alleged infringer instructing copying of the copyrighted materials).

Even if UTMB's actions did not constitute direct copying, the same facts clearly show access to PEARL and substantial similarity between the copyrighted materials provided to UTMB under the Agreement and currently **[*20]** being used by UTMB. *See id.* (finding circumstantial evidence of copying under the facts supporting direct copying). Access may be shown "if the person who created the allegedly infringing work had a reasonable opportunity to view the copyrighted work." *Gen. Universal Sys., 379 F.3d at 141* (citing *Ferguson v. Nat'l Broadcasting Co., 584 F.2d 111, 113 (5th Cir. 1978))*. Here, Defendants had—and continue to have—access to the copyrighted PEARL system. Substantial similarity may be shown when the works, "compared as a whole, are adequately similar to establish appropriation." *Id.* (quoting *Peel & Co. v. The Rug Mkt., 238 F.3d 391, 397 (5th Cir. 2001)* (internal quotation marks omitted)). While Defendants allege that UTMB has "largely recreated PEARL" to tailor the system to its specific needs, there is no dispute that the underlying system—its fundamental essence and structure—has not substantially changed from the copyrighted PEARL system initially provided to UTMB. For these reasons, KaZee has provided sufficient evidence of copyright infringement to survive Defendants' motion to dismiss.

C. Federal Misappropriation of Trade Secrets

A plaintiff may establish a DTSA claim by alleging that it owns a trade secret related to a product used in interstate commerce that was misappropriated. *18 U.S.C. § 1836(b)(1)*. Under the DTSA, a "trade secret" means "all forms and types of financial, **[*21]** business, scientific, technical, economic, or engineering information," that the owner takes reasonable measures to keep confidential and that derive independent economic value from not being generally known by or readily accessible to the public. *Id. § 1839(3)*. A trade secret may be misappropriated by a party using it without consent, *id. § 1839(5)*, having acquired it through improper means, *id. § 1839(6)*.

KaZee has alleged sufficient facts to avoid dismissal of its DTSA claim. KaZee alleges that it created PEARL to be a "cutting-edge medical software application" used by public and private healthcare providers "across the country." (Dkt. #4 at 4-5). PEARL "contains proprietary information, including source code and object code, that is confidential to KaZee." *Id.* at 5. The PEARL system and the proprietary information alleged therein therefore fall squarely within the "scientific, technical" "program devices," "methods," "techniques," "programs," or "codes" contemplated by the DTSA. *See* 18 U.S.C. § 1839(3). KaZee further alleges that the proprietary information is "valuable to KaZee" and "not generally known to KaZee's competitors." (Dkt. #4 at 5). KaZee alleges that it protects such information by "implementing security features to protect **[*22]** the PEARL software and requiring employees and others who access the software to execute confidentiality agreements," just as UTMB did. *Id.* These allegations show sufficient measures to keep KaZee's proprietary information confidential. *See* Accresa Health LLC v. Hint Health Inc., No. 4:18CV536, 2018 U.S. Dist. LEXIS 213547, 2018 WL 6626551, at *8-9 (E.D. Tex. Nov. 28, 2018), *report and recommendation adopted*, No. 4:18-CV-536, 2018 U.S. Dist. LEXIS 212567, 2018 WL 6617707 (E.D. Tex. Dec. 18, 2018).

KaZee further alleges that Defendants misappropriated its trade secrets through improper use. KaZee contends that, "UTMB, under the direction and supervision of Defendants, continues to use the PEARL software despite that UTMB's license to PEARL was terminated effective December 31, 2018." (Dkt. #1 at 11-12). This provides a sufficient allegation of fact that Defendants are misappropriating KaZee's trade secrets through improper use. *See* 18 U.S.C. § 1839(5). KaZee maintains that this continued use will deprive KaZee of "the ability to control access to its intellectual property" and risk "use and [disclosure of] KaZee's proprietary and confidential information, causing harm to KaZee's reputation and goodwill." (Dkt. #1 at 14). Because the DTSA authorizes injunctive relief "to prevent actual or threatened misappropriation," KaZee has alleged sufficient facts **[*23]** to demonstrate harm.

* * *

Defendants' Rule 12(b)(6) motion fails because, as to both its copyright-infringement claim and its misappropriation-of-trade-secrets claim, KaZee has alleged facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *See* Iqbal, 556 U.S. at 687 (citing Twombly, 550 U.S at 556).

IV. Conclusion

It is therefore **ORDERED** that Defendants' objections, (Dkt. #38), are **DENIED**. It is further **ORDERED** that Defendants' Motion to Dismiss, (Dkt. #10), is **DENIED**.

So ORDERED and SIGNED this 2nd day of March, 2020.

/s/ Sean D. Jordan

SEAN D. JORDAN

UNITED STATES DISTRICT JUDGE

End of Document

West's Nevada Revised Statutes Annotated
Title 4. Witnesses and Evidence (Chapters 47-56) (Refs & Annos)
Chapter 50. Witnesses (Refs & Annos)
General Provisions

N.R.S. 50.025

50.025. Lack of personal knowledge

Currentness

1. A witness may not testify to a matter unless:

(a) Evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter; or

(b) The witness states his or her opinion or inference as an expert.

2. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness.

Credits

Added by Laws 1971, p. 788.

Editors' Notes

SUBCOMMITTEE'S COMMENT

Taken from Draft Federal Rule 6-02.

Notes of Decisions (10)

Nev. Rev. Stat. Ann. § 231.1473

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 18. State Executive Department. (Chs. 223 — 233J) > Chapter 231. Economic Development, Tourism, and Cultural Affairs. (§§ 231.002 — 231.720) > Economic Development (§§ 231.020 — 231.1597) > Program of Training for Employees of Business (§§ 231.141 — 231.152)

231.1473. Request for confidentiality of proprietary information, intellectual property or trade secret in training materials.

A business that participates in a program of workforce development may request that any proprietary information, intellectual property or trade secret which is contained in any training materials provided through the program be deemed confidential. Upon approval by the Executive Director of such a request, the proprietary information, intellectual property or trade secret identified by the business shall be deemed confidential, may be redacted from the training materials and may not be disclosed.

History

HISTORY:

2015 29th Sp. Sess., ch. 1, § 5, p. 5.

End of Document

Nev. Rev. Stat. Ann. § 233B.040

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 18. State Executive Department. (Chs. 223 — 233J) > Chapter 233B. Nevada Administrative Procedure Act. (§§ 233B.010 — 233B.150) > Administrative Regulations (§§ 233B.0395 — 233B.120)

233B.040. Regulations: Authority to adopt; enforcement; inclusion of citation of authority and agency contact information; adoption of material by reference; deadline for adoption of proposed regulations; agency to explain failure to adopt.

1.To the extent authorized by the statutes applicable to it, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions. If adopted and filed in accordance with the provisions of this chapter, the following regulations have the force of law and must be enforced by all peace officers:

(a) The Nevada Administrative Code; and

(b) Temporary and emergency regulations.

In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned.

2.Every regulation adopted by an agency must include:

(a)A citation of the authority pursuant to which it, or any part of it, was adopted; and

(b) The address of the agency and, to the extent not elsewhere provided in the regulation, a brief explanation of the procedures for obtaining clarification of the regulation or relief from the strict application of any of its terms, if the agency is authorized by a specific statute to grant such relief, or otherwise dealing with the agency in connection with the regulation.

3.An agency may adopt by reference in a regulation material published by another authority in book or pamphlet form if:

(a) It files one copy of the publication with the Secretary of State and one copy with the State Library, Archives and Public Records Administrator, and makes at least one copy available for public inspection with its regulations; and

(b) The reference discloses the source and price for purchase of the publication.

An agency shall not attempt to incorporate any other material in a regulation by reference.

4.An agency shall adopt a proposed regulation not later than 2 years after the date on which the proposed regulation is submitted to the Legislative Counsel pursuant to subsection 1 of *NRS 233B.063*. If an agency does not adopt a proposed regulation within the time prescribed by this subsection, the executive head of the agency shall appear personally before the Legislative Commission and explain why the proposed regulation has not been adopted.

History

1965, p. 963; 1971, p. 804; 1977, p. 1385; 1985, pp. 366, 1488; *1997, ch. 635*, § 47, p. 3151; *2013, ch. 29*, § 2, p. 77.

End of Document

Nev. Rev. Stat. Ann. § 239.010

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 19. Miscellaneous Matters Related to Government and Public Affairs. (Chs. 234 — 242) > Chapter 239. Public Records. (§§ 239.001 — 239.340) > In General (§§ 239.001 — 239.044)

239.010. Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be prepared by governmental entity and provided in electronic format unless other medium requested.

1.Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119A.677, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3923, 209.3925, 209.419, 209.429, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 226.300, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239.014, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 239C.420, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095, 268.0978, 268.490, 268.910, 269.174, 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 286.118, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.5757, 293.870, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.2242, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.0075, 379.008, 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.033, 391.035, 391.0365, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 393.045, 394.167, 394.16975, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 414.280, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902, 432C.140, 432C.150, 433.534, 433A.360, 437.145, 437.207, 439.4941, 439.840, 439.914, 439B.420, 439B.754, 439B.760, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735, 442.774, 445A.665, 445B.570, 445B.7773, 447.345, 449.209, 449.245, 449.4315, 449A.112, 450.140, 450B.188, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.535, 480.545, 480.935, 480.940, 481.063, 481.091, 481.093, 482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484A.469, 484E.070, 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.303, 604A.710,

612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.238, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.2673, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.3415, 632.405, 633.283, 633.301, 633.4715, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.580, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641.221, 641.325, 641A.191, 641A.262, 641A.289, 641B.170, 641B.282, 641B.460, 641C.760, 641C.800, 642.524, 643.189, 644A.870, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 653.900, 654.110, 656.105, 657A.510, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370, 677.243, 678A.470, 678C.710, 678C.800, 679B.122, 679B.124, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.325, 706.1725, 706A.230, 710.159, 711.600, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2.A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3.A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate, including, without limitation, electronically, the confidential information from the information included in the public book or record that is not otherwise confidential.

4.If requested, a governmental entity shall provide a copy of a public record in an electronic format by means of an electronic medium. Nothing in this subsection requires a governmental entity to provide a copy of a public record in an electronic format or by means of an electronic medium if:

(a) The public record:

(1) Was not created or prepared in an electronic format; and

(2) Is not available in an electronic format; or

(b) Providing the public record in an electronic format or by means of an electronic medium would:

(1) Give access to proprietary software; or

(2) Require the production of information that is confidential and that cannot be redacted, deleted, concealed or separated from information that is not otherwise confidential.

5.An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in the medium that is requested because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

History

1911, p. 290; RL 1912, § 3232; CL 1929, § 5620; 1963, p. 26; 1965, p. 69; 1993, ch. 393, § 4, p. 1230; 1993, ch. 561, § 6, p. 2307; 1993, ch. 626, § 2, p. 2623; 1995, ch. 289, § 1, p. 503; 1995, ch. 293, § 90, p. 716; 1997, ch. 497, § 7, p. 2386; 1999, ch. 291, § 6, p. 1210; 2007, ch. 435, § 8, p. 2062; 2013, ch. 98, § 1, p. 321; 2013, ch. 414, § 3, p. 2268; 2013, ch. 414, § 3.5, p. 2269; 2015, ch. 119, § 21, p. 445; 2015, ch. 123, § 8, p. 456; 2015, ch. 147, § 2.5, p. 573; 2015, ch. 183, § 2, p. 872; 2015, ch. 201, § 7, p. 953; 2015, ch. 203, § 2, p. 961; 2015, ch. 226, § 1, p. 1052; 2015, ch. 262, § 10, p. 1270; 2015, ch. 279, § 2.5, p. 1396; 2015, ch. 293, § 3, p. 1458; 2015, ch. 32, § 2, p. 165; 2015, ch. 378, § 9.5, p. 2143; 2015, ch. 404, § 63, p. 2312; 2015, ch. 409, § 52, p. 2368; 2015, ch. 430, § 14.5, p. 2465; 2015, ch. 457, § 8, p. 2661; 2015, ch. 494, § 3.7, p. 2983; 2015, ch. 503, § 7, p. 3073; 2015, ch. 511, § 4, p. 3195; 2015, ch. 521, § 6, p. 3364; 2015, ch. 522, § 314, p. 3511; 2015, ch. 533, § 2.5, p. 3665; 2015 29th Sp. Sess., ch. 1, § 15, p. 10; 2017, ch. 114, § 2.7, p. 495; 2017, ch. 119, § 10, p. 521; 2017, ch. 12, § 28, p. 74; 2017, ch. 129, § 1.7, p. 589; 2017, ch. 157, § 6, p. 716; 2017, ch. 164, § 9, p. 742; 2017, ch. 166, § 8, p. 753; 2017, ch. 172, § 198, p. 890; 2017, ch. 183, § 10, p. 1007; 2017, ch. 190, § 3, p. 1020; 2017, ch. 212, § 4, p. 1150; 2017, ch. 275, § 41, p. 1474; 2017, ch. 294, § 16, p. 1554; 2017, ch. 307, § 19, p. 1637; 2017, ch. 314, § 42, p. 1725; 2017, ch. 327, § 137, p. 1956; 2017, ch. 338, § 23, p. 2068; 2017, ch. 341, § 32, p. 2131; 2017, ch. 363, § 33, p. 2246; 2017, ch. 376, § 163, p. 2402; 2017, ch. 384, § 28, p. 2508; 2017, ch. 401, § 17, p. 2688; 2017, ch. 461, § 18, p. 2955; 2017, ch. 486, § 94, p. 3095; 2017, ch. 500, § 25, p. 3206; 2017, ch. 506, § 29, p. 3400; 2017, ch. 548, § 97, p. 3876; 2017, ch. 556, § 34, p. 3983; 2017, ch. 568, § 11, p. 4071; 2017, ch. 588, § 52, p. 4238; 2017, ch. 92, § 5, p. 389; 2017, ch. 99, § 7, p. 438, § 11; 2019, ch. 9, § 10, p. 10; 2019, ch. 30, § 10; 2019, ch. 50, § 4; 2019, ch. 62, § 20, p. 326; 2019, ch. 101, § 27.3; 2019, ch. 177, § 16; 2019, ch. 194, § 11; 2019, ch. 196, § 28.5, p. 1058; 2019, ch. 198, § 5; 2019, ch. 199, § 8; 2019, ch. 212, § 6, p. 1176; 2019, ch. 311, § 48; 2019, ch. 316, § 17; 2019, ch. 349, § 15, p. 2163; 2019, ch. 392, § 2, p. 2463; 2019, ch. 403, § 1.5; 2019, ch. 435, § 19; 2019, ch. 473, § 12; 2019, ch. 511, § 8; 2019, ch. 546, § 67; 2019, ch. 556, § 22; 2019, ch. 595, § 197, p. 3850; 2019, ch. 611, § 35; 2019, ch. 612, § 5; 2019, ch. 613, § 2; 2019, ch. 620, § 15; 2019, ch. 627, § 113.5; 2020, ch. 8, § 32, p. 110.

End of Document

West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
in General

N.R.S. 239.0107

239.0107. Requests for inspection or copying of public books or records: Actions by governmental entities

Effective: October 1, 2019

Currentness

1. Not later than the end of the fifth business day after the date on which the person who has legal custody or control of a public book or record of a governmental entity receives a written or oral request from a person to inspect, copy or receive a copy of the public book or record, a governmental entity shall do one of the following, as applicable:

(a) Except as otherwise provided in subsection 2, allow the person to inspect or copy the public book or record or, if the request is for the person to receive a copy of the public book or record, provide such a copy to the person.

(b) If the governmental entity does not have legal custody or control of the public book or record, provide to the person, in writing:

(1) Notice of the fact that it does not have legal custody or control of the public book or record; and

(2) The name and address of the governmental entity that has legal custody or control of the public book or record, if known.

(c) Except as otherwise provided in paragraph (d), if the governmental entity is unable to make the public book or record available by the end of the fifth business day after the date on which the person who has legal custody or control of the public book or record received the request:

(1) Provide to the person, in writing, notice of the fact that it is unable to make the public book or record available by that date and the earliest date and time after which the governmental entity reasonably believes the public book or record will be available for the person to inspect or copy or after which a copy of the public book or record will be available to the person. If the public book or record or the copy of the public book or record is not available to the person by that date and time, the governmental entity shall provide to the person, in writing, an explanation of the reason the public book or record is not available and a date and time after which the governmental entity reasonably believes the public book or record will be available for the person to inspect or copy or after which a copy of the public book or record will be available to the person.

(2) Make a reasonable effort to assist the requester to focus the request in such a manner as to maximize the likelihood the requester will be able to inspect, copy or receive a copy of the public book or record as expeditiously as possible.

(d) If the governmental entity must deny the person's request because the public book or record, or a part thereof, is confidential, provide to the person, in writing:

(1) Notice of that fact; and

(2) A citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.

2. If a public book or record of a governmental entity is readily available for inspection or copying, the person who has legal custody or control of the public book or record shall allow a person who has submitted a request to inspect, copy or receive a copy of a public book or record as expeditiously as practicable.

Credits

Added by Laws 2007, c. 435, § 4. Amended by Laws 2013, c. 98, § 2; Laws 2019, c. 612, § 6, eff. Oct. 1, 2019.

Notes of Decisions (6)

N. R. S. 239.0107, NV ST 239.0107
Current through the end of both the 31st and 32nd Special Sessions (2020)

Nev. Rev. Stat. Ann. § 388A.247

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 34. Education. (Chs. 385 — 400) > Chapter 388A. Charter Schools. (§§ 388A.010 — 388A.740) > Formation of Charter School (§§ 388A.240 — 388A.285) > Applications (§§ 388A.240 — 388A.258)

388A.247. Information provided to sponsor of charter school by charter management organization, committee to form charter school or charter school is public record; authority to declare certain information confidential.

1.Except as otherwise provided in subsection 2, any information that is provided to the sponsor of the charter school by a charter management organization, a committee to form a charter school or a charter school is a public record that is subject to the provisions of chapter 239 of NRS.

2.A charter school must designate any information contained in a submission by the charter school to the sponsor of the charter school that is intended to remain confidential and request for the sponsor to declare such information confidential. Upon receipt of such a request, the sponsor of the charter school shall determine whether the designated information should be declared confidential. If the sponsor of the charter school determines the information should not be declared confidential, the sponsor must give the charter school an opportunity to redact such information. Except as otherwise provided in *NRS 239.0115*, if the sponsor of the charter school determines that the information should be declared confidential, the information is confidential and must not be disclosed.

History

2017, ch. 506, § 5, p. 3375.

End of Document

Nev. Rev. Stat. Ann. § 439.930

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 40. Public Health and Safety. (Chs. 439 — 461A) > Chapter 439. Administration of Public Health. (§§ 439.005 — 439.994) > Website for Information Concerning Price of Commonly Prescribed Drugs [Renumbered] (§§ 439.900 — 439.940)

439.930. Regulations. [Renumbered]

History

2007, ch. 519, § 8, p. 3139; *2011, ch. 221*, § 18, p. 977.

End of Document

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.600
Formerly cited as NRS 439.900

439B.600. Definitions

Effective: October 1, 2017

Currentness

As used in NRS 439B.600 to 439B.695, inclusive, unless the context otherwise requires, the words and terms defined in NRS 439B.605 to 439B.620, inclusive, have the meanings ascribed to them in those sections.

Credits

Added by Laws 2007, c. 519, § 2. Amended by Laws 2017, c. 592, § 5, eff. Oct. 1, 2017. Substituted in 2017 revision for NRS 439.900.

N. R. S. 439B.600, NV ST 439B.600
Current through the end of both the 31st and 32nd Special Sessions (2020)

End of Document

West’s Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.620

439B.620. “Wholesale acquisition cost” defined

Effective: October 1, 2017

Currentness

“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.

Credits

Added by Laws 2017, c. 592, § 3.4, eff. Oct. 1, 2017.

N. R. S. 439B.620, NV ST 439B.620
Current through the end of both the 31st and 32nd Special Sessions (2020)

End of Document

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.630

439B.630. Department to annually compile lists of certain prescription drugs essential for treating asthma and diabetes

Effective: October 1, 2019

Currentness

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 asthma and 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.

Credits

Added by Laws 2017, c. 592, § 3.6, eff. Oct. 1, 2017. Amended by Laws 2019, c. 258, § 1, eff. Oct. 1, 2019.

N. R. S. 439B.630, NV ST 439B.630
Current through the end of both the 31st and 32nd Special Sessions (2020)

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.635

439B.635. Manufacturer of certain essential asthma and diabetes drugs to prepare and submit annual report

Effective: October 1, 2017

Currentness

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 NRS 439B.630 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 NRS 439B.630, trends in those costs and rebates available for such drugs.

Credits

Added by Laws 2017, c. 592, § 3.8, eff. Oct. 1, 2017.

N. R. S. 439B.635, NV ST 439B.635
Current through the end of both the 31st and 32nd Special Sessions (2020)

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.640

439B.640. Manufacturer of essential asthma or diabetes drug that has undergone significant price increase to submit report

Effective: October 1, 2017

Currentness

On or before April 1 of a year in which a drug is included on the list compiled pursuant to subsection 2 of NRS 439B.630, 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.

Credits

Added by Laws 2017, c. 592, § 4, eff. Oct. 1, 2017.

N. R. S. 439B.640, NV ST 439B.640
Current through the end of both the 31st and 32nd Special Sessions (2020)

End of Document

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.645

439B.645. Pharmacy benefit manager to submit annual report concerning essential asthma and diabetes drugs

Effective: October 1, 2017

Currentness

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 NRS 439B.630;

(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.

Credits

Added by Laws 2017, c. 592, § 4.2, eff. Oct. 1, 2017.

N. R. S. 439B.645, NV ST 439B.645
Current through the end of both the 31st and 32nd Special Sessions (2020)

End of Document

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.650

439B.650. Department to compile report concerning price of essential asthma and diabetes drugs

Effective: October 1, 2019

Currentness

On or before June 1 of each year, the Department shall analyze the information submitted pursuant to NRS 439B.635, 439B.640 and 439B.645 and compile a report on the price of the prescription drugs that appear on the most current lists compiled by the Department pursuant to NRS 439B.630, 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 asthma and diabetes while maintaining access to such drugs.

Credits

Added by Laws 2017, c. 592, § 4.3, eff. Oct. 1, 2017. Amended by Laws 2019, c. 258, § 2, eff. Oct. 1, 2019.

N. R. S. 439B.650, NV ST 439B.650
Current through the end of both the 31st and 32nd Special Sessions (2020)

End of Document

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.655
Formerly cited as NRS 439.910

439B.655. Pharmacies to provide to Department contact information, electronic mail address and address of Internet website; exceptions

Effective: October 1, 2017

Currentness

1. Except as otherwise provided in subsections 2 and 3, each pharmacy shall, in accordance with the regulations adopted pursuant to NRS 439B.685, provide to the Department:

(a) Information that a consumer may use to locate, contact or otherwise do business with the pharmacy, including, without limitation:

(1) The name of the pharmacy;

(2) The physical address of the pharmacy; and

(3) The phone number of the pharmacy;

(b) If the pharmacy maintains an electronic mail address, the electronic mail address of the pharmacy; and

(c) If the pharmacy maintains an Internet website, the Internet address of that website.

2. If a pharmacy is not located within the State of Nevada, the pharmacy may, but is not required to, provide to

the Department the information described in subsection 1.

3. If a pharmacy is part of a larger company or corporation or a chain of pharmacies or retail stores, the parent company or corporation may provide to the Department the information described in subsection 1.

Credits

Added by Laws 2007, c. 519, § 4. Substituted in 2017 revision for NRS 439.910.

N. R. S. 439B.655, NV ST 439B.655
Current through the end of both the 31st and 32nd Special Sessions (2020)

End of Document

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.660

439B.660. Manufacturer required to provide list of its pharmaceutical sales representatives; electronic access to list; prohibition against unlisted person marketing prescription drugs; reports

Effective: October 1, 2017

Currentness

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 4 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.

Credits

Added by Laws 2017, c. 592, § 4.6, eff. Oct. 1, 2017.

N. R. S. 439B.660, NV ST 439B.660
Current through the end of both the 31st and 32nd Special Sessions (2020)

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.665

439B.665. Report by certain nonprofit organizations that receive items of value from manufacturer

Effective: January 1, 2020

Currentness

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 687B.470, 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.

Credits

Added by Laws 2017, c. 592, § 4.9, eff. Oct. 1, 2017. Amended by Laws 2019, c. 201, § 46, eff. Jan. 1, 2020.

N. R. S. 439B.665, NV ST 439B.665
Current through the end of both the 31st and 32nd Special Sessions (2020)

Nev. Rev. Stat. Ann. § 439B.670

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 40. Public Health and Safety. (Chs. 439 — 461A) > Chapter 439B. Restraining Costs of Health Care. (§§ 439B.010 — 439B.760) > Reporting of Certain Information Relating to Prescription Drugs (§§ 439B.600 — 439B.695)

439B.670. Department to place on Internet website certain information concerning pharmacies, nonprofit organizations and prescription drugs and certain reports by Department; additional or alternative procedures for obtaining information concerning pharmacies, nonprofit organizations and prescription drugs.

1.Except as otherwise provided in subsection 2 and subsection 3 of *NRS 439B.660*, the Department shall:

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

(1) The information provided by each pharmacy pursuant to *NRS 439B.655*;

(2) The information compiled by a nonprofit organization pursuant to *NRS 439B.665* 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 *NRS 439B.630*;

(4) The wholesale acquisition cost of each prescription drug reported pursuant to *NRS 439B.635*; and

(5) The reports compiled by the Department pursuant to *NRS 439B.650* and 439B.660.

(b) Ensure that the information 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 439B.625* 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 439B.675*; 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 pharmacy charges to the general public for a drug, as described in 42 C.F.R. § 447.512.

History

2007, ch. 519, § 5, p. 3138; *2017, ch. 592*, § 6, p. 4301.

End of Document

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.685
Formerly cited as NRS 439.930

439B.685. Regulations

Effective: May 1, 2018

Currentness

The Department shall adopt such regulations as it determines to be necessary or advisable to carry out the provisions of NRS 439B.600 to 439B.695, inclusive. 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 information made available on the Department's Internet website pursuant to NRS 439B.670, 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 the Department, the Department is unable to guarantee the accuracy of any information made available on that Internet website; 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 439B.600 to 439B.695, inclusive;

2. Procedures adopted to direct consumers who have questions regarding the program described in NRS 439B.600 to 439B.695, inclusive, 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 made available on the Department's Internet website pursuant to NRS 439B.670 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, pharmacies, manufacturers and nonprofit organizations may report to the Department that information made available to consumers pursuant to NRS 439B.600 to 439B.695, inclusive, is inaccurate;

5. The form and manner in which pharmacies are to provide to the Department the information described in NRS 439B.655; and

6. The form and manner in which manufacturers are to provide to the Department the information described in NRS 439B.635, 439B.640 and 439B.660;

7. The form and manner in which pharmacy benefit managers are to provide to the Department the information described in NRS 439B.645;

8. The form and manner in which pharmaceutical sales representatives are to provide to the Department the information described in NRS 439B.660;

9. The form and manner in which nonprofit organizations are to provide to the Department the information described in NRS 439B.665, 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.

Credits

Added by Laws 2007, c. 519, § 8. Amended by Laws 2011, c. 221, § 18, eff. July 1, 2011. Substituted in 2017 revision for NRS 439.930. Amended by Laws 2017, c. 592, § 7, eff. May 1, 2018.

N. R. S. 439B.685, NV ST 439B.685
Current through the end of both the 31st and 32nd Special Sessions (2020)

West's Nevada Revised Statutes Annotated
Title 40. Public Health and Safety (Chapters 439-461a)
Chapter 439B. Restraining Costs of Health Care
Reporting of Certain Information Relating to Prescription Drugs

N.R.S. 439B.695
Formerly cited as NRS 439.940

439B.695. Penalty for failure to provide information to Department

Effective: October 1, 2019

Currentness

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 439B.655 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 NRS 439B.635, 439B.640 or 439B.660, a pharmacy benefit manager fails to provide to the Department the information required by NRS 439B.645, a nonprofit organization fails to post or provide to the Department, as applicable, the information required by NRS 439B.665 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 NRS 439B.660, 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 asthma and diabetes and prevent those diseases.

Credits

439B.695. Penalty for failure to provide information to Department, NV ST 439B.695

Added by Laws 2007, c. 519, § 10. Amended by Laws 2017, c. 592, § 8, eff. Oct. 1, 2017. Substituted in 2017 revision for NRS 439.940. Amended by Laws 2019, c. 258, § 3, eff. Oct. 1, 2019.

N. R. S. 439B.695, NV ST 439B.695
Current through the end of both the 31st and 32nd Special Sessions (2020)

End of Document

Showing differences between versions effective January 2, 2020 to June 30, 2020 and July 1, 2020 [current]
Key: ~~deleted text~~ added text
4 deletions · **4** additions

N.R.S. 453A.370

453A.368 to 453A.370. ~~Regulations~~Repealed

~~The Department shall adopt such regulations as it determines to be necessary or advisable to carry out the provisions of NRS 453A.320 to 453A.370, inclusive. Such regulations are in addition to any requirements set forth in statute and must, without limitation:~~

~~1. Prescribe the form and any additional required content of registration and renewal applications submitted pursuant to NRS 453A.322 and 453A.332.~~

~~2. Set forth rules pertaining to the safe and healthful operation of medical marijuana establishments, including, without limitation:~~

~~(a) The manner of protecting against diversion and theft without imposing an undue burden on medical marijuana establishments or compromising the confidentiality of the holders of registry identification cards and letters of approval.~~

~~(b) Minimum requirements for the oversight of medical marijuana establishments.~~

~~(c) Minimum requirements for the keeping of records by medical marijuana establishments.~~

~~(d) Provisions for the security of medical marijuana establishments, including, without limitation, requirements for the protection by a fully operational security alarm system of each medical marijuana establishment.~~

~~(e) Procedures pursuant to which medical marijuana dispensaries must use the services of an independent testing laboratory to ensure that any marijuana, edible marijuana products and marijuana infused products sold by the dispensaries to end users are tested for content, quality and potency in accordance with standards established by the Department.~~

~~(f) Procedures pursuant to which a medical marijuana dispensary will be notified by the Department if a patient who holds a valid registry identification card or letter of approval has chosen the dispensary as his or her designated medical marijuana dispensary, as described in NRS 453A.366.~~

(g) Minimum requirements for hemp, as defined in NRS 557.160, or a commodity or product made using such hemp which is used by a facility for the production of edible marijuana products or marijuana-infused products to manufacture edible marijuana products or marijuana-infused products or dispensed by a medical marijuana dispensary.

3. Establish circumstances and procedures pursuant to which the maximum fees set forth in NRS 453A.344 may be reduced over time to ensure that the fees imposed pursuant to NRS 453A.344 are, insofar as may be practicable, revenue neutral.

4. Set forth the amount of usable marijuana that a medical marijuana dispensary may dispense to a person who holds a valid registry identification card, including, without limitation, a designated primary caregiver, in any one 14-day period. Such an amount must not exceed the limits set forth in NRS 453A.200.

5. As far as possible while maintaining accountability, protect the identity and personal identifying information of each person who receives, facilitates or delivers services in accordance with this chapter.

6. In cooperation with the applicable professional licensing boards, establish a system to:

(a) Register and track attending providers of health care who advise their patients that the medical use of marijuana may mitigate the symptoms or effects of the patient's medical condition;

(b) Insofar as is possible, track and quantify the number of times an attending provider of health care described in paragraph (a) makes such an advisement; and

(c) Provide for the progressive discipline of attending providers of health care who advise the medical use of marijuana at a rate at which the Department, in consultation with the Division, and applicable board determine and agree to be unreasonably high.

7. Establish different categories of medical marijuana establishment agent registration cards, including, without limitation, criteria for training and certification, for each of the different types of medical marijuana establishments at which such an agent may be employed or volunteer or provide labor as a medical marijuana establishment agent.

8. Provide for the maintenance of a log by the Department, in consultation with the Division, of each person who is authorized to cultivate, grow or produce marijuana pursuant to subsection 6 of NRS 453A.200. The Department shall ensure that the contents of the log are available for verification by law enforcement personnel 24 hours a day.

9. Determine whether any provision of NRS 453A.350 or 453A.352 would make the operation of a medical

~~marijuana establishment or marijuana establishment, as defined in~~ NRS 453D.030~~, by a dual licensee, as defined in~~ NRS 453D.030~~, unreasonably impracticable, as defined in~~ NRS 453D.030~~.~~

~~10. Address such other matters as may assist in implementing the program of dispensation contemplated by~~ NRS 453A.320 ~~to 453A.370, inclusive.~~

Credits

~~Added~~Repealed by ~~Laws 2013, c. 547, § 20, eff. April 1, 2014. Amended by Laws 2015, c. 401, § 34, eff. July 1, 2015; Laws 2015, c. 506, § 30, eff. July 1, 2015; Laws 2017, c. 259, § 25, eff. July 1, 2017; Laws 2017, c. 540, § 47, eff. July 1, 2017; Laws 2017, c. 541, § 48, eff. July 1, 2017; Laws 2019, c. 374, § 17, eff. July 1, 2019; Laws 2019, c. 394, § 4, eff. Jan. 2, 2020; Laws 2019, c. 414, § 21, eff. July 1, 2019~~Laws 2019, c. 595, § 245, eff. July 1, 2020.

N. R. S. 453A.370, NV ST 453A.370

End of Document

Nev. Rev. Stat. Ann. § 482A.100

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 43. Public Safety; Vehicles; Watercraft. (Chs. 480 — 490) > Chapter 482A. Autonomous Vehicles. (§§ 482A.010 — 482A.220)

482A.100. Adoption of regulations to authorize operation and testing; requirements.

1.The Department may adopt regulations relating to the operation and testing of autonomous vehicles on highways within the State of Nevada which are consistent with this chapter and do not impose additional requirements upon the operation and testing of autonomous vehicles.

2.A regulation adopted pursuant to subsection 1 shall not become effective until at least 180 days after the regulation is adopted by the Department.

3.The regulations adopted pursuant to subsection 1 may:

(a) Require that an autonomous vehicle or automated driving system be certified to comply with the requirements of this chapter by the manufacturer of the autonomous vehicle, the manufacturer or developer of the automated driving system or an autonomous vehicle certification facility licensed pursuant to paragraph (c) before it may be operated on a highway within this State;

(b) Include provisions relating to license plates for and the registration of autonomous vehicles and the licensing and training of drivers that do not conflict with this chapter or unreasonably impede the testing and operation of autonomous vehicles in this State; and

(c)

Provide for the licensing of autonomous vehicle certification facilities.

History

2011, ch. 472, § 8, p. 2876; *2017, ch. 608*, § 10, p. 4468.

End of Document

Nev. Rev. Stat. Ann. § 513.063

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 46. Mines, Minerals, Oil and Gas. (Chs. 512 — 523) > Chapter 513. Commission on Mineral Resources. (§§ 513.011 — 513.113) > General Provisions (§§ 513.011 — 513.063)

513.063. Duties.

The Commission shall:

1.Keep itself informed of and interested in the entire field of legislation and administration charged to the Division.

2.Report to the Governor, the Mining Oversight and Accountability Commission created by *NRS 514A.040* and the Legislature on all matters which it may deem pertinent to the Division, and concerning any specific matters previously requested by the Governor or the Mining Oversight and Accountability Commission.

3.Advise and make recommendations to the Governor, the Mining Oversight and Accountability Commission and the Legislature concerning the policy of this State relating to minerals.

4.Formulate the administrative policies of the Division.

5.Adopt regulations necessary for carrying out the duties of the Commission and the Division.

History

1983, p. 2068; *1999, ch. 645*, § 20, p. 3627; *2011, ch. 449*, § 14, p. 2698.

End of Document

Nev. Rev. Stat. Ann. § 522.040

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 46. Mines, Minerals, Oil and Gas. (Chs. 512 — 523) > Chapter 522. Oil and Gas. (§§ 522.010 — 522.190) > General Provisions (§§ 522.010 — 522.040)

522.040. Powers and duties of Division.

Except as otherwise provided in *NRS 522.119*:

1.The Division has jurisdiction and authority over all persons and property, public and private, necessary to effectuate the purposes and intent of this chapter.

2.The Division shall make investigation to determine whether waste exists or is imminent, or whether other facts exist which justify or require action by it.

3.The Division shall adopt regulations, make orders and take other appropriate action to effectuate the purposes of this chapter.

4.The Division may:

(a) Require:

(1) Identification of ownership of wells, producing leases, tanks, plants and drilling structures.

(2) The making and filing of reports, well logs and directional surveys. Logs of exploratory or "wildcat" wells marked "confidential" must be kept confidential for 6 months after the filing thereof, unless the owner gives written permission to release those logs at an earlier date.

(3) The drilling, casing and plugging of wells in such a manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into an oil or gas stratum, the pollution of fresh water supplies by oil, gas or salt water, and to prevent blowouts, cavings, seepages and fires.

(4) The furnishing of a reasonable bond with good and sufficient surety conditioned for the performance of the duty to plug each dry or abandoned well or the repair of wells causing waste.

(5) The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.

(6) The gauging or other measuring of oil and gas to determine the quality and quantity thereof.

(7) That every person who produces oil or gas in this State keep and maintain for a period of 5 years within this State complete and accurate record of the quantities thereof, which must be available for examination by the Division or its agents at all reasonable times.

(b) Regulate, for conservation purposes:

(1) The drilling, producing and plugging of wells.

(2) The shooting and chemical treatment of wells.

(3) The spacing of wells.

(4) The disposal of salt water, nonpotable water and oil field wastes.

(5) The contamination or waste of underground water.

(c) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

History

1953, p. 238; 1977, p. 1151; 1981, p. 86; 1983, p. 2079; *1993, ch. 466*, § 641, p. 1689; *2013, ch. 466*, § 7, p. 2776.

End of Document

West's Nevada Revised Statutes Annotated
Title 52. Trade Regulations and Practices (Chapters 597-604b)
Chapter 600A. Trade Secrets (Uniform Act) (Refs & Annos)

N.R.S. 600A.030

600A.030. Definitions

Effective: October 1, 2017

Currentness

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”:

(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:

(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

(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 NRS 439B.635 or 439B.640, information that a pharmaceutical sales representative is required to report pursuant to NRS 439B.660 or information that a pharmacy benefit manager is required to report pursuant to NRS 439B.645, to the extent that such information is required to be disclosed by those sections.

Credits

Added by Laws 1987, p. 20. Amended by Laws 1993, p. 2802; Laws 1999, c. 449, § 2; Laws 2017, c. 592, § 9, eff. Oct. 1, 2017.

Notes of Decisions (25)

N. R. S. 600A.030, NV ST 600A.030
Current through the end of both the 31st and 32nd Special Sessions (2020)

Nev. Rev. Stat. Ann. § 600A.070

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 52. Trade Regulations and Practices. (Chs. 597 — 604B) > Chapter 600A. Trade Secrets (Uniform Act). (§§ 600A.010 — 600A.100)

600A.070. Preservation of secrecy.

In any civil or criminal action, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include, without limitation:

1.Granting protective orders in connection with discovery proceedings;

2.Holding hearings in camera;

3.Sealing the records of the action;

4.Determining the need for any information related to the trade secret before allowing discovery;

5.Allowing the owner of the trade secret to obtain a signed agreement of confidentiality from any party who obtains knowledge of the trade secret;

6.Ordering a person who obtains knowledge of the trade secret to return to the owner of the trade secret any writing which reflects or contains the trade secret; and

7.Ordering any person involved in the litigation not to disclose an alleged trade secret without previous court approval.

History

1987, ch. 15, § 8, p. 21; *1999, ch. 449*, § 5, p. 2102.

End of Document

Nev. Rev. Stat. Ann. § 690B.260

This document is current through Chapter 3 of the 81st Regular Session (2021), including all legislation effective March 28, 2021 or earlier.

Nevada Revised Statutes Annotated > Title 57. Insurance. (Chs. 679A — 697A) > Chapter 690B. Casualty Insurance. (§§ 690B.010 — 690B.495) > Medical Malpractice (§§ 690B.200 — 690B.370)

690B.260. Physicians and osteopathic physicians: Reports to Commissioner and licensing boards. [Repealed]

History

1977, p. 621; 1987, ch. 321, § 82, p. 735; 2002, Sp. Sess., ch. 3, § 68, p. 24; 2003, ch. 495, § 57, p. 3317; 2007, ch. 536, § 16, p. 3327; 2017, ch. 376, § 118, p. 2376; repealed by 2019, ch. 295, § 77, p. 1728.

End of Document

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 90. Protection of Trade Secrets

18 U.S.C.A. § 1833

§ 1833. Exceptions to prohibitions

Effective: May 11, 2016

Currentness

(a) In general.--This chapter does not prohibit or create a private right of action for--

(1) any otherwise lawful activity conducted by a governmental entity of the United States, a State, or a political subdivision of a State; or

(2) the disclosure of a trade secret in accordance with subsection (b).

(b) Immunity from liability for confidential disclosure of a trade secret to the government or in a court filing.--

(1) Immunity.--An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that--

(A) is made--

(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and

(ii) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(2) Use of trade secret information in anti-retaliation lawsuit.--An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual--

(A) files any document containing the trade secret under seal; and

(B) does not disclose the trade secret, except pursuant to court order.

(3) Notice.--

(A) In general.--An employer shall provide notice of the immunity set forth in this subsection in any contract or agreement with an employee that governs the use of a trade secret or other confidential information.

(B) Policy document.--An employer shall be considered to be in compliance with the notice requirement in subparagraph (A) if the employer provides a cross-reference to a policy document provided to the employee that sets forth the employer's reporting policy for a suspected violation of law.

(C) Non-compliance.--If an employer does not comply with the notice requirement in subparagraph (A), the employer may not be awarded exemplary damages or attorney fees under subparagraph (C) or (D) of section 1836(b)(3) in an action against an employee to whom notice was not provided.

(D) Applicability.--This paragraph shall apply to contracts and agreements that are entered into or updated after the date of enactment of this subsection.

(4) Employee defined.--For purposes of this subsection, the term "employee" includes any individual performing work as a contractor or consultant for an employer.

(5) Rule of construction.--Except as expressly provided for under this subsection, nothing in this subsection shall be construed to authorize, or limit liability for, an act that is otherwise prohibited by law, such as the unlawful access of material by unauthorized means.

CREDIT(S)

(Added Pub.L. 104-294, Title I, § 101(a), Oct. 11, 1996, 110 Stat. 3489; amended Pub.L. 114-153, §§ 2(c), 7(a), May 11, 2016, 130 Stat. 381, 384.)

18 U.S.C.A. § 1833, 18 USCA § 1833
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 90. Protection of Trade Secrets

18 U.S.C.A. § 1836

§ 1836. Civil proceedings

Effective: May 11, 2016

Currentness

(a) The Attorney General may, in a civil action, obtain appropriate injunctive relief against any violation of this chapter.

(b) Private civil actions.--

(1) In general.--An owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.

(2) Civil seizure.--

(A) In general.--

(i) Application.--Based on an affidavit or verified complaint satisfying the requirements of this paragraph, the court may, upon ex parte application but only in extraordinary circumstances, issue an order providing for the seizure of property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action.

(ii) Requirements for issuing order.--The court may not grant an application under clause (i) unless the court finds that it clearly appears from specific facts that--

(I) an order issued pursuant to Rule 65 of the Federal Rules of Civil Procedure or another form of equitable relief would be inadequate to achieve the purpose of this paragraph because the party to which the order would be issued would evade, avoid, or otherwise not comply with such an order;

(II) an immediate and irreparable injury will occur if such seizure is not ordered;

(III) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application and substantially outweighs the harm to any third parties who may be harmed by such seizure;

(IV) the applicant is likely to succeed in showing that--

(aa) the information is a trade secret; and

(bb) the person against whom seizure would be ordered--

(AA) misappropriated the trade secret of the applicant by improper means; or

(BB) conspired to use improper means to misappropriate the trade secret of the applicant;

(V) the person against whom seizure would be ordered has actual possession of--

(aa) the trade secret; and

(bb) any property to be seized;

(VI) the application describes with reasonable particularity the matter to be seized and, to the extent reasonable under the circumstances, identifies the location where the matter is to be seized;

(VII) the person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person; and

(VIII) the applicant has not publicized the requested seizure.

(B) Elements of order.--If an order is issued under subparagraph (A), it shall--

(i) set forth findings of fact and conclusions of law required for the order;

(ii) provide for the narrowest seizure of property necessary to achieve the purpose of this paragraph and direct that the seizure be conducted in a manner that minimizes any interruption of the business operations of third parties and, to the extent possible, does not interrupt the legitimate business operations of the person accused of misappropriating the trade secret;

(iii)(I) be accompanied by an order protecting the seized property from disclosure by prohibiting access by the applicant or the person against whom the order is directed, and prohibiting any copies, in whole or in part, of the seized property, to prevent undue damage to the party against whom the order has issued or others, until such parties have an opportunity to be heard in court; and

(II) provide that if access is granted by the court to the applicant or the person against whom the order is directed, the access shall be consistent with subparagraph (D);

(iv) provide guidance to the law enforcement officials executing the seizure that clearly delineates the scope of the authority of the officials, including--

(I) the hours during which the seizure may be executed; and

(II) whether force may be used to access locked areas;

(v) set a date for a hearing described in subparagraph (F) at the earliest possible time, and not later than 7 days after the order has issued, unless the party against whom the order is directed and others harmed by the order consent to another date for the hearing, except that a party against whom the order has issued or any person harmed by the order may move the court at any time to dissolve or modify the order after giving notice to the applicant who obtained the order; and

(vi) require the person obtaining the order to provide the security determined adequate by the court for the payment of the damages that any person may be entitled to recover as a result of a wrongful or excessive seizure or wrongful or excessive attempted seizure under this paragraph.

(C) Protection from publicity.--The court shall take appropriate action to protect the person against whom an order under this paragraph is directed from publicity, by or at the behest of the person obtaining the order, about such order and any seizure under such order.

(D) Materials in custody of court.--

(i) In general.--Any materials seized under this paragraph shall be taken into the custody of the court. The court shall secure the seized material from physical and electronic access during the seizure and while in the custody of the court.

(ii) Storage medium.--If the seized material includes a storage medium, or if the seized material is stored on a storage medium, the court shall prohibit the medium from being connected to a network or the Internet without the consent of both parties, until the hearing required under subparagraph (B)(v) and described in subparagraph (F).

(iii) Protection of confidentiality.--The court shall take appropriate measures to protect the confidentiality of seized materials that are unrelated to the trade secret information ordered seized pursuant to this paragraph unless the person against whom the order is entered consents to disclosure of the material.

(iv) Appointment of special master.--The court may appoint a special master to locate and isolate all misappropriated trade secret information and to facilitate the return of unrelated property and data to the person from whom the property was seized. The special master appointed by the court shall agree to be bound by a non-disclosure agreement approved by the court.

(E) Service of order.--The court shall order that service of a copy of the order under this paragraph, and the submissions of the applicant to obtain the order, shall be made by a Federal law enforcement officer who, upon making service, shall carry out the seizure under the order. The court may allow State or local law enforcement officials to participate, but may not permit the applicant or any agent of the applicant to participate in the seizure. At the request of law enforcement officials, the court may allow a technical expert who is unaffiliated with the applicant and who is bound by a court-approved non-disclosure agreement to participate in the seizure if the court determines that the participation of the expert will aid the efficient execution of and minimize the burden of the seizure.

(F) Seizure hearing.--

(i) Date.--A court that issues a seizure order shall hold a hearing on the date set by the court under subparagraph (B)(v).

(ii) Burden of proof.--At a hearing held under this subparagraph, the party who obtained the order under subparagraph (A) shall have the burden to prove the facts supporting the findings of fact and conclusions of law necessary to support the order. If the party fails to meet that burden, the seizure order shall be dissolved or modified appropriately.

(iii) Dissolution or modification of order.--A party against whom the order has been issued or any person harmed by the order may move the court at any time to dissolve or modify the order after giving notice to the party who obtained the order.

(iv) Discovery time limits.--The court may make such orders modifying the time limits for discovery under the Federal Rules of Civil Procedure as may be necessary to prevent the frustration of the purposes of a hearing under this subparagraph.

(G) Action for damage caused by wrongful seizure.--A person who suffers damage by reason of a wrongful or excessive seizure under this paragraph has a cause of action against the applicant for the order under which such seizure was made, and shall be entitled to the same relief as is provided under section 34(d)(11) of the Trademark Act of 1946 (15 U.S.C. 1116(d)(11)). The security posted with the court under subparagraph (B)(vi) shall not limit the recovery of third parties for damages.

(H) Motion for encryption.--A party or a person who claims to have an interest in the subject matter seized may make a motion at any time, which may be heard ex parte, to encrypt any material seized or to be seized under this paragraph that is stored on a storage medium. The motion shall include, when possible, the desired encryption method.

(3) Remedies.--In a civil action brought under this subsection with respect to the misappropriation of a trade secret, a court may--

(A) grant an injunction--

(i) to prevent any actual or threatened misappropriation described in paragraph (1) on such terms as the court deems reasonable, provided the order does not--

(I) prevent a person from entering into an employment relationship, and that conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows; or

(II) otherwise conflict with an applicable State law prohibiting restraints on the practice of a lawful profession, trade, or business;

(ii) if determined appropriate by the court, requiring affirmative actions to be taken to protect the trade secret; and

(iii) in exceptional circumstances that render an injunction inequitable, that conditions future use of the trade secret upon payment of a reasonable royalty for no longer than the period of time for which such use could have been prohibited;

(B) award--

(i)(I) damages for actual loss caused by the misappropriation of the trade secret; and

(II) damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss; or

(ii) in lieu of damages measured by any other methods, the damages caused by the misappropriation measured by imposition of liability for a reasonable royalty for the misappropriator's unauthorized disclosure or use of the trade secret;

(C) if the trade secret is willfully and maliciously misappropriated, award exemplary damages in an amount not more than 2 times the amount of the damages awarded under subparagraph (B); and

(D) if a claim of the misappropriation is made in bad faith, which may be established by circumstantial evidence, a motion to terminate an injunction is made or opposed in bad faith, or the trade secret was willfully and maliciously misappropriated, award reasonable attorney's fees to the prevailing party.

(c) Jurisdiction.--The district courts of the United States shall have original jurisdiction of civil actions brought under this section.

(d) Period of limitations.--A civil action under subsection (b) may not be commenced later than 3 years after the date on which the misappropriation with respect to which the action would relate is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this subsection, a continuing misappropriation constitutes a single claim of misappropriation.

CREDIT(S)

(Added Pub.L. 104-294, Title I, § 101(a), Oct. 11, 1996, 110 Stat. 3490; amended Pub.L. 107-273, Div. B, Title IV, § 4002(e)(9), Nov. 2, 2002, 116 Stat. 1810; Pub.L. 114-153, § 2(a), (d)(1), May 11, 2016, 130 Stat. 376, 381.)

Notes of Decisions (33)

18 U.S.C.A. § 1836, 18 USCA § 1836
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 90. Protection of Trade Secrets

18 U.S.C.A. § 1839

§ 1839. Definitions

Effective: May 11, 2016

Currentness

As used in this chapter--

(1) the term "foreign instrumentality" means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government;

(2) the term "foreign agent" means any officer, employee, proxy, servant, delegate, or representative of a foreign government;

(3) the term "trade secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if--

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information;

(4) the term "owner", with respect to a trade secret, means the person or entity in whom or in which rightful

legal or equitable title to, or license in, the trade secret is reposed;

(5) the term "misappropriation" means--

(A) 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

(B) disclosure or use of a trade secret of another without express or implied consent by a person who--

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was--

(I) derived from or through a person who had used improper means to acquire the trade secret;

(II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or

(III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or

(iii) before a material change of the position of the person, knew or had reason to know that--

(I) the trade secret was a trade secret; and

(II) knowledge of the trade secret had been acquired by accident or mistake;

(6) the term "improper means"--

(A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and

(B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition; and

(7) the term "Trademark Act of 1946" means the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes[1], approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the 'Trademark Act of 1946' or the 'Lanham Act')"[1].

CREDIT(S)

(Added Pub.L. 104-294, Title I, § 101(a), Oct. 11, 1996, 110 Stat. 3490; amended Pub.L. 114-153, § 2(b), May 11, 2016, 130 Stat. 380.)

Notes of Decisions (29)

Footnotes

1 So in original. The closing quotation marks probably should follow "purposes" instead of "'Lanham Act')".

18 U.S.C.A. § 1839, 18 USCA § 1839
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

NAC 239.041

This document reflects changes received through August 2020

NV - Nevada Administrative Regulations > CHAPTER 239 - PUBLIC RECORDS > RECORDS OF LOCAL GOVERNMENTAL ENTITIES

239.041 "Legal custody" defined. (NRS 239.125, 378.255)

"Legal custody" means all rights and responsibilities of access to and maintenance of a record which are vested in an office or department of a local governmental entity and with the official or head of the department charged with the care, custody and control of that record.

History

(Added to NAC by St. Librarian, eff. 10-26-83; A 7-9-96; A by Library & Archives Admin'r by R118-12, 10-24-2014)

End of Document

NAC 239.051

This document reflects changes received through August 2020

NV - Nevada Administrative Regulations > CHAPTER 239 - PUBLIC RECORDS > RECORDS OF LOCAL GOVERNMENTAL ENTITIES

239.051 "Nonrecord materials" defined. (NRS 239.125, 378.255)

"Nonrecord materials" means published materials printed by a governmental printer, worksheets, unused blank forms except ballots, brochures, newsletters, magazines, catalogs, price lists, drafts, convenience copies, ad hoc reports, reference materials not relating to a specific project and any other documentation that does not serve as the record of an official action of a local governmental entity.

History

(Added to NAC by St. Librarian, eff. 10-26-83; A by Library & Archives Admin'r by R090-06, 6-1-2006; R118-12, 10-24-2014)

End of Document

NAC 439.730

This document reflects changes received through August 2020

NV - Nevada Administrative Regulations > CHAPTER 439 - ADMINISTRATION OF PUBLIC HEALTH > REPORTING OF CERTAIN INFORMATION RELATING TO PRESCRIPTION DRUGS

439.730 Department to make available on Internet website forms for manufacturer, pharmacy benefit manager and pharmaceutical sales representative to submit required reports. (NRS 439.930)

The Department will make available on an Internet website maintained by the Department the forms on which:

1.A manufacturer is required to submit the reports required by NRS 439B.635 and 439B.640.

2.A pharmacy benefit manager is required to submit the report required by NRS 439B.645.

3.A person included on a list of pharmaceutical sales representatives provided by a manufacturer to the Department pursuant to subsection 1 of NRS 439B.660, is required to submit the report required by subsection 4 of that section.

History

(Added to NAC by Dep't of Health & Human Services by R042-18, eff. 5-31-2018)

End of Document

NAC 439.735

This document reflects changes received through August 2020

NV - Nevada Administrative Regulations > CHAPTER 439 - ADMINISTRATION OF PUBLIC HEALTH > REPORTING OF CERTAIN INFORMATION RELATING TO PRESCRIPTION DRUGS

439.735 Request by manufacturer or pharmacy benefit manager to keep certain information confidential as a trade secret; procedures for Department to follow upon receipt of public records request for disclosure. (NRS 439.930)

1.In complying with NRS 439B.635, 439B.640 or 439B.645, if a manufacturer or pharmacy benefit manager reasonably believes that public disclosure of information that it submits to the Department would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended, the manufacturer or pharmacy benefit manager may submit to the Department a request to keep the information confidential.

2.A request for confidentiality submitted pursuant to subsection 1 must be divided into the following parts, which must be severable from each other:

(a) The first part of the request for confidentiality must describe, with particularity, the information sought to be protected from public disclosure. Upon a request for public records pursuant to NRS 239.010, the Department will not disclose the description set forth in the request for confidentiality or the information sought to be protected from public disclosure, unless the description and information are disclosed pursuant to subsections 5 and 6.

(b) The second part of the request for confidentiality must include an explanation of the reasons why public disclosure of the information would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended. Upon a request for public records pursuant to NRS 239.010, the Department will disclose the explanation set forth in the request for confidentiality.

3.If the Department receives a request for public records pursuant to NRS 239.010 seeking disclosure of any information for which a manufacturer or pharmacy benefit manager has submitted a request for confidentiality pursuant to subsection 1, the Department will:

(a) As soon as reasonably practicable after receiving the request for public records, provide the manufacturer or pharmacy benefit manager with:

(1) Written notice of the request for public records and the procedures set forth in this section; and

(2)A copy of the request for public records and the date on which the Department received the request.

(b) Undertake an initial review to determine whether the Department reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended. In undertaking its initial review, the Department will consider, as persuasive authority, the interpretation and application given to the term "trade secrets" in Exemption 4 of the federal Freedom of Information Act, 5 U.S.C. § 552(b)(4), as amended.

4.If, after undertaking its initial review pursuant to subsection 3, the Department reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, *18 U.S.C. § 1836*, as amended, the Department will:

(a) Within the time prescribed by *NRS 239.0107*, provide the requester of the public records with written notice pursuant to paragraph (d) of subsection 1 of *NRS 239.0107* that the Department must deny the request for public records on the basis that the information is confidential pursuant to the federal Defend Trade Secrets Act of 2016, *18 U.S.C. § 1836*, as amended.

(b) As soon as reasonably practicable after providing the written notice to the requester pursuant to paragraph (a), provide the manufacturer or pharmacy benefit manager with:

(1) Written notice that the Department denied the request for public records; and

(2)A copy of the written notice that the Department provided to the requester pursuant to paragraph (a) and the date on which the Department sent the written notice to the requester.

5.If, after undertaking its initial review pursuant to subsection 3, the Department reasonably believes that public disclosure of the information would not constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, *18 U.S.C. § 1836*, as amended, the Department will:

(a) Within the time prescribed by *NRS 239.0107*, provide the requester of the public records with written notice pursuant to paragraph (c) of subsection 1 of *NRS 239.0107* that the Department intends to disclose the information, except that:

(1) The Department will not be able to disclose the information until 30 days have elapsed following the date on which such written notice was sent to the requester; and

(2) If the manufacturer or pharmacy benefit manager timely commences an action within the 30-day period as provided in subsection 6, the Department will not be able to disclose the information, unless the disclosure is permitted by that subsection.

(b) As soon as reasonably practicable after providing the written notice to the requester pursuant to paragraph (a), provide the manufacturer or pharmacy benefit manager with:

(1) Written notice that the Department intends to disclose the information; and

(2)A copy of the written notice that the Department provided to the requester pursuant to paragraph (a) and the date on which the Department sent the written notice to the requester.

6.If, within the 30-day period following the date on which the Department sent the written notice to the requester of public records pursuant to subsection 5, the manufacturer or pharmacy benefit manager:

(a) Does not commence an action in a court of competent jurisdiction to enjoin the Department from disclosing the information pursuant to the federal Defend Trade Secrets Act of 2016, *18 U.S.C. § 1836*, as amended, the Department will disclose the information.

(b) Commences an action in a court of competent jurisdiction to enjoin the Department from disclosing the information pursuant to the federal Defend Trade Secrets Act of 2016, *18 U.S.C. § 1836*, as amended, the Department will not disclose the information until final resolution of the action, including any appeals. After final resolution of the action, if the court:

(1) Enjoins the Department from disclosing the information as a trade secret, the Department will not disclose the information so long as the information retains its status as a trade secret.

(2) Does not enjoin the Department from disclosing the information as a trade secret, the Department will disclose the information as soon as reasonably practicable after final resolution of the action.

History

(Added to NAC by Dep't of Health & Human Services by R042-18, eff. 5-31-2018)

NAC 439.740

This document reflects changes received through August 2020

NV - Nevada Administrative Regulations > CHAPTER 439 - ADMINISTRATION OF PUBLIC HEALTH > REPORTING OF CERTAIN INFORMATION RELATING TO PRESCRIPTION DRUGS

439.740 Requirements for data and information included in report compiled by Department concerning price of essential diabetes drugs. (NRS 439.930)

In the report compiled by the Department pursuant to NRS 439B.650, the Department will include:

1. Only aggregated data that does not disclose the identity of any drug, manufacturer or pharmacy benefit manager; and

2. In addition to the information required by NRS 439B.650, a description of trends concerning the prices of prescription drugs that appear on the most current lists compiled by the Department pursuant to NRS 439B.630, and an explanation of how those prices and trends may affect:

(a) The prevalence and severity of diabetes in this State; and

(b) The system of health care in this State.

History

(Added to NAC by Dep't of Health & Human Services by R042-18, eff. 5-31-2018)

End of Document

NAC 482A.060

This document reflects changes received through August 2020

NV - Nevada Administrative Regulations > CHAPTER 482A - AUTONOMOUS VEHICLES > GENERAL PROVISIONS

482A.060 Confidentiality of documents and records submitted or obtained by Department; disclosure under certain circumstances. (NRS 482A.100)

1.The Department will keep confidential any document or record submitted to or obtained by the Department pursuant to this chapter and chapter 482A of NRS in relation to the:

(a) Testing or operation of an autonomous vehicle or an automated driving system; or

(b) Licensure of an autonomous vehicle certification facility.

2.Any document or record that the Department keeps confidential pursuant to subsection 1:

(a) Is deemed to be the proprietary or confidential information of the person who submitted the document or record;

(b) Is not a public record; and

(c) Will not be disclosed by the Department unless:

(1) The Department first obtains the consent of the person who submitted the document or record; or

(2) The Department is ordered to disclose the document or record by a court of competent jurisdiction.

History

(Added to NAC by Dep't of Motor Veh. by R136-17, eff. 8-30-2018)

End of Document

NAC 513.070

This document reflects changes received through August 2020

NV - Nevada Administrative Regulations > CHAPTER 513 - COMMISSION ON MINERAL RESOURCES; DIVISION OF MINERALS > REGISTRATION AND RECORDS OF MINING OPERATIONS

513.070 Confidentiality of information. (NRS 513.063)

1.Except as otherwise provided in subsection 4, any information submitted to the Administrator pursuant to the provisions of *NAC 513.010* to *513.120*, inclusive, may be classified as confidential by the person submitting the information. If the person submitting the information wishes the Administrator to consider the information confidential, the claim must be asserted at the time of submission by stamping or writing "confidential business information" on each page containing the information.

2.If a claim is asserted, the information so kept must remain confidential except that the information may be used in connection with other data if use of that information would not disclose the identity of the confidential information.

3.If a claim is not made at the time of submission, the Administrator may make the information available to the public without further notice.

4.The Administrator will not classify as confidential any information required to be submitted to him or her pursuant to the provisions of *NAC 513.010* to *513.120*, inclusive, if the information relates to:

(a) The name and address of the person conducting the operation of the mine;

(b) The annual production of the commodity;

(c) The amount of the tax on the net proceeds of a mine and the amount of the tax on the property of the operation; or

(d) The number of persons employed by a mine.

History

(Added to NAC by Comm'n on Mineral Resources, eff. 2-18-88)

NAC 522.728

This document reflects changes received through August 2020

NV - Nevada Administrative Regulations > CHAPTER 522 - OIL AND GAS > HYDRAULIC FRACTURING

522.728 Duties of operator. (NRS 522.040, 522.119)

1.An operator of an oil or gas well shall:

(a) Not less than 14 days before the commencement of hydraulic fracturing:

(1) Provide written notice to each owner of real property and any operator of an oil, gas or geothermal well located within the area of review of the hydraulic fracturing operation.

(2) Provide written notice to the board of county commissioners in the county in which the oil or gas well is located.

(3) Submit to the Division an affidavit (Form 15) certifying that each strata is sealed and isolated with casing and cement in accordance with *NAC 522.260*. The affidavit must be signed by the operator or a competent person designated by the operator and must incorporate and include a copy of each relevant cement evaluation log as evidence of compliance with *NAC 522.260*.

(4) Submit for approval by the Division a sundry notice (Form 4) and a report describing all specific aspects of the proposed hydraulic fracturing operation. The report must identify each stage of the hydraulic fracturing operation, the measured depth and true vertical depth below the surface of the ground for each stage, the duration of each stage, all intervals to be perforated in measured depth and true vertical depth below the surface of the ground, the number and diameter of perforations per foot and the estimated hydraulic pressures to be utilized.

(b) Maintain a record as to the manner in which each owner, operator and board of county commissioners was notified pursuant to subparagraphs (1) and (2) of paragraph (a), including, without limitation, the method of notification.

(c) Before the commencement of hydraulic fracturing:

(1) Ensure that each chemical used in the hydraulic fracturing process is identified on the Internet website maintained by the Division as a chemical which is approved by the Division for hydraulic fracturing. An operator may request and the Division may approve the use of a chemical that is not identified as an approved chemical if the operator submits the request to the Division on a sundry notice (Form 4) not less than 30 days before the commencement of hydraulic fracturing.

(2) Disclose to the Division each additive that the operator intends to use in the hydraulic fracturing fluid, including, without limitation, any additive that may be protected as a trade secret. The operator shall include with the identity of each additive the trade name and vendor of the additive and a brief description of the intended use or function of the additive.

2.The operator shall monitor and record all well head pressures, including each annular space pressure, during the hydraulic fracturing operation. The maximum hydraulic pressure to which a segment of casing is exposed must not exceed the burst-pressure rating of the casing, but the Division may require a lower maximum hydraulic pressure as the Division determines is necessary. The operator shall immediately stop the hydraulic fracturing process and notify the Division if any change in annular space pressure is observed which suggests communication with the hydraulic fracturing fluids. The operator shall provide the Division with a report

documenting all recorded hydraulic fracturing pressures for each stage of the hydraulic fracturing operation not later than 15 days after the completion of each stage.

3.The operator shall contain all liquids that are returned to the surface and discharged from the wellbore at the conclusion of each stage of the hydraulic fracturing operation. The operator shall contain the liquids in enclosed tanks or in the manner prescribed by the Division of Environmental Protection pursuant to chapter 445A of NRS and chapter 445A of NAC.

4.Except as otherwise provided in subsection 5 and not later than 60 days after the completion of a hydraulic fracturing operation, the operator shall report, at a minimum, to the Internet website *www.fracfocus.org* for inclusion in FracFocus, or its successor registry:

(a) The name of the operator, the well name and well number and the American Petroleum Institute well number.

(b) The date of the hydraulic fracturing treatment, the county in which the well is located, any public land surveys relevant to the location of the well and the global positioning system coordinates of the well.

(c) The true vertical depth of the well and the total volume of water used in the hydraulic fracturing treatment of the well or if the operator utilizes a base fluid other than water, the type and total volume of the base fluid used in the hydraulic fracturing treatment.

(d) The identity of each additive used in the hydraulic fracturing fluid, including, without limitation, the trade name and vendor of the additive and a brief description of the intended use or function of the additive.

(e) The identity of each chemical intentionally added to the base fluid.

(f) The maximum concentration, measured in percent by mass, of each chemical intentionally added to the base fluid.

(g) The Chemical Abstracts Service Registry Number for each chemical intentionally added to the base fluid, if applicable.

5.Proprietary information with respect to a trade secret does not constitute public information and is confidential. An operator may submit a request to the Division to protect from disclosure any information which, under generally accepted business practices, would be considered a trade secret or other confidential proprietary information of the business. The Administrator shall, after consulting with the operator, determine whether to protect the information from disclosure. If the Administrator determines to protect the information from disclosure, the protected information:

(a) Is confidential proprietary information of the operator.

(b) Is not a public record.

(c) Must be redacted by the Administrator from any report that is disclosed to the public.

(d) May only be disclosed or transmitted by the Division:

(1) To any officer, employee or authorized representative of this State or the United States:

(I) For the purposes of carrying out any duties pursuant to the provisions of this chapter or chapter 522 of NRS; or

(II) If the information is relevant in any judicial proceeding or adversary administrative proceeding under this chapter or chapter 522 of NRS or under the provisions of any federal law relating to oil or gas wells or hydraulic fracturing, and the information is admissible under the rules of evidence; or

(2) Upon receiving the consent of the operator.

--> The disclosure of any proprietary information pursuant to this subsection must be made in a manner which preserves the status of the information as a trade secret.

6.The Division shall make available to the public for inspection any information, other than a trade secret or other proprietary information that is maintained confidentially pursuant to subsection 5, that is submitted by an operator pursuant to this section.

7.As used in this section, "trade secret" has the meaning ascribed to it in *NRS 600A.030*.

History

(Added to NAC by Comm'n on Mineral Resources by R011-14, eff. 10-24-2014)

N.R.A.P. 3

Current through rules promulgated and effective as of January 15, 2021

NV - Nevada Local, State & Federal Court Rules > NEVADA RULES OF APPELLATE PROCEDURE > II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

Rule 3. Appeal -- How taken

(a) ***Filing the notice of appeal.***

(1) Except for automatic appeals from a judgment of death under NRS 177.055, an appeal permitted by law from a district court may be taken only by filing a notice of appeal with the district court clerk within the time allowed by Rule 4.

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court to act as it deems appropriate, including dismissing the appeal.

(3) ***Deficient notice of appeal.***The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall send the notice of appeal to the Supreme Court in accordance with subdivision (g) with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12.

(b) ***Joint or consolidated appeals.***

(1) When two or more parties are entitled to appeal from a district court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court upon its own motion or upon motion of a party.

(c) ***Contents of the notice of appeal.***

(1) The notice of appeal shall:

(A)specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B)designate the judgment, order or part thereof being appealed; and

(C)name the court to which the appeal is taken.

(2) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(3) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) ***Serving the notice of appeal.***

(1) ***In general.***The appellant shall serve the notice of appeal on all parties to the action in the district court. Service on a party represented by counsel shall be made on counsel. If a party is not represented by counsel, appellant shall serve the notice of appeal on the party at the party's last known

address. The appellant must note, on each copy, the date when the notice of appeal was filed. The notice of appeal filed with the district court clerk shall contain an acknowledgment of service or proof of service that conforms to the requirements of Rule 25(d).

(2) ***Service in criminal appeals.*** When a defendant in a criminal case appeals, appellant's counsel shall also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. In criminal appeals governed by Rule 3C, appellant's trial counsel must comply with the provisions of this Rule and Rule 3C(c) governing service of the notice of appeal.

(e) ***Payment of fees.*** Except where provided by statute, upon filing a notice of appeal, the appellant must pay the district court clerk the Supreme Court filing fee and any fees charged by the district court. Except for amended notices of appeal filed under Rule 4(a)(7), the Supreme Court filing fee is $ 250 for each notice of appeal filed.

(f) ***Case appeal statement.***

(1) ***Appellant's Duty to File Case Appeal Statement.*** Upon filing a notice of appeal, the appellant shall also file with the district court clerk a completed case appeal statement that is signed by appellant's counsel.

(2) ***District court's duty to complete case appeal statement.*** When the appellant is not represented by counsel, the district court clerk shall complete and sign the case appeal statement.

(3) ***Contents of case appeal statement.*** The case appeal statement must contain the following information:

(A) the district court case number and caption showing the names of all parties to the proceedings below, but the use of et al. to denote parties is prohibited;

(B) the name of the judge who entered the order or judgment being appealed;

(C) the name of each appellant and the name and address of counsel for each appellant;

(D) the name of each respondent and the name and address of appellate counsel, if known, for each respondent, but if the name of a respondent's appellate counsel is not known, then the name and address of that respondent's trial counsel;

(E) whether an attorney identified in response to subparagraph (D) is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42, including a copy of any district court order granting that permission;

(F) whether the appellant was represented by appointed counsel in the district court, and whether the appellant is represented by appointed counsel on appeal;

(G) whether the district court granted the appellant leave to proceed in forma pauperis, and if so, the date of the district court's order granting that leave;

(H) the date that the proceedings commenced in the district court;

(I) a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court;

(J) whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court or Court of Appeals and, if so, the caption and docket number of the prior proceeding;

(K) whether the appeal involves child custody or visitation; and

(L) in civil cases, whether the appeal involves the possibility of settlement.

(4) ***Form case appeal statement.*** A case appeal statement must substantially comply with Form 2 in the Appendix of Forms.

(g) ***Forwarding Appeal Documents to Supreme Court.***

(1) ***District Court Clerk's Duty to Forward.***

(A) Upon the filing of the notice of appeal, the district court clerk shall immediately forward to the dell of the Supreme Court the required filing fee, together with 3 certified, file-stamped copies of the following documents:

-- the notice of appeal;

-- the case appeal statement;

-- the district court docket entries;

-- the civil case cover sheet, if any;

-- the judgment(s) or order(s) being appealed;

-- any notice of entry of the judgment(s) or order(s) being appealed;

-- any certification order directing entry of judgment in accordance with NRCP 54(b);

-- the minutes of the district court proceedings; and

-- a list of exhibits offered into evidence, if any.

(B) If, at the time of filing of the notice of appeal, any of the enumerated documents have not been filed in the district court, the district court clerk shall nonetheless forward the notice of appeal together with all documents then on file with the clerk.

(C) The district court clerk shall promptly forward any later docket entries to the clerk of the Supreme Court.

(2) ***Appellant's Duty.***An appellant shall take all action necessary to enable the clerk to assemble and forward the documents enumerated in this subdivision.

History

Amended 7-22-96, eff. 9-1-96; Amended eff. 7-1-03; Amended 12-31-08, eff. 7-1-09; Amended 12-18-14, eff. 1-20-15; Amended eff. 3-1-19

End of Document

N.R.C.P. 56

Current through rules promulgated and effective as of January 15, 2021

NV - Nevada Local, State & Federal Court Rules > RULES OF CIVIL PROCEDURE FOR THE NEVADA DISTRICT COURTS > VII. JUDGMENT

Rule 56. Summary Judgment

(a) ***Motion for Summary Judgment or Partial Summary Judgment.***A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) ***Time to File a Motion.***Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) ***Procedures.***

(1) ***Supporting Factual Positions.***A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A)citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B)showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) ***Objection That a Fact Is Not Supported by Admissible Evidence.***A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) ***Materials Not Cited.***The court need consider only the cited materials, but it may consider other materials in the record.

(4) ***Affidavits or Declarations.***An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) ***When Facts Are Unavailable to the Nonmovant.***If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1)defer considering the motion or deny it;

(2)allow time to obtain affidavits or declarations or to take discovery; or

(3)issue any other appropriate order.

(e) ***Failing to Properly Support or Address a Fact.***If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1)give an opportunity to properly support or address the fact;

(2)consider the fact undisputed for purposes of the motion;

(3)grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or

(4)issue any other appropriate order.

(f) ***Judgment Independent of the Motion.***After giving notice and a reasonable time to respond, the court may:

(1)grant summary judgment for a nonmovant;

(2)grant the motion on grounds not raised by a party; or

(3)consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) ***Failing to Grant All the Requested Relief.***If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact--including an item of damages or other relief--that is not genuinely in dispute and treating the fact as established in the case.

(h) ***Affidavit or Declaration Submitted in Bad Faith.***If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court--after notice and a reasonable time to respond--may order the submitting party to pay the other party the reasonable expenses, including attorney fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

History

Amended eff. 3-16-64; Amended 12-13-85, eff. 2-11-86; Amended eff. 1-1-05; Amended eff. 3-1-19

End of Document

Rule 2.21. Affidavits on motions

(a) Factual contentions involved in any pretrial or post-trial motion must be initially presented and heard upon affidavits, unsworn declarations under penalty of perjury, depositions, answers to interrogatories, and admissions on file. Oral testimony will not be received at the hearing, except upon the stipulation of the parties and with the approval of the court, but the court may set the matter for a hearing at a time in the future and require or allow oral examination of the affiants/declarants to resolve factual issues shown by the affidavits/declarations to be in dispute. This provision does not apply to an application for a preliminary injunction pursuant to NRCP 65(a).

(b) Each affidavit/declaration shall identify the affiant/declarant, the party on whose behalf it is submitted, and the motion or application to which it pertains and must be served and filed with the motion, opposition, or reply to which it relates.

(c) Affidavits/declarations must contain only factual, evidentiary matter, conform with the requirements of NRCP 56(e), and avoid mere general conclusions or argument. Affidavits/declarations substantially defective in these respects may be stricken, wholly or in part.

History

Amended 5-3-07, eff. 7-2-07

ASSEMBLY BILL NO. 215–ASSEMBLYMEN JOINER, SPIEGEL; BILBRAY-AXELROD, CARRILLO, DALY, DIAZ, FLORES, FUMO, MILLER, MONROE-MORENO AND THOMPSON

PREFILED FEBRUARY 13, 2017

JOINT SPONSORS: SENATORS CANCELA AND PARKS

Referred to Committee on Commerce and Labor

SUMMARY—Requires the reporting of certain information relating to prescription drugs. (BDR 57-284)

FISCAL NOTE: Effect on Local Government: No.
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 manufacturer of certain prescription drugs to submit a report to the Division of Insurance of the Department of Business and Industry containing information about the costs of the drug; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this bill requires the manufacturer of certain prescription drugs to prepare and submit a report each year to the Division of Insurance of the Department of Business and Industry. **Section 2** requires the report of the manufacturer to include certain information relating to the costs of producing the drug, administrative expenditures attributable to the drug, profit earned from the drug, any financial assistance provided by the manufacturer relating to the drug and the wholesale cost of the drug. **Section 3** of this bill requires the Division to compile a report outlining the information contained in the reports submitted by each manufacturer, post its report on the Internet and submit the report to the Legislature.

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

Section 1. Chapter 679B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *1. On or before May 1 of each year, the manufacturer of a prescription drug that is marketed for sale in this State under a brand name shall prepare and submit to the Division, on the form prescribed by the Division pursuant to section 3 of this act, a report for each drug that has a wholesale acquisition cost:*

(a) Of $10,000 or more per year, if the drug is used according to the instructions of the manufacturer;

(b) Of $10,000 or more for a course of treatment administered according to the instructions of the manufacturer; or

(c) That has increased more than 25 percent in the year last preceding the date on which the report is submitted.

2. The report submitted pursuant to subsection 1 must include, for each drug that is the subject of the report:

(a) The total cost of research and development for the drug, including, without limitation:

(1) The total cost of any study drug manufactured for the purpose of obtaining approval by the Food and Drug Administration of the drug that is the subject of the report;

(2) The total cost of any preclinical studies of the drug;

(3) The total cost of any clinical studies of the drug, including clinical trials performed for the purpose of obtaining the approval of the Food and Drug Administration and clinical studies conducted after the drug has been approved by the Food and Drug Administration, regardless of whether such trials were required by the Food and Drug Administration;

(4) The total cost associated with preparing and submitting documents to the Food and Drug Administration concerning the drug;

(5) Any cost of research and development incurred with respect to the drug by a predecessor entity of the manufacturer; and

(6) The total cost of studies conducted after the drug has been approved by the Food and Drug Administration using external providers of data for the purpose of publication;

(b) Any other costs of producing the drug, including:

(1) The total cost for materials, manufacturing and administration attributable to the drug;

(2) The total cost paid by any entity other than the manufacturer or a predecessor entity for research and

development, including money from governmental entities, subsidies and private grants; and

(3) Any cost to acquire rights to the drug, including the cost of purchasing patents, licensing or acquiring a corporate entity that owns rights to the drug;

(c) The total administrative expenditures relating to the drug, including marketing and advertising costs;

(d) The profit that the manufacturer has earned from the drug and the percentage of the manufacturer's total profit attributable to the drug;

(e) The total amount of financial assistance that the manufacturer has provided through any patient prescription assistance program;

(f) The cost associated with coupons provided directly to consumers and the cost to the manufacturer attributable to the redemption of those coupons;

(g) The wholesale acquisition cost of the drug; and

(h) 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.

3. As used in this section, "wholesale acquisition cost" means the manufacturer's list price for the 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. *The Division shall:*

1. In consultation with an advisory group consisting of representatives of the pharmaceutical industry, health insurance plans, pharmacy benefit managers, relevant governmental agencies and advocates for consumers and physicians, develop the form on which the report must be submitted pursuant to section 2 of this act.

2. Determine whether any information contained in a report submitted pursuant to section 2 of this act would cause competitive harm to the manufacturer that filed the report if made public. Such information is confidential and must not be included in the report compiled pursuant to subsection 3 or otherwise made available to the public.

3. Compile a report outlining, for each prescription drug for which a report is submitted by a manufacturer pursuant to section 2 of this act, the information provided in the manufacturer's report.

4. On or before July 1 of each year, post the report compiled pursuant to subsection 3 on the Internet website maintained by the Division and submit the report to the Director of the Legislative Counsel Bureau for transmittal to:

(a) The Legislative Committee on Health Care if the report is received during an odd-numbered year; or

(b) The next regular session of the Legislature if the report is received during an even-numbered year.

Sec. 4. NRS 679B.510 is hereby amended to read as follows:

679B.510 As used in NRS 679B.510 to 679B.560, inclusive, ***and sections 2 and 3 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 679B.520, 679B.530 and 679B.540 have the meanings ascribed to them in those sections.

Sec. 5. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 41.071, 49.095, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 130.312, 130.712, 136.050, 159.044, 172.075, 172.245, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350, 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.5002, 293.503, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.16925, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 391.035, 392.029, 392.147,

392.264, 392.271, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720, 450.140, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.365, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 706A.230, 710.159, 711.600, ***and section 3 of this act,*** sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the

governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

Sec. 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. 7. This act becomes effective upon passage and approval for the purposes of developing the form required by section 3 of this act and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act, and on January 1, 2018, for all other purposes.

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SENATE BILL NO. 265–SENATORS CANCELA, SEGERBLOM, ATKINSON, PARKS; CANNIZZARO, DENIS, FARLEY, MANENDO AND WOODHOUSE

MARCH 14, 2017

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to prescription drugs. (BDR 40-809)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 a list of prescription drugs essential for treating diabetes in this State; requiring the manufacturer of a prescription drug included on the list to reimburse a purchaser for a portion of the price of the drug in certain circumstances; requiring the manufacturer of a prescription drug included on the list to report certain information to the Department; requiring certain nonprofit organizations to report to the Department information concerning contributions received from drug manufacturers; requiring the Department to place certain information on its Internet website; authorizing the Department to impose an administrative penalty in certain circumstances; requiring a private school and an employer to allow a pupil or employee, as applicable, to keep and self-administer certain drugs; requiring an insurer to reimburse an insured for a portion of any deductible, copay or coinsurance paid for certain drugs; requiring an insurer to provide certain notice to insureds; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Department of Health and Human Services to compile and post on its Internet website information relating to the prices charged for certain prescription drugs. (NRS 439.915) **Section 6** of this bill requires the Department to compile a list of drugs that the Department determines to be essential for treating diabetes in this State. **Section 6** also requires the manufacturer of a drug included on the list to submit to the Department a list of such drugs for which: (1) the wholesale acquisition cost of the drug exceeds the highest price paid for the drug in certain foreign countries; or (2) the manufacturer increases the wholesale acquisition cost of a drug during a calendar year by more than a prescribed amount. **Section 7** of this bill requires the manufacturer of a prescription drug included on the list to submit to the Department an annual report that contains certain information concerning the cost of the drug. **Section 9** of this bill requires a nonprofit organization that advocates for patients or funds medical research in this State to submit information to the Department concerning contributions that the organization receives from manufacturers of prescription drugs. **Section 12** of this bill requires the Department to compile and place that information on the Internet website maintained by the Department. **Section 13** of this bill provides that the Department is not liable for the omission of information from reports or any incorrect information in the reports. **Section 14** of this bill requires the Department to adopt any necessary regulations concerning the reports. **Section 16** of this bill authorizes the Department to impose an administrative penalty on a manufacturer that fails to submit a required report.

Section 6 also requires a manufacturer to reimburse the purchaser of a drug that is included on the list of essential diabetes drugs compiled by the Department if: (1) the wholesale acquisition cost of the drug exceeds the highest price paid for the drug in certain foreign countries; or (2) the manufacturer increases the wholesale acquisition cost of a drug during a calendar year by more than a prescribed amount. **Sections 25, 26, 29, 32, 33, 35, 38, 40, 42 and 44** of this bill require an insurer, including a state or local governmental entity that insures its employees, that receives such a reimbursement to refund any deductible paid by an insured for the drug in an amount that does not exceed the amount of the reimbursement. **Section 8** of this bill requires the manufacturer of a prescription drug included on the list to notify certain insurers at least 90 days before a planned price increase that is larger than a prescribed amount.

Sections 25, 26, 30, 31, 34, 36, 37, 39, 41 and 43 of this bill require an insurer that uses a formulary, including a state or local governmental entity that insures its employees, to publish before each open enrollment period a notice of any drugs on the list that have been removed from the formulary or will be removed from the formulary during the current plan year or the next plan year. **Sections 25 and 26** also require a state or local governmental entity that insures its employees to provide each insured with notice of whether a formulary is used and, if so, the opportunity to obtain information about the formulary. **Section 26** additionally prohibits the State from limiting or excluding coverage provided to its employees for certain prescription drugs that have previously been approved for coverage.

Under existing law, the Division of Public and Behavioral Health of the Department of Health and Human Services licenses and regulates certain health care facilities and organizations that provide health care. (Chapter 449 of NRS) **Sections 17-24** of this bill require the Division to also license and regulate pharmaceutical sales representatives. **Section 19** of this bill makes it a misdemeanor to practice as a pharmaceutical sales representative in this State without a license. **Section 23** of this bill requires a pharmaceutical sales representative to submit an annual report to the Division containing certain information about his or her activities.

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 for suspending, demoting, dismissing or refusing to reemploy a teacher or administrator. (NRS 391.750) **Sections 27 and 28** of this bill: (1) impose similar requirements for private schools and employers; and (2) make a willful violation of those requirements a misdemeanor.

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 9, inclusive, of this act.

Sec. 2. ***"Manufacturer" means a person who derives, produces, prepares, compounds, mixes, cultivates, grows or processes a prescription drug.***

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. 4. ***"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 coverage for prescription drugs;

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 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. ***"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. 6. ***1. The Department shall compile and annually update a list of prescription drugs that the Department determines***

to be essential for treating diabetes in this State. The list must include, without limitation, all forms of insulin and biguanides marketed for sale in this State.

2. If the wholesale acquisition cost of a drug included on the list compiled pursuant to subsection 1 is greater than the foreign price cap for that drug on January 1 of the current calendar year, the manufacturer of the drug shall, upon the submission of a valid claim by a person or entity that purchased the drug in this State, including, without limitation, a patient or third party, reimburse the claimant for the difference between the wholesale acquisition cost and the foreign price cap.

3. If the manufacturer of a drug included on the list compiled pursuant to subsection 1 increases the price of the drug during a calendar year by a percentage that is larger than the percentage increase in the Consumer Price Index, Medical Care Component, for that calendar year, the manufacturer of that drug shall, upon the submission of a valid claim by a person or entity that purchased the drug in this State, including, without limitation, a patient or third party, reimburse the claimant for the difference between the amount of the increased price and the price of the drug at the beginning of the calendar year, multiplied by the percentage increase in the Consumer Price Index, Medical Care Component, for that calendar year.

4. A patient who is covered by a third party and has paid a deductible for a drug for which reimbursement is available pursuant to subsection 2 or 3 may submit a claim for reimbursement pursuant to subsection 2 or 3, as applicable. Except as otherwise provided in paragraph (a), the manufacturer shall, upon the submission of a valid claim by such a patient, reimburse the patient for the amount required by subsection 2 or 3, as applicable, not to exceed the amount of the deductible. A manufacturer:

(a) Is not required to provide a reimbursement pursuant to this subsection if the third party that covers the patient submitted a valid claim for reimbursement before the patient submitted his or her claim for reimbursement; and

(b) May deduct the amount of any reimbursement provided to a patient in accordance with this subsection from the amount reimbursed to the third party that covers the patient on a subsequent claim.

5. Each manufacturer of a drug included on the list compiled pursuant to subsection 1 shall :

(a) Establish a means by which a person or entity that purchased the drug in this State may submit a claim for reimbursement pursuant to subsection 2 or 3.

(b) Post conspicuously on an Internet website maintained by the manufacturer and submit to the Department a list of all drugs manufactured by the manufacturer for which reimbursement is available for sales within the immediately preceding 12 months. The list must be updated at least quarterly.

6. As used in this section, "foreign price cap" means the highest price paid for a prescription drug, excluding taxes, in any country other than the United States that is:

(a) A member of the Organisation for Economic Co-operation and Development or its successor organization; or

(b) If the Organisation for Economic Co-operation and Development ceases to exist and has no successor organization, on a list of 35 economically developed countries adopted by regulation of the Department for the purposes of this section.

Sec. 7. *On or before May 1 of each year, the manufacturer of a prescription drug that appears on the list compiled by the Department pursuant to section 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 total cost of research and development for the drug, including, without limitation:

(a) The total cost of any study drug manufactured for the purpose of obtaining approval by the United States Food and Drug Administration of the drug that is the subject of the report;

(b) The total cost of any preclinical studies of the drug;

(c) The total cost of any clinical studies of the drug, including clinical trials performed for the purpose of obtaining the approval of the United States Food and Drug Administration and clinical studies conducted after the drug was approved by the United States Food and Drug Administration, regardless of whether such trials were required by the United States Food and Drug Administration;

(d) The total cost associated with preparing and submitting documents to the United States Food and Drug Administration concerning the drug;

(e) Any cost for research and development incurred with respect to the drug by a predecessor entity of the manufacturer; and

(f) The total cost of studies conducted after the drug was approved by the United States Food and Drug Administration using external providers of data for the purpose of publication;

2. Any other costs of producing the drug, including:

(a) The total cost for materials, manufacturing and administrative expenditures relating to the drug;

(b) The total cost paid by any entity other than the manufacturer or a predecessor entity of the manufacturer for research and development, including money from governmental entities, subsidies and private grants; and

(c) Any cost to acquire rights to the drug, including the cost of purchasing patents or licensing or acquiring a corporate entity that owns rights to the drug;

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

4. The profit that the manufacturer has earned from the drug and the percentage of the manufacturer's total profit attributable to the drug;

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

6. The cost associated with coupons provided directly to consumers and the cost to the manufacturer attributable to the redemption of those coupons;

7. The wholesale acquisition cost of the drug; and

8. 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.

Sec. 8. *1. At least 90 days before increasing the wholesale acquisition cost of a prescription drug included on the list compiled pursuant to section 6 of this act by a percentage larger than the percentage increase in the Consumer Price Index, Medical Care Component, for the 12 months immediately preceding the date by which notification is required pursuant to this section, the manufacturer of the drug shall notify each third party listed in the database established pursuant to subsection 2 of the planned price increase.*

2. The Department, in consultation with the Commissioner of Insurance, shall:

(a) Establish and maintain a database of third parties that provide or offer coverage of prescription drugs to residents of this State.

(b) Provide information in that database to a manufacturer upon request for the purposes of complying with the requirements of this section.

Sec. 9. *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 contribution from a*

manufacturer during the immediately preceding calendar year shall submit to the Department a report which includes:

1. For each such contribution, the amount of the contribution and the manufacturer that made the contribution; and

2. For each manufacturer that made such a contribution, the percentage of the total gross income of the organization during the immediately preceding calendar year attributable to contributions from the manufacturer.

Sec. 10. NRS 439.150 is hereby amended to read as follows:

439.150 1. The State Board of Health is hereby declared to be supreme in all nonadministrative health matters. It has general supervision over all matters, except for administrative matters and as otherwise provided in NRS 439.950 to 439.983, inclusive, relating to the preservation of the health and lives of citizens of this State and over the work of the Chief Medical Officer and all district, county and city health departments, boards of health and health officers.

2. The Department is hereby designated as the agency of this State to cooperate with the federal authorities in the administration of those parts of the Social Security Act which relate to the general promotion of public health. It may receive and expend all money made available to the Division by the Federal Government, the State of Nevada or its political subdivisions, or from any other source, for the purposes provided in this chapter. In developing and revising any state plan in connection with federal assistance for health programs, the Department shall consider, without limitation, the amount of money available from the Federal Government for those programs, the conditions attached to the acceptance of that money and the limitations of legislative appropriations for those programs.

3. Except as otherwise provided in NRS 576.128 ~~[,]~~ ***and section 19 of this act,*** the State Board of Health may set reasonable fees for the:

(a) Licensing, registering, certifying, inspecting or granting of permits for any facility, establishment or service regulated by the Division;

(b) Programs and services of the Division;

(c) Review of plans; and

(d) Certification and licensing of personnel.

➥ Fees set pursuant to this subsection must be calculated to produce for that period the revenue from the fees projected in the budget approved for the Division by the Legislature.

Sec. 11. 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 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 5, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 12. NRS 439.915 is hereby amended to read as follows:

439.915 1. Except as otherwise provided in ~~[subsection]~~ ***subsections*** 2 ~~[,]~~ ***and 3,*** the Department shall:

(a) ~~[Place]~~ ***Compile and place*** or cause to be placed on the Internet website maintained by the Department the information provided by each pharmacy pursuant to NRS 439.910 ~~[,]~~ ***, each manufacturer pursuant to sections 6 and 7 of this act and each nonprofit organization pursuant to section 9 of this act;***

(b) Ensure that the information provided by each pharmacy pursuant to NRS 439.910 ***, each manufacturer pursuant to sections 6 and 7 of this act and each nonprofit organization pursuant to section 9 of this act*** and placed on the Internet website maintained by the Department 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 is not required to place information reported by a manufacturer pursuant to section 7 of this act on the Internet website maintained by the Department if the Department determines that publishing the information would be detrimental to the financial or competitive position of the manufacturer.***

4. 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.]~~ ***5.*** 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. 13. 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 ~~[;]~~ ***, any information concerning a prescription drug that is required to be reported pursuant to section 6 or 7 of this act or any information that a nonprofit organization is required to report by section 9 of this act;*** 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 ~~[.]~~ ***, any information concerning a prescription drug that is required to be reported pursuant to section 6 or 7 of this act or any information that a nonprofit organization is required to report by section 9 of this act.***

Sec. 14. 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 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, ***the information that is reported concerning prescription drugs pursuant to sections 6 and 7 of this act and the information that is reported by nonprofit organizations pursuant to section 9 of this act,*** 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 Internet]~~ ***that*** 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 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 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 ***, each manufacturer pursuant to sections 6 and 7 of this act and each nonprofit organization pursuant to section 9 of this act*** and made available on the Department's Internet website 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 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 6 and 7 of this act;***

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

8. 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. 15. 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 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 9, inclusive, of this act.***

Sec. 16. 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 6 or 7 of this act, a nonprofit organization fails to provide to the Department the information required by section 9 of this act or a manufacturer or nonprofit organization 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 manufacturer or nonprofit organization, as applicable, an administrative penalty of not more than $5,000 for each day of such failure.

3. If a manufacturer fails to comply with any other requirement of section 6 of this act, the Department may impose against the manufacturer an administrative penalty prescribed by regulation of the Department.

Sec. 17. Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 18 to 24, inclusive, of this act.

Sec. 18. *As used in sections 18 to 24, inclusive, of this act, unless the context otherwise requires, "pharmaceutical sales representative" means a person who markets prescription drugs to providers of health care in this State.*

Sec. 19. *1. A person shall not practice as a pharmaceutical sales representative in this State for more than 15 days in any calendar year unless the person holds a valid license as a pharmaceutical sales representative issued by the Division. Such a license expires 1 year after the date on which the license is issued. A person who violates the requirements of this subsection is guilty of a misdemeanor.*

2. The Board shall adopt regulations to carry out the provisions of sections 18 to 24, inclusive, of this act. Those regulations must establish, without limitation:

(a) The qualifications for obtaining or renewing a license as a pharmaceutical sales representative, which must include a requirement that a pharmaceutical sales representative obtain at least 5 hours of continuing education each year concerning ethics, pharmacology or the laws and regulations concerning the marketing of prescription drugs.

(b) The requirements to apply for or renew a license as a pharmaceutical sales representative. No fee may be charged to apply for, reinstate or renew such a license.

(c) Standards of practice for pharmaceutical sales representatives.

(d) Disciplinary action that may be imposed for violating the standards of practice established pursuant to paragraph (c), which may include, without limitation, the suspension or revocation of a license and the imposition of an administrative penalty of not more than $3,000 for each day on which a violation occurs.

(e) Procedures for imposing disciplinary action.

3. A pharmaceutical sales representative shall not:

(a) Engage in deceptive or misleading marketing;

(b) Falsely represent that he or she is licensed or certified as a provider of health care; or

(c) Attend an examination of a patient by a provider of health care without the consent of the patient.

Sec. 20. *An application for the issuance of a license as a pharmaceutical sales representative pursuant to section 19 of this act must include the social security number of the applicant.*

Sec. 21. *1. An applicant for the issuance or renewal of a license as a pharmaceutical sales representative must submit to the Division of Public and Behavioral Health the statement prescribed by the Division of Welfare and Supportive Services of the Department pursuant to NRS 425.520. The statement must be completed and signed by the applicant.*

2. The Division of Public and Behavioral Health shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the certificate; or

(b) A separate form prescribed by the Division.

3. A license as a pharmaceutical sales representative may not be issued or renewed by the Division if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Division shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 22. *1. If the Division receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license as a pharmaceutical sales representative, the Division shall deem the certificate issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Division receives a letter issued to the holder of*

the certificate by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the certificate has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The Division shall reinstate a license as a pharmaceutical sales representative that has been suspended by a district court pursuant to NRS 425.540 if the Division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose certificate was suspended stating that the person whose certificate was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 23. *1. When a pharmaceutical sales representative submits an application to renew his or her license, he or she shall also submit to the Division a report, which must include, for the immediately preceding year:*

(a) A list of providers of health care whom the pharmaceutical sales representative contacted and the number of times that the pharmaceutical sales representative contacted each provider;

(b) The name, manufacturer and wholesale acquisition cost of each prescription drug marketed by the pharmaceutical sales representative;

(c) The name and manufacturer of each prescription drug for which the pharmaceutical sales representative provided a free sample, the name of each provider of health care to whom a free sample was provided and the number of free samples provided to each such provider; and

(d) The name of each provider of health care to whom the pharmaceutical sales representative provided compensation, including, without limitation, gifts, food or free supplies, and the value of such compensation.

2. As used in this section, "wholesale acquisition cost" has the meaning ascribed to it in section 5 of this act.

Sec. 24. *1. In addition to any other requirements set forth in sections 18 to 24, inclusive, of this act, an applicant for the renewal of a license as a pharmaceutical sales representative must indicate in the application submitted to the Division whether the applicant has a state business registration. If the applicant has a state business registration, the applicant must include in the application the business identification number assigned by the Secretary of State upon compliance with the provisions of chapter 76 of NRS.*

2. The license of a pharmaceutical sales representative may not be renewed if:

(a) The applicant fails to submit the information required by subsection 1; or

(b) The State Controller has informed the Division pursuant to subsection 5 of NRS 353C.1965 that the applicant owes a debt to an agency that has been assigned to the State Controller for collection and the applicant has not:

(1) Satisfied the debt;

(2) Entered into an agreement for the payment of the debt pursuant to NRS 353C.130; or

(3) Demonstrated that the debt is not valid.

3. As used in this section:

(a) "Agency" has the meaning ascribed to it in NRS 353C.020.

(b) "Debt" has the meaning ascribed to it in NRS 353C.040.

Sec. 25. NRS 287.010 is hereby amended to read as follows:

287.010 1. The governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada may:

(a) Adopt and carry into effect a system of group life, accident or health insurance, or any combination thereof, for the benefit of its officers and employees, and the dependents of officers and employees who elect to accept the insurance and who, where necessary, have authorized the governing body to make deductions from their compensation for the payment of premiums on the insurance.

(b) Purchase group policies of life, accident or health insurance, or any combination thereof, for the benefit of such officers and employees, and the dependents of such officers and employees, as have authorized the purchase, from insurance companies authorized to transact the business of such insurance in the State of Nevada, and, where necessary, deduct from the compensation of officers and employees the premiums upon insurance and pay the deductions upon the premiums.

(c) Provide group life, accident or health coverage through a self-insurance reserve fund and, where necessary, deduct contributions to the maintenance of the fund from the compensation of officers and employees and pay the deductions into the fund. The money accumulated for this purpose through deductions from the compensation of officers and employees and contributions of the governing body must be maintained as an internal service fund as defined by NRS 354.543. The money must be deposited in a state or national bank or credit union authorized to transact business in the State of Nevada. Any independent administrator of a fund created under this section is subject to the licensing requirements of chapter 683A of NRS, and must be a resident of this State. Any contract

with an independent administrator must be approved by the Commissioner of Insurance as to the reasonableness of administrative charges in relation to contributions collected and benefits provided. The provisions of NRS 687B.408, ***689B.0283,*** 689B.030 to 689B.050, inclusive, and 689B.287 apply to coverage provided pursuant to this paragraph.

(d) Defray part or all of the cost of maintenance of a self-insurance fund or of the premiums upon insurance. The money for contributions must be budgeted for in accordance with the laws governing the county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada.

2. If a school district offers group insurance to its officers and employees pursuant to this section, members of the board of trustees of the school district must not be excluded from participating in the group insurance. If the amount of the deductions from compensation required to pay for the group insurance exceeds the compensation to which a trustee is entitled, the difference must be paid by the trustee.

3. In any county in which a legal services organization exists, the governing body of the county, or of any school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada in the county, may enter into a contract with the legal services organization pursuant to which the officers and employees of the legal services organization, and the dependents of those officers and employees, are eligible for any life, accident or health insurance provided pursuant to this section to the officers and employees, and the dependents of the officers and employees, of the county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency.

4. If a contract is entered into pursuant to subsection 3, the officers and employees of the legal services organization:

(a) Shall be deemed, solely for the purposes of this section, to be officers and employees of the county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency with which the legal services organization has contracted; and

(b) Must be required by the contract to pay the premiums or contributions for all insurance which they elect to accept or of which they authorize the purchase.

5. A contract that is entered into pursuant to subsection 3:

(a) Must be submitted to the Commissioner of Insurance for approval not less than 30 days before the date on which the contract is to become effective.

(b) Does not become effective unless approved by the Commissioner.

(c) Shall be deemed to be approved if not disapproved by the Commissioner within 30 days after its submission.

6. As used in this section, "legal services organization" means an organization that operates a program for legal aid and receives money pursuant to NRS 19.031.

Sec. 26. NRS 287.04335 is hereby amended to read as follows:

287.04335 If the Board provides health insurance through a plan of self-insurance, it shall comply with the provisions of NRS 689B.255, 695G.150 ~~[, 695G.160, 695G.162, 695G.164, 695G.1645, 695G.1665,]~~ ***to*** 695G.167, ***inclusive,*** 695G.170 to 695G.173, inclusive, 695G.177, 695G.200 to 695G.230, inclusive, 695G.241 to 695G.310, inclusive, and 695G.405, in the same manner as an insurer that is licensed pursuant to title 57 of NRS is required to comply with those provisions.

Sec. 27. 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. 28. Chapter 613 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An employee who has asthma, anaphylaxis or diabetes may submit a written request to his or her employer to allow the employee to self-administer medication for the treatment of the employee's asthma, anaphylaxis or diabetes while the employee is

at his or her place of employment or engaged in activities required by his or her employment.

2. A written request made pursuant to subsection 1 must include a signed statement of a physician indicating that the employee has asthma, anaphylaxis or diabetes and is capable of self-administration of the medication while the employee is at his or her place of employment or engaged in activities required by his or her employment.

3. The provisions of this section do not create a duty for the employer that is in addition to those duties otherwise required of the employer.

4. If an employee is granted authorization pursuant to this section to self-administer medication, the employer is immune from liability for the injury to or death of:

(a) The employee as a result of self-administration of a medication pursuant to this section or the failure of the employee 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 an employee pursuant to this section.

5. Upon receipt of a request that complies with subsection 1, the employer shall provide written authorization for the employee to carry and self-administer medication to treat his or her asthma, anaphylaxis or diabetes while the employee is at his or her place of employment or engaged in activities required by his or her employment. The written authorization must be maintained in the records of the employer and must include:

(a) The name and purpose of the medication which the employee 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; and

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

6. An employer who willfully violates any provision of this section is guilty of a misdemeanor.

7. 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. 29. NRS 689A.04045 is hereby amended to read as follows:

689A.04045 1. Except as otherwise provided in this section, a policy of health insurance which provides coverage for prescription drugs must not limit or exclude coverage for a drug if the drug:

(a) Had previously been approved for coverage by the insurer for a medical condition of an insured and the insured's provider of health care determines, after conducting a reasonable investigation, that none of the drugs which are otherwise currently approved for coverage are medically appropriate for the insured; and

(b) Is appropriately prescribed and considered safe and effective for treating the medical condition of the insured.

2. The provisions of subsection 1 do not:

(a) Apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the Food and Drug Administration;

(b) Prohibit:

(1) The insurer from charging a deductible, copayment or coinsurance for the provision of benefits for prescription drugs to the insured or from establishing, by contract, limitations on the maximum coverage for prescription drugs ~~[;]~~ ***that comply with the provisions of subsection 3;***

(2) A provider of health care from prescribing another drug covered by the policy that is medically appropriate for the insured; or

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive; or

(c) Require any coverage for a drug after the term of the policy.

3. ***Except as otherwise provided in this subsection, an insurer that receives a reimbursement from the manufacturer of a prescription drug pursuant to section 6 of this act shall refund any deductible paid by an insured for the prescription drug in an amount equal to the amount of the reimbursement or the amount of the deductible, whichever is less. An insurer is not required to reimburse an insured for any amount for which the insured submitted a claim for reimbursement pursuant to subsection 4 of section 6 of this act before the insurer submitted its claim for reimbursement.***

4. Any provision of a policy subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after ***:***

(a) October 1, 2001, which is in conflict with ~~[this section]~~ ***subsection 1*** is void.

(b) January 1, 2018, which is in conflict with subsection 3 is void.

Sec. 30. 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) At least 30 days before each period for open enrollment, publish on an Internet website that is operated by the insurer and accessible to the public 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 section 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. 31. NRS 689B.0283 is hereby amended to read as follows:

689B.0283 1. An insurer that offers or issues a policy of group 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 group 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) At least 30 days before each period for open enrollment, publish on an Internet website that is operated by the insurer and accessible to the public 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 section 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. 32. NRS 689B.0368 is hereby amended to read as follows:

689B.0368 1. Except as otherwise provided in this section, a policy of group health insurance which provides coverage for prescription drugs must not limit or exclude coverage for a drug if the drug:

(a) Had previously been approved for coverage by the insurer for a medical condition of an insured and the insured's provider of health care determines, after conducting a reasonable investigation, that none of the drugs which are otherwise currently approved for coverage are medically appropriate for the insured; and

(b) Is appropriately prescribed and considered safe and effective for treating the medical condition of the insured.

2. The provisions of subsection 1 do not:

(a) Apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the Food and Drug Administration;

(b) Prohibit:

(1) The insurer from charging a deductible, copayment or coinsurance for the provision of benefits for prescription drugs to the insured or from establishing, by contract, limitations on the maximum coverage for prescription drugs ~~[;]~~ ***that comply with the provisions of subsection 3;***

(2) A provider of health care from prescribing another drug covered by the policy that is medically appropriate for the insured; or

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive; or

(c) Require any coverage for a drug after the term of the policy.

3. ***Except as otherwise provided in this subsection, an insurer that receives a reimbursement from the manufacturer of a prescription drug pursuant to section 6 of this act shall refund any deductible paid by an insured for the prescription drug in an amount equal to the amount of the reimbursement or the amount***

of the deductible, whichever is less. An insurer is not required to reimburse an insured for any amount for which the insured submitted a claim for reimbursement pursuant to subsection 4 of section 6 of this act before the insurer submitted its claim for reimbursement.

4. Any provision of a policy subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after ***:***

(a) October 1, 2001, which is in conflict with ~~[this section]~~ ***subsection 1*** is void.

(b) January 1, 2018, which is in conflict with subsection 3 is void.

Sec. 33. NRS 689C.168 is hereby amended to read as follows:

689C.168 1. Except as otherwise provided in this section, a health benefit plan which provides coverage for prescription drugs must not limit or exclude coverage for a drug if the drug:

(a) Had previously been approved for coverage by the carrier for a medical condition of an insured and the insured's provider of health care determines, after conducting a reasonable investigation, that none of the drugs which are otherwise currently approved for coverage are medically appropriate for the insured; and

(b) Is appropriately prescribed and considered safe and effective for treating the medical condition of the insured.

2. The provisions of subsection 1 do not:

(a) Apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the Food and Drug Administration;

(b) Prohibit:

(1) The carrier from charging a deductible, copayment or coinsurance for the provision of benefits for prescription drugs to the insured or from establishing, by contract, limitations on the maximum coverage for prescription drugs ~~[,]~~ ***that comply with the provisions of subsection 3;***

(2) A provider of health care from prescribing another drug covered by the plan that is medically appropriate for the insured; or

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive; or

(c) Require any coverage for a drug after the term of the plan.

3. ***Except as otherwise provided in this subsection, a carrier that receives a reimbursement from the manufacturer of a prescription drug pursuant to section 6 of this act shall refund any deductible paid by an insured for the prescription drug in an amount equal to the amount of the reimbursement or the amount of the deductible, whichever is less. A carrier is not required to reimburse an insured for any amount for which the insured submitted a claim for reimbursement pursuant to subsection 4 of***

section 6 of this act before the insurer submitted its claim for reimbursement.

4. Any provision of a health benefit plan subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after ***:***

(a) October 1, 2001, which is in conflict with ~~[this section]~~ ***subsection 1*** is void.

(b) January 1, 2018, which is in conflict with subsection 3 is void.

Sec. 34. NRS 689C.281 is hereby amended to read as follows:

689C.281 1. A carrier that offers or issues a health benefit plan 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 carrier 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 carrier for making a request for information regarding the formulary pursuant to subsection 2.

2. If a carrier offers or issues a health benefit plan which provides coverage for prescription drugs and a formulary is used, the carrier 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 carrier 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) At least 30 days before each period for open enrollment, publish on an Internet website that is operated by the carrier and accessible to the public 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 section 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. 35. NRS 695A.184 is hereby amended to read as follows:

695A.184 1. Except as otherwise provided in this section, a benefit contract which provides coverage for prescription drugs must not limit or exclude coverage for a drug if the drug:

(a) Had previously been approved for coverage by the society for a medical condition of an insured and the insured's provider of health care determines, after conducting a reasonable investigation, that none of the drugs which are otherwise currently approved for coverage are medically appropriate for the insured; and

(b) Is appropriately prescribed and considered safe and effective for treating the medical condition of the insured.

2. The provisions of subsection 1 do not:

(a) Apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the Food and Drug Administration;

(b) Prohibit:

(1) The society from charging a deductible, copayment or coinsurance for the provision of benefits for prescription drugs to the insured or from establishing, by contract, limitations on the maximum coverage for prescription drugs ~~[,]~~ ***that comply with the provisions of subsection 3;***

(2) A provider of health care from prescribing another drug covered by the benefit contract that is medically appropriate for the insured; or

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive; or

(c) Require any coverage for a drug after the term of the benefit contract.

3. ***Except as otherwise provided in this subsection, a society that receives a reimbursement from the manufacturer of a prescription drug pursuant to section 6 of this act shall refund any deductible paid by an insured for the prescription drug in an amount equal to the amount of the reimbursement or the amount of the deductible, whichever is less. A society is not required to***

reimburse an insured for any amount for which the insured submitted a claim for reimbursement pursuant to subsection 4 of section 6 of this act before the insurer submitted its claim for reimbursement.

4. Any provision of a benefit contract subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after ***:***

(a) October 1, 2001, which is in conflict with ~~[this section]~~ ***subsection 1*** is void.

(b) January 1, 2018, which is in conflict with subsection 3 is void.

Sec. 36. NRS 695A.255 is hereby amended to read as follows:

695A.255 1. A society that offers or issues a benefit contract which provides coverage for prescription drugs shall include with any certificate for such a contract provided to a benefit member, notice of whether a formulary is used and, if so, of the opportunity to secure information regarding the formulary from the society 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 society for making a request for information regarding the formulary pursuant to subsection 2.

2. If a society offers or issues a benefit contract which provides coverage for prescription drugs and a formulary is used, the society 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 society 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) At least 30 days before each period for open enrollment, publish on an Internet website that is operated by the society and accessible to the public 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 section 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. 37. NRS 695B.176 is hereby amended to read as follows:

695B.176 1. An insurer that offers or issues a contract for hospital or medical services 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 contract for hospital or medical services 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) At least 30 days before each period for open enrollment, publish on an Internet website that is operated by the insurer and accessible to the public 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 section 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. 38. NRS 695B.1905 is hereby amended to read as follows:

695B.1905 1. Except as otherwise provided in this section, a contract for hospital or medical services which provides coverage for prescription drugs must not limit or exclude coverage for a drug if the drug:

(a) Had previously been approved for coverage by the insurer for a medical condition of an insured and the insured's provider of health care determines, after conducting a reasonable investigation, that none of the drugs which are otherwise currently approved for coverage are medically appropriate for the insured; and

(b) Is appropriately prescribed and considered safe and effective for treating the medical condition of the insured.

2. The provisions of subsection 1 do not:

(a) Apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the Food and Drug Administration;

(b) Prohibit:

(1) The insurer from charging a deductible, copayment or coinsurance for the provision of benefits for prescription drugs to the insured or from establishing, by contract, limitations on the maximum coverage for prescription drugs ~~[,]~~ ***that comply with the provisions of subsection 3;***

(2) A provider of health care from prescribing another drug covered by the contract that is medically appropriate for the insured; or

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive; or

(c) Require any coverage for a drug after the term of the contract.

3. ***Except as otherwise provided in this subsection, an insurer that receives a reimbursement from the manufacturer of a prescription drug pursuant to section 6 of this act shall refund any deductible paid by an insured for the prescription drug in an amount equal to the amount of the reimbursement or the amount of the deductible, whichever is less. An insurer is not required to reimburse an insured for any amount for which the insured submitted a claim for reimbursement pursuant to subsection 4 of section 6 of this act before the insurer submitted its claim for reimbursement.***

4. Any provision of a contract for hospital or medical services subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after ***:***

(a) October 1, 2001, which is in conflict with ~~[this section]~~ ***subsection 1*** is void.

(b) January 1, 2018, which is in conflict with subsection 3 is void.

Sec. 39. NRS 695C.1703 is hereby amended to read as follows:

695C.1703 1. A health maintenance organization or insurer that offers or issues evidence of coverage which provides coverage for prescription drugs shall include with any evidence of that coverage provided to an enrollee, notice of whether a formulary is used and, if so, of the opportunity to secure information regarding the formulary from the organization or 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 organization or insurer for making a request for information regarding the formulary pursuant to subsection 2.

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

(a) Provide to any enrollee 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 organization or 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) At least 30 days before each period for open enrollment, publish on an Internet website that is operated by the health maintenance organization or insurer and accessible to the public 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 section 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. 40. NRS 695C.1734 is hereby amended to read as follows:

695C.1734 1. Except as otherwise provided in this section, evidence of coverage which provides coverage for prescription drugs must not limit or exclude coverage for a drug if the drug:

(a) Had previously been approved for coverage by the health maintenance organization or insurer for a medical condition of an enrollee and the enrollee's provider of health care determines, after conducting a reasonable investigation, that none of the drugs which are otherwise currently approved for coverage are medically appropriate for the enrollee; and

(b) Is appropriately prescribed and considered safe and effective for treating the medical condition of the enrollee.

2. The provisions of subsection 1 do not:

(a) Apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the Food and Drug Administration;

(b) Prohibit:

(1) The health maintenance organization or insurer from charging a deductible, copayment or coinsurance for the provision of benefits for prescription drugs to the enrollee or from

establishing, by contract, limitations on the maximum coverage for prescription drugs ~~[,]~~ ***that comply with the provisions of subsection 3;***

(2) A provider of health care from prescribing another drug covered by the evidence of coverage that is medically appropriate for the enrollee; or

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive; or

(c) Require any coverage for a drug after the term of the evidence of coverage.

3. ***Except as otherwise provided in this subsection, a health maintenance organization or insurer that receives a reimbursement from the manufacturer of a prescription drug pursuant to section 6 of this act shall refund any deductible paid by an enrollee for the prescription drug in an amount equal to the amount of the reimbursement or the amount of the deductible whichever is less. A health maintenance organization or insurer is not required to reimburse an enrollee for any amount for which the enrollee submitted a claim for reimbursement pursuant to subsection 4 of section 6 of this act before the health maintenance organization or insurer submitted its claim for reimbursement.***

4. Any provision of an evidence of coverage subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after ***:***

(a) October 1, 2001, which is in conflict with ~~[this section]~~ ***subsection 1*** is void.

(b) January 1, 2018, which is in conflict with subsection 3 is void.

Sec. 41. NRS 695F.153 is hereby amended to read as follows:

695F.153 1. A prepaid limited health service organization that offers or issues evidence of coverage which provides coverage for prescription drugs shall include with any evidence of that coverage provided to a subscriber, notice of whether a formulary is used and, if so, of the opportunity to secure information regarding the formulary from the organization 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 organization for making a request for information regarding the formulary pursuant to subsection 2.

2. If a prepaid limited health service organization offers or issues evidence of coverage which provides coverage for prescription drugs and a formulary is used, the organization shall:

(a) Provide to any enrollee 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 organization 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) At least 30 days before each period for open enrollment, publish on an Internet website that is operated by the prepaid limited health service organization and accessible to the public 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 section 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. 42. NRS 695F.156 is hereby amended to read as follows:

695F.156 1. Except as otherwise provided in this section, evidence of coverage which provides coverage for prescription drugs must not limit or exclude coverage for a drug if the drug:

(a) Had previously been approved for coverage by the prepaid limited health service organization for a medical condition of an enrollee and the enrollee's provider of health care determines, after conducting a reasonable investigation, that none of the drugs which are otherwise currently approved for coverage are medically appropriate for the enrollee; and

(b) Is appropriately prescribed and considered safe and effective for treating the medical condition of the enrollee.

2. The provisions of subsection 1 do not:

(a) Apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the Food and Drug Administration;

(b) Prohibit:

(1) The organization from charging a deductible, copayment or coinsurance for the provision of benefits for prescription drugs to the enrollee or from establishing, by contract, limitations on the maximum coverage for prescription drugs ~~[;]~~ ***that comply with the provisions of subsection 3;***

(2) A provider of health care from prescribing another drug covered by the evidence of coverage that is medically appropriate for the enrollee; or

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive; or

(c) Require any coverage for a drug after the term of the evidence of coverage.

3. ***Except as otherwise provided in this subsection, a prepaid limited health service organization that receives a reimbursement from the manufacturer of a prescription drug pursuant to section 6 of this act shall refund any deductible paid by an enrollee for the prescription drug in an amount equal to the amount of the reimbursement or the amount of the deductible, whichever is less. A prepaid limited health service organization is not required to reimburse an enrollee for any amount for which the enrollee submitted a claim for reimbursement pursuant to subsection 4 of section 6 of this act before the prepaid limited health service organization submitted its claim for reimbursement.***

4. Any provision of an evidence of coverage subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after ***:***

(a) October 1, 2001, which is in conflict with ~~[this section]~~ ***subsection 1*** is void.

(b) January 1, 2018, which is in conflict with subsection 3 is void.

Sec. 43. NRS 695G.163 is hereby amended to read as follows:

695G.163 1. A managed care organization that offers or issues a health care plan 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 organization 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 organization for making a request for information regarding the formulary pursuant to subsection 2.

2. If a managed care organization offers or issues a health care plan which provides coverage for prescription drugs and a formulary is used, the organization 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 organization 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) At least 30 days before each period for open enrollment, publish on an Internet website that is operated by the managed care organization and accessible to the public 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 section 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. 44. NRS 695G.166 is hereby amended to read as follows:

695G.166 1. Except as otherwise provided in this section, a health care plan which provides coverage for prescription drugs must not limit or exclude coverage for a drug if the drug:

(a) Had previously been approved for coverage by the managed care organization for a medical condition of an insured and the insured's provider of health care determines, after conducting a reasonable investigation, that none of the drugs which are otherwise currently approved for coverage are medically appropriate for the insured; and

(b) Is appropriately prescribed and considered safe and effective for treating the medical condition of the insured.

2. The provisions of subsection 1 do not:

(a) Apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the Food and Drug Administration;

(b) Prohibit:

(1) The organization from charging a deductible, copayment or coinsurance for the provision of benefits for prescription drugs to the insured or from establishing, by contract, limitations on the maximum coverage for prescription drugs ~~[;]~~ ***that comply with the provisions of subsection 3;***

(2) A provider of health care from prescribing another drug covered by the plan that is medically appropriate for the insured; or

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive; or

(c) Require any coverage for a drug after the term of the plan.

3. ***Except as otherwise provided in this subsection, a managed care organization that receives a reimbursement from the manufacturer of a prescription drug pursuant to section 6 of this act shall refund any deductible paid by an insured for the prescription drug in an amount equal to the amount of the reimbursement or the amount of the deductible, whichever is less. A managed care organization is not required to reimburse an insured for any amount for which the insured submitted a claim for reimbursement pursuant to subsection 4 of section 6 of this act before the managed care organization submitted its claim for reimbursement.***

4. Any provision of a health care plan subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after ***:***

(a) October 1, 2001, which is in conflict with ~~[this section]~~ ***subsection 1*** is void.

(b) January 1, 2018, which is in conflict with subsection 3 is void.

Sec. 45. 1. This section becomes effective upon passage and approval.

2. Sections 27 and 28 of this act become effective on July 1, 2017.

3. Sections 1 to 26, inclusive, and 29 to 44, inclusive, 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.

4. Sections 20, 21 and 22 of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

➥ are repealed by the Congress of the United States.

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EMERGENCY REQUEST of Senate Minority Leader

Senate Bill No. 539–Senators Roberson, Gansert; Atkinson, Cancela, Cannizzaro, Denis, Farley, Ford, Goicoechea, Harris, Manendo, Parks, Ratti, Segerblom, Settelmeyer, Spearman and Woodhouse

CHAPTER.....

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.

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

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.

Secs. 21-26. (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.

REQUIRES TWO-THIRDS MAJORITY VOTE (§ 18)

*

S.B. 539

EMERGENCY REQUEST OF SENATE MINORITY LEADER

SENATE BILL NO. 539–SENATORS ROBERSON, GANSERT, KIECKHEFER, HARRIS, HARDY; GOICOECHEA, GUSTAVSON, HAMMOND AND SETTELMEYER

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 a list of certain prescription drugs that are used to treat diabetes; requiring the manufacturer of a drug included on the list to provide certain information to the Department; requiring the Department to compile a report based on such information; providing that certain information does not constitute a trade secret; requiring a pharmacy benefit manager to obtain a license from the Commissioner of Insurance; imposing certain requirements on a pharmacy benefit manager; providing a penalty; 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 4** of this bill requires the

Department to compile a list of prescription drugs that: (1) are used to treat diabetes; and (2) have been subject to a significant price increase within the immediately preceding 2 calendar years. **Section 4** requires the manufacturer of a drug included on that list to submit to the Department a report concerning the reasons for the cost increase. **Section 4** requires the Department to analyze the information submitted by such manufacturers and compile a report concerning the reasons for and effect of the increases in the price of prescription drugs used to treat diabetes. **Section 6** of this bill requires the Department to place the report on the Internet website maintained by the Department. **Section 8** of this bill authorizes the Department to impose an administrative penalty against any manufacturer that fails to report the information required by **section 4**. **Sections 5 and 7** of this bill make conforming changes.

Existing law requires certain persons engaged in business relating to insurance to be licensed by the Commissioner of Insurance. (NRS 683A.090, 683A.201) **Section 18** of this bill additionally requires a pharmacy benefit manager to be licensed by the Commissioner. **Section 18** also authorizes the Commissioner to adopt regulations governing the management of prescription drug coverage by a pharmacy benefit manager. **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 19** also requires a pharmacy benefit manager to provide to such an insurer a certain percentage of the rebates issued by a manufacturer to the pharmacy benefit manager for the sale to an insured person of a prescription drug used to treat diabetes.

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

Section 21 of this bill requires a pharmacy benefit manager to post certain information on the Internet website maintained by the pharmacy benefit manager and report certain information to the Division of Insurance of the Department of Business and Industry. **Section 9** of this bill provides that any such information required to be posted or reported is not a trade secret.

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. **Sections 23-25** of this bill impose certain requirements relating to the collection of child support from a pharmacy benefit manager who is a natural person. **Section 26** of this bill authorizes the Commissioner to impose disciplinary action against a pharmacy benefit manager that violates such requirements. Additionally, a violation of those requirements is punishable as a misdemeanor. (NRS 679A.180)

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, 3 and 4 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. 4. *1. On or before February 1 of each year, the Department shall compile a list of all prescription drugs used to treat diabetes that meet the requirements of subsection 2. When determining which drugs to include on the list, the Department shall consider any rebates, discounts or other reductions in the price of the drug.*

2. Each prescription drug included on the list compiled pursuant to subsection 1 must have been subject to an increase in the wholesale acquisition cost of the drug 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.

3. On or before July 1 of a year in which a drug is included on the list compiled pursuant to subsection 1, 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 subsection 2. The report must include, without limitation:

(a) A list of each factor that has contributed to the increase;

(b) The percentage of the total increase that is attributable to each factor;

(c) An explanation of the role of each factor in the increase; and

(d) Any other information prescribed by regulation by the Department.

4. On or before September 1 of each year, the Department shall analyze the information submitted pursuant to subsection 3 and compile a report of the reasons for increases in the price of prescription drugs used to treat diabetes and the effect of those price increases on the cost to the residents of this State.

5. As used in this section, "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. 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, 3 and 4 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 and 3 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, the Department shall:

(a) Place or cause to be placed on the Internet website maintained by the Department the information provided by each pharmacy pursuant to NRS 439.910 ~~[;]~~ ***and the report compiled by the Department pursuant to section 4 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 is organized so that each individual pharmacy 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 charges to the general public for a drug, as described in 42 C.F.R. § ~~[447.331.]~~ ***447.512.***

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, 3 and 4 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, 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, 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 maintained by a pharmacy, the Department is unable to guarantee the accuracy of any information made available on the Internet website maintained by the pharmacy; and

(c) The Department advises consumers to contact a pharmacy directly to verify the accuracy of any information regarding the pharmacy which is made available to consumers pursuant to NRS 439.900 to 439.940, inclusive ~~[,]~~ ***, and sections 2, 3 and 4 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, 3 and 4 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 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 may report to the Department that information made available to

consumers pursuant to NRS 439.900 to 439.940, inclusive, ***and sections 2, 3 and 4 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. 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. 8. NRS 439.940 is hereby amended to read as follows:

439.940 If a pharmacy that is licensed under the provisions of chapter 639 of NRS and is located within the State of Nevada ***or a manufacturer that does business in this State*** 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 ***or manufacturer*** an administrative penalty of not more than $500 for each day of such failure.

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 4 of this act or information that a pharmacy benefit manager is required to post or report pursuant to section 21 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. ***"Pharmacy benefit manager" means an entity that contracts with or is employed by a third party, as defined in section 16 of this act, and manages the pharmacy benefits plan, as defined in section 15 of this act, provided by the third party.***

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. 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. *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.*

Sec. 18. *1. A pharmacy benefit manager shall not operate in this State unless the pharmacy benefit manager has obtained a license from the Commissioner.*

2. A person who wishes to obtain a license as a pharmacy benefit manager must:

(a) Submit an application to the Commissioner in the form prescribed by the Commissioner; and

(b) Pay the licensure fee prescribed by regulation by the Commissioner.

3. The Commissioner may adopt such regulations as he or she deems necessary and appropriate to establish the qualifications to receive a license as a pharmacy benefit manager and ensure compliance with the requirements of sections 12 to 21, inclusive, of this act.

Sec. 19. *1. 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.

2. A pharmacy benefit manager shall reimburse to a third party with which it has entered into a contract described in subsection 1 at least 80 percent of the amount of any rebate obtained from a manufacturer for the sale to a covered person of a prescription drug used to treat diabetes.

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. *1. A pharmacy benefit manager shall post on an Internet website that is maintained by the pharmacy benefit manager and accessible to the public the rate at which the pharmacy benefit manager reimburses each pharmacy for each prescription drug used to treat diabetes that is covered by a prescription drug plan managed by the pharmacy benefit manager.*

2. On or before February 1 of each year, a pharmacy benefit manager shall submit to the Division a report which includes:

(a) The total amount of all rebates that the pharmacy benefit manager negotiated with manufacturers, as defined in NRS

639.009, during the immediately preceding calendar year for prescription drugs used to treat diabetes;

(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); and

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

3. The Division shall post the reports submitted pursuant to subsection 2 on an Internet website maintained by the Division.

Sec. 22. NRS 683A.020 is hereby amended to read as follows:

683A.020 As used in this Code, unless the context otherwise requires, the words and terms defined in NRS 683A.025 to 683A.078, inclusive, ***and section 11 of this act*** have the meanings ascribed to them in those sections.

Sec. 23. NRS 683A.383 is hereby amended to read as follows:

683A.383 1. A natural person who applies for the issuance or renewal of a certificate of registration as an administrator or a license as a producer of insurance **,** ~~[or]~~ managing general agent ***or pharmacy benefit manager*** shall submit to the Commissioner the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Commissioner shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the certificate of registration or license; or

(b) A separate form prescribed by the Commissioner.

3. A certificate of registration as an administrator or a license as a producer of insurance **,** ~~[or]~~ managing general agent ***or pharmacy benefit manager*** may not be issued or renewed by the Commissioner if the applicant is a natural person who:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that he or she is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Commissioner shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 24. NRS 683A.385 is hereby amended to read as follows:

683A.385 1. If the Commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a certificate of registration as an administrator or a license as a producer of insurance ***,*** ~~[or]~~ managing general agent ~~[,]~~ ***or pharmacy benefit manager,*** the Commissioner shall suspend the certificate of registration or license issued to that person at the end of the 30th day after the date on which the court order was issued unless the Commissioner receives a letter issued to the holder of the certificate of registration or license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the certificate of registration or license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The Commissioner shall reinstate a certificate of registration as an administrator or a license as a producer of insurance ***,*** ~~[or]~~ managing general agent ***or pharmacy benefit manager*** that has been suspended by a district court pursuant to NRS 425.540 if the Commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose certificate of registration or license was suspended stating that the person whose certificate of registration or license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 25. NRS 683A.387 is hereby amended to read as follows:

683A.387 The application of a natural person who applies for the issuance of a certificate of registration as an administrator or a license as a producer of insurance ***,*** ~~[or]~~ managing general agent ***or pharmacy benefit manager*** must include the social security number of the applicant.

Sec. 26. NRS 683A.451 is hereby amended to read as follows:

683A.451 The Commissioner may refuse to issue a license or certificate pursuant to this chapter or may place any person to whom a license or certificate is issued pursuant to this chapter on probation, suspend the person for not more than 12 months, or

revoke or refuse to renew his or her license or certificate, or may impose an administrative fine or take any combination of the foregoing actions, for one or more of the following causes:

1. Providing incorrect, misleading, incomplete or partially untrue information in his or her application for a license.

2. Violating a law regulating insurance, or violating a regulation, order or subpoena of the Commissioner or an equivalent officer of another state.

3. Obtaining or attempting to obtain a license through misrepresentation or fraud.

4. Misappropriating, converting or improperly withholding money or property received in the course of the business of insurance.

5. Intentionally misrepresenting the terms of an actual or proposed contract of or application for insurance.

6. Conviction of a felony or a crime which involves theft, fraud, dishonesty or moral turpitude.

7. Admitting or being found to have committed an unfair trade practice or fraud.

8. Using fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business, or otherwise, in this State or elsewhere.

9. Denial, suspension or revocation of a license as a producer of insurance ~~[,]~~ ***or pharmacy benefit manager,*** or ~~[its equivalent,]~~ ***their equivalents,*** in any other state, territory or province.

10. Forging another's name to an application for insurance or any other document relating to the transaction of insurance.

11. Improperly using notes or other reference material to complete an examination for a license related to insurance.

12. Knowingly accepting business related to insurance from an unlicensed person.

13. Failing to comply with an administrative or judicial order imposing an obligation of child support.

14. Failing to pay a tax as required by law.

15. Failing to adequately discharge the fiduciary duty imposed upon a pharmacy benefit manager by section 19 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 11 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. 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 January 1, 2018, for all other purposes.

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EMERGENCY REQUEST OF SENATE MINORITY LEADER

SENATE BILL NO. 539–SENATORS ROBERSON, GANSERT, KIECKHEFER, HARRIS, HARDY; GOICOECHEA, GUSTAVSON, HAMMOND AND SETTELMEYER

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 [~~a list~~] **certain lists** of certain prescription drugs that are used to treat diabetes; requiring the manufacturer of a drug included on [~~the list~~] **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; [~~requiring a pharmacy benefit manager to obtain a license from the Commissioner of Insurance;~~] 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 ~~[a penalty;]~~ **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** ~~[4]~~ **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 ~~[: (1) are used to treat diabetes; and (2)]~~ 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 ~~[that]~~ **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]~~ **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 ~~[increases in the price of prescription drugs used to treat diabetes. Section 6 of this bill requires the Department to place the report on the Internet website maintained by the Department. Section 8 of this bill authorizes the Department to impose an administrative penalty against any manufacturer that fails to report the information required by section 4. Sections 5 and 7 of this bill make conforming changes.~~

~~Existing law requires certain persons engaged in business relating to insurance to be licensed by the Commissioner of Insurance. (NRS 683A.090, 683A.201) Section 18 of this bill additionally requires a pharmacy benefit manager to be licensed by the Commissioner. Section 18 also authorizes the Commissioner to adopt regulations governing the management of prescription drug coverage by a pharmacy benefit manager.]~~ **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 19 also requires a pharmacy benefit manager to provide to such an insurer a certain percentage of the rebates issued by a manufacturer to the pharmacy benefit manager for the sale to an insured person of a prescription drug used to treat diabetes.]~~

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

~~[Section 21 of this bill requires a pharmacy benefit manager to post certain information on the Internet website maintained by the pharmacy benefit manager and report certain information to the Division of Insurance of the Department of Business and Industry. Section 9 of this bill provides that any such information required to be posted or reported is not a trade secret.]~~

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 ~~[. Sections 23-25 of this bill impose certain requirements relating to the collection of child support from a pharmacy benefit manager who is a natural person. Section 26 of this bill authorizes the Commissioner to impose disciplinary action against a pharmacy benefit manager that violates such requirements. Additionally, a violation of those requirements is punishable as a misdemeanor. (NRS 679A.180)]~~ **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 ~~[, 3 and 4]~~ **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. ~~*[1. On or before February 1 of each year, the Department shall compile a list of all prescription drugs used to treat diabetes that meet the requirements of subsection 2. When determining which drugs to include on the list, the Department shall consider any rebates, discounts or other reductions in the price of the drug.*~~

~~2. Each prescription drug included on the list compiled pursuant to subsection 1 must have been subject to an increase in the wholesale acquisition cost of the drug 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.~~

~~3.]~~ On or before ~~[July]~~ April 1 of a year in which a drug is included on the list compiled pursuant to subsection ~~[1,]~~ 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 . ~~[2.]~~ The report must include, without limitation:

~~[(a)]~~ 1. A list of each factor that has contributed to the increase;

~~[(b)]~~ 2. The percentage of the total increase that is attributable to each factor;

~~[(c)]~~ 3. An explanation of the role of each factor in the increase; and

~~[(d)]~~ 4. Any other information prescribed by regulation by the Department.

~~[4. On or before September 1 of each year, the Department shall analyze the information submitted pursuant to subsection 3 and compile a report of the reasons for increases in the price of prescription drugs used to treat diabetes and the effect of those price increases on the cost to the residents of this State.~~

~~5. As used in this section, "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. 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 ~~[, 3 and 4]~~ 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 ~~[and 3]~~ 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 ***; ~~[and the report]~~***

(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 ~~[section 4]~~ 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 ~~[, 3 and 4]~~ 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 ~~[, 3 and 4]~~ 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 ~~[, 3 and 4]~~ 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 ~~[, 3 and 4]~~ 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 ~~*for a manufacturer that does business in this State]*~~ 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 ~~*for manufacturer]*~~ 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 ~~[post or]~~ report pursuant to section ~~[21]~~ 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. ~~[***"Pharmacy benefit manager" means an entity that contracts with or is employed by a third party, as defined in section 16 of this act, and manages the pharmacy benefits plan, as defined in section 15 of this act, provided by the third party.***]~~ **(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. ~~*[The]*~~ *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. ~~*[1. A pharmacy benefit manager shall not operate in this State unless the pharmacy benefit manager has obtained a license from the Commissioner.*~~

~~*2. A person who wishes to obtain a license as a pharmacy benefit manager must:*~~

~~*(a) Submit an application to the Commissioner in the form prescribed by the Commissioner; and*~~

~~*(b) Pay the licensure fee prescribed by regulation by the Commissioner.*~~

~~*3. The Commissioner may adopt such regulations as he or she deems necessary and appropriate to establish the qualifications to receive a license as a pharmacy benefit manager and ensure compliance with the requirements of sections 12 to 21, inclusive, of this act.]*~~ (Deleted by amendment.)

Sec. 19. ~~*[1.]*~~ *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.*

~~*[2. A pharmacy benefit manager shall reimburse to a third party with which it has entered into a contract described in subsection 1 at least 80 percent of the amount of any rebate obtained from a manufacturer for the sale to a covered person of a prescription drug used to treat diabetes.]*~~

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. ~~[*1. A pharmacy benefit manager shall post on an Internet website that is maintained by the pharmacy benefit manager and accessible to the public the rate at which the pharmacy benefit manager reimburses each pharmacy for each prescription drug used to treat diabetes that is covered by a prescription drug plan managed by the pharmacy benefit manager.*~~

~~*2. On or before February 1 of each year, a pharmacy benefit manager shall submit to the Division a report which includes:*~~

~~*(a) The total amount of all rebates that the pharmacy benefit manager negotiated with manufacturers, as defined in NRS 639.009, during the immediately preceding calendar year for prescription drugs used to treat diabetes;*~~

~~*(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); and*~~

~~*(4) Persons covered by third parties that are not governmental entities.*~~

~~*3. The Division shall post the reports submitted pursuant to subsection 2 on an Internet website maintained by the Division.]*~~ **(Deleted by amendment.)**

Sec. 22. ~~[NRS 683A.020 is hereby amended to read as follows:~~

~~683A.020 As used in this Code, unless the context otherwise requires, the words and terms defined in NRS 683A.025 to 683A.078, inclusive, *and section 11 of this act* have the meanings ascribed to them in those sections.]~~ **(Deleted by amendment.)**

Sec. 23. ~~[NRS 683A.383 is hereby amended to read as follows:~~

~~683A.383 1. A natural person who applies for the issuance or renewal of a certificate of registration as an administrator or a license as a producer of insurance , [or] managing general agent *or pharmacy benefit manager* shall submit to the Commissioner the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.~~

~~2. The Commissioner shall include the statement required pursuant to subsection 1 in:~~

~~(a) The application or any other forms that must be submitted for the issuance or renewal of the certificate of registration or license; or~~

~~(b) A separate form prescribed by the Commissioner.~~

~~3. A certificate of registration as an administrator or a license as a producer of insurance , [or] managing general agent *or pharmacy benefit manager* may not be issued or renewed by the Commissioner if the applicant is a natural person who:~~

~~(a) Fails to submit the statement required pursuant to subsection 1; or~~

~~(b) Indicates on the statement submitted pursuant to subsection 1 that he or she is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.~~

~~4. If an applicant indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Commissioner shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.]~~ **(Deleted by amendment.)**

Sec. 24. ~~[NRS 683A.385 is hereby amended to read as follows:~~

~~683A.385 1. If the Commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a certificate of registration as an administrator or a license as a producer of insurance , [or] managing general agent [,] *or pharmacy benefit manager,* the Commissioner shall suspend the certificate of registration or license issued to that person at the end of the 30th day after the date on which the court order was issued unless the Commissioner receives a letter issued to the holder of the certificate of registration or license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the certificate of registration or license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.~~

~~2. The Commissioner shall reinstate a certificate of registration as an administrator or a license as a producer of insurance , [or] managing general agent *or pharmacy benefit manager* that has been suspended by a district court pursuant to NRS 425.540 if the Commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose certificate of registration or license was suspended stating that the person whose certificate of registration or license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.]~~ **(Deleted by amendment.)**

Sec. 25. ~~[NRS 683A.387 is hereby amended to read as follows:~~

~~683A.387 The application of a natural person who applies for the issuance of a certificate of registration as an administrator or a license as a producer of insurance , [or] managing general agent *or pharmacy benefit manager* must include the social security number of the applicant.]~~ **(Deleted by amendment.)**

Sec. 26. ~~[NRS 683A.451 is hereby amended to read as follows:~~

~~683A.451 The Commissioner may refuse to issue a license or certificate pursuant to this chapter or may place any person to whom a license or certificate is issued pursuant to this chapter on probation, suspend the person for not more than 12 months, or revoke or refuse to renew his or her license or certificate, or may impose an administrative fine or take any combination of the foregoing actions, for one or more of the following causes:~~

~~1. Providing incorrect, misleading, incomplete or partially untrue information in his or her application for a license.~~

~~2. Violating a law regulating insurance, or violating a regulation, order or subpoena of the Commissioner or an equivalent officer of another state.~~

~~3. Obtaining or attempting to obtain a license through misrepresentation or fraud.~~

~~4. Misappropriating, converting or improperly withholding money or property received in the course of the business of insurance.~~

~~5. Intentionally misrepresenting the terms of an actual or proposed contract of or application for insurance.~~

~~6. Conviction of a felony or a crime which involves theft, fraud, dishonesty or moral turpitude.~~

~~7. Admitting or being found to have committed an unfair trade practice or fraud.~~

~~8. Using fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business, or otherwise, in this State or elsewhere.~~

~~9. Denial, suspension or revocation of a license as a producer of insurance [,] *or pharmacy benefit manager,* or [its equivalent,] *their equivalents,* in any other state, territory or province.~~

~~10. Forging another's name to an application for insurance or any other document relating to the transaction of insurance.~~

~~11. Improperly using notes or other reference material to complete an examination for a license related to insurance.~~

~~12. Knowingly accepting business related to insurance from an unlicensed person.~~

~~13. Failing to comply with an administrative or judicial order imposing an obligation of child support.~~

~~14. Failing to pay a tax as required by law.~~

~~*15. Failing to adequately discharge the fiduciary duty imposed upon a pharmacy benefit manager by section 19 of this act.]~~ **(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 ~~[11]~~ **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 ~~[becomes]~~ **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.

MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-ninth Session
March 29, 2017

The Senate Committee on Health and Human Services was called to order by Chair Pat Spearman at 3:39 p.m. on Wednesday, March 29, 2017, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Julia Ratti, Vice Chair
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator Scott Hammond

GUEST LEGISLATORS PRESENT:

Senator Nicole J. Cannizzaro, Senatorial District No. 6
Senator Yvanna D. Cancela, Senatorial District No. 10

STAFF MEMBERS PRESENT:

Megan Comlossy, Policy Analyst
Eric Robbins, Counsel
Debbie Carmichael, Committee Secretary

OTHERS PRESENT:

Sheila Leslie, Social Services, Washoe County
Travis Warren, Police Officer, Police Department, City of Reno
Shawn Marston, Deputy Sheriff, Sheriff's Office, Washoe County
Brandi Planet, Dignity Health – St. Rose Dominican
Marlene Lockard, Nevada Women's Lobby; Human Services Network; Service Employees International Union Local 1107 Nevada
Trey Delap, Group Six Partners

Amy Roukie, Deputy Administrator of Clinical Services, Division of Public and Behavioral Health, Department of Health and Human Services
Jodi Tyson, Three Square
Shane Piccinini, Food Bank of Northern Nevada
Jon Sasser, Washoe Legal Services; Legal Aid Center of Southern Nevada
Denise Tanata, Executive Director, Children's Advocacy Alliance
Edwina Richardson, Macedonia Outreach Social Enrichment Services
Mary Finch, Three Square
Steve H. Fisher, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services,
Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada
Mekhi Overton-Jackson
Stephanie Mahler
Elliot Brittain
James Conway, Executive Director, Washoe Legal Services
Jesse Fredzess
Yolanda T. King, County Manager, Office of the County Manager, Clark County
Jodi Stephens, Wynn Resorts, Limited
Kevin Schiller, Assistant County Manager, Washoe County
Praveen Jayakumar, M.D., Medical Director, Culinary Health Fund
Bobette Bond, Executive Director, Nevada Healthcare Policy, Unite Here Health
Kevin Hooks
Tanya George
Rita Neanover
Bonnie Jean Sedich
Peggy Lear Bowen
Christopher Hughes
Keith Lee, Nevada Association of Health Plans
Rusty McAllister, Nevada State AFL-CIO
Jim Sullivan, Culinary Workers Union Local 226
Stacie Sasso, Health Services Coalition
Matt Morrison, Executive Director, Healthcare Operations, MGM Resorts International
Ruben R. Murillo, Nevada State Education Association
Ryan Beaman, Clark County Firefighters Union Local 1908
Todd Ingalsbee, Professional Firefighters of Nevada
Priscilla Maloney, AFSCME - Retirees
Russell Rowe, Boyd Gaming Corp.
Mike Alonso, Caesars Entertainment

Rachel Gumpert, AFSCME International
Randy Soltero, International Alliance of Theatrical Stage Employees
Fran Almaraz, Teamster Local 986; Teamster Local 631
Jeanetta Williams, President, NAACP Tri-State Conference Idaho-Nevada-Utah
Beth Handler, Chief, Bureau of Child, Family and Community Wellness, Division of Public and Behavioral Health, Department of Health and Human Services
DuAne Young, Chief, Behavioral Health and Pharmacy Services, Division of Health Care Financing and Policy, Department of Health and Human Services
Kipp Snider, Pharmaceutical Research and Manufacturers of America
Brian Warren, Biotechnology Innovation Organization
Jeff Buel, Johnson & Johnson Services, Inc.
Chris Ferrari, Pfizer, Inc.

CHAIR SPEARMAN:
I will open the hearing on Senate Bill (S.B.) 192.

SENATE BILL 192: Establishes required hours of operation for certain mobile mental health units. (BDR 39-816)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):
The reason why S.B. 192 came to my attention deals in part with what I do for a living, which is I am a prosecutor with the Clark County District Attorney's Office. All too often, we struggle when we encounter individuals who are in the court process by virtue of the fact that they have an unaddressed mental illness, or they have not had the resources to intervene to ensure that they are getting the help that they need. Instead, they become the subject of one of the Clark County District Attorney's Office cases. Frankly, it is very difficult for them to encounter those individuals to address with the criminal justice system. I had discussions on how can we better address this situation, so we are not using our criminal justice resources on individuals who deserve treatment. This issue started to percolate, which is the existence of what we have now in Clark County, Washoe County, Lyon County and Carson City, which are mobile mental health units (MMHU). What came out of the discussions was the suggestion that if these MMHUs were more readily available, that we might be able to combat this situation. While S.B. 192 is quite short, its impact could be substantial. Senate Bill 192 requires that any facility within the Department of Health and Human Services (DHHS) in the Division of Public and Behavioral

kids get out of the system and caseloads can go down. That is the way it should be. Kids should not be raised in foster care, as it is not healthy.

SENATOR HAMMOND:
Can we talk off-line about the national best practices and the current caseloads?

MS. BUCKLEY:
Yes, we can do that.

CHAIR SPEARMAN:
I close the hearing on S.B. 305. Senate Bill 325 will not be heard today and will be rescheduled to another day.

SENATE BILL 325: Revises provisions governing medical assistance to certain children. (BDR 38-941)

I open the hearing on S.B. 265.

SENATE BILL 265: Revises provisions relating to prescription drugs. (BDR 40-809)

SENATOR YVANNA D. CANCELA (Senatorial District No.10):
Senate Bill 265 is intended to address the rapidly increasing cost of diabetes care in Nevada. Twelve percent of all Nevadans are diabetic, thirty eight percent are prediabetic. The total diabetic population of Nevada is on path to double by 2030. Meanwhile, the cost of insulin has inflated across the Country, and certainly here in Nevada, so much so, that the three makers of insulin have been sued for fixing prices in a Massachusetts federal court. You will hear from doctors, who are diabetes experts and experts on the rising cost of insulin and drug purchasing and you will hear about the impact on families and the importance of consumer protection. I suspect you will also hear some of the same arguments that have been advanced in other states as legislatures have attempted to put legislation forward to address the rapidly increasing costs of pharmaceuticals. You might hear the problem with prices is not the industry and see some finger-pointing about who is really in charge. Is it the pharmaceutical benefit managers? Is it the insurance companies? I would ask that you remember the initial starting point for price setting begins with the manufacturers, which is why they are the major target of S.B. 265. You might also hear that spending on diabetes medications reduces other health care costs

such as hospitalization and that is true if folks are able to access diabetes medications. You might hear transparency in prescription drug pricing will stifle innovation. To that, I would say it may be true for other drugs, it is not true for a 95-year-old drug like insulin. You might hear that price gouging is an isolated incident, that there are some bad actors, but the reality is that we have seen price increases across the board in insulin nationally for almost two decades.

PRAVEEN JAYAKUMAR, M.D. (Medical Director, Culinary Health Fund):
The insulins of today are different from the insulins from 95 years ago. The most potent and long-acting insulins were discovered in the year 2000 and all of those are unaffordable if you do not have health insurance. The insulin you can get for $25 at Walmart and Target is called NPH 70/30 and these are combinations that were made in the 1980s. This is the only option for our patients who do not have insurance coverage and it is 2017. Diabetes is a silent killer. Type 1 diabetes affect young children and young adults, and they get to know the symptoms sooner, and they need to be on insulin. Most of the time folks who get diabetes later as a metabolic issue do not know they have diabetes until complications set in. The reason diabetes is such a public health issue is that elevated blood sugars, when uncontrolled for long periods of time, affects every single part of the body. It starts by affecting the microvessels of the nerves, kidneys and the eyes which ultimately leads to kidney damage, loss of vision and loss of sensation in the feet. Ultimately, it affects the large vessels and leads to diseases such as heart disease, heart failure and stroke. It is a silent killer in the folks who do not realize the complications until it is too late. The way progression and complications of diabetes is controlled is through intensively controlling the blood sugar levels. That is where the role of insulin comes in. In the course of my clinical practice, I have treated hundreds of diabetics in Nevada. For these patients, at some point in time, either early on in the course of treatment or later, they all end up on insulin at some point.

I would like to share a story of one of my patients called Jose, who first came to see me when I worked at Lied Clinic at the University of Nevada, Las Vegas, School of Medicine, which is the county hospital. Jose was 46 years old, hardworking, and worked in the fast food sector. He came to see me and his main complaint was he was tired all the time and it was affecting his work. I ran some lab work and found out he had diabetes, his blood sugars were uncontrolled. They were so high, and the guidelines suggested he go on insulin right away. He could not take oral drugs because of how high his blood sugar levels were. We discussed diet, lifestyle changes and other medications but

CHAIR SPEARMAN:
This question does not have to be answered right now, but I would like someone to get back to me with an answer. Instead of coupons, is it conceivable that a price reduction could be commensurate with what a coupon does?

I close the hearing on S.B. 265. Seeing no further business, I adjourn the meeting at 8:22 p.m.

RESPECTFULLY SUBMITTED:

_____
Debbie Carmichael,
Committee Secretary

APPROVED BY:

_____
Senator Pat Spearman, Chair

DATE: _____

MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-ninth Session
May 3, 2017

The Senate Committee on Health and Human Services was called to order by Chair Pat Spearman at 3:37 p.m. on Wednesday, May 3, 2017, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Julia Ratti, Vice Chair
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator Scott Hammond

GUEST LEGISLATORS PRESENT:

Senator Yvanna D. Cancela, Senatorial District No. 10
Assemblywoman Amber Joiner, Assembly District No. 24
Assemblyman James Oscarson, Assembly District No. 36
Assemblywoman Melissa Woodbury, Assembly District No. 23

STAFF MEMBERS PRESENT:

Megan Comlossy, Policy Analyst
Eric Robbins, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Steven L. Phillips, M.D., Treasurer, Nevada Physician Order for Life-Sustaining Treatment; President, Geriatric Specialty Care
Catherine O'Mara, Nevada State Medical Association
Barry Gold, AARP Nevada

Michael Hackett, Nevada Academy of Physician Assistants; Nevada Public Health Association; Nevada Primary Care Association
Chelsea Capurro, Nevada Advance Practice Nurses Association; Health Services Coalition
Brooke Maylath, President, Transgender Allies Group
Jared Busker, Children's Advocacy Alliance
Jon Sasser, Legal Aid Center of Southern Nevada
Shannon Sprout, Deputy Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
Ryan Beaman, Clark County Firefighters Local 1908
Regan Comis, Nevada Association of Health Plans
Jan Crandy
Brian Patchett, CEO, Easter Seals Nevada
Stephanie Hill
Edward Ableser, Administrator, Aging and Disability Services Division, Department of Health and Human Services
George Ross, Hospital Corporation of America, Inc.; Touro University; Las Vegas HEALS
Bill Welch, Nevada Hospital Association
Paul Moradkhan, Las Vegas Metro Chamber of Commerce
Kelly Crompton, City of Las Vegas
Lisa Foster, State of Nevada Association of Providers
Mary Liveratti
Katherine Ryder, Director, A Team NV, Advocacy, Awareness, Advisement
Barbara Paulson, Nevadans for the Common Good
Jeffrey Klein, Chair, Legislative Subcommittee, Nevada Commission on Aging; President, Nevada Senior Services
Sam Lieberman, Easter Seals Nevada
Nancy Brune, Executive Director, Guinn Center for Policy Priorities
Ed Guthrie, Opportunity Village
Marta Jensen, Acting Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
John Yacenda, President, Nevada Silver Haired Legislative Forum

CHAIR SPEARMAN:
I will open the work session on Senate Bill (S.B.) 265.

SENATE BILL 265: Revises provisions relating to prescription drugs. (BDR 40-809)

MEGAN COMLOSSY (Policy Analyst):
Senate Bill 265 was heard in Committee on March 29, as noted in the work session document (Exhibit C). The bill makes various changes related to prescription drugs. It requires the Department of Health and Human Services (DHHS) to identify essential prescription drugs for the treatment of diabetes; requires manufacturers of these drugs to submit information related to costs and to reimburse purchasers of those drugs if costs increase more than a certain amount each year; and requires that insurers are notified of imminent cost increases, among other things. The bill also requires pharmaceutical sales representatives to be licensed and report certain information annually. It authorizes students who attend private school, as well as certain employees, to self-administer medication for certain conditions, including diabetes.

Proposed Amendment 3888 to S.B. 265 is attached to the work session document and was proposed following the bill hearing.

SENATOR YVANNA D. CANCELA (Senatorial District No. 10):
The amendment clarifies language to ensure the changes can be properly enacted. The bulk of section 6 has been deleted, namely the language requiring a refund to be processed and returned to the consumer. Some language was challenged. Based on a recommendation from the Legislative Counsel Bureau, the language causing concern has been removed because there may be a conflict with the federal Commerce Clause. I kept the language allowing the Department of Health and Human Services to determine the total cost and development of essential diabetes drugs because it is the core of the bill.

Section 7 copies the transparency language from Assembly Bill (A.B.) 215.

ASSEMBLY BILL 215: Requires the reporting of certain information relating to prescription drugs. (BDR 57-284)

This language in S.B. 265 has broadened. Section 7, subsection 1, paragraph (a) addresses research and development language; paragraph (b) addresses the cost of producing the drug; paragraph (c) is the administrative cost and marketing; paragraph (d) is profit from the drug plus the overall profit from the drug to the manufacturer; paragraph (e) addresses the financial assistance provided by the manufacturer; paragraph (f) addresses the cost of coupons provided directly to consumers and the cost attributable to the redemption of those coupons to the manufacturer; paragraph (g) addresses the

VICE CHAIR RATTI:
Since there is no further business to come before the Committee, we are adjourned at 5:31 p.m.

RESPECTFULLY SUBMITTED:

_____
Martha Barnes,
Committee Secretary

APPROVED BY:

_____
Senator Pat Spearman, Chair

DATE:_____

MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-ninth Session
May 26, 2017

The Senate Committee on Health and Human Services was called to order by Chair Pat Spearman at 3:25 p.m. on Friday, May 26, 2017, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Julia Ratti, Vice Chair
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator Scott Hammond

GUEST LEGISLATORS PRESENT:

Senator Heidi S. Gansert, Senatorial District No. 15
Senator Michael Roberson, Senatorial District No. 20

STAFF MEMBERS PRESENT:

Megan Comlossy, Policy Analyst
Eric Robbins, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

DuAne Young, Chief, Behavioral Health and Pharmacy Services, Division of Health Care Financing and Policy, Department of Health and Human Services
Khanh Pham, Nevada Pharmacist Association
Julie Kotchevar, Deputy Administrator, Director's Office, Department of Health and Human Services
John Jones, Pharmaceutical Care Management Association

Nick Vassiliadis, Pharmaceutical Care Management Association
Elizabeth MacMenamin, Retail Association of Nevada
Elyse Monroy, Policy Analyst, Office of the Governor

CHAIR SPEARMAN:
We will open the hearing on Assembly Bill (A.B.) 473.

ASSEMBLY BILL 473 (1st Reprint): Temporarily provides for the continued inclusion of certain drugs on the list of preferred prescription drugs to be used for the Medicaid program. (BDR 38-977)

DUANE YOUNG (Chief, Behavioral Health and Pharmacy Services, Division of Health Care Financing and Policy, Department of Health and Human Services):
Assembly Bill 473 extends the sunset language of *Nevada Revised Statutes* 422.4025 until 2019 and allows the Nevada fee-for-service Medicaid program to continue to manage its atypical and typical antipsychotic medications, anticonvulsant medications and antidiabetic medications on the preferred drug list.

The Governor-appointed Pharmacy and Therapeutics Committee consisting of pharmacists and physicians from Nevada reviews and manages Nevada's Medicaid's preferred drug list (PDO). The PDO is not a closed or tiered formulary. The drugs are either preferred or non-preferred. If a non-preferred drug is requested, the prescribing physician is asked to choose a preferred drug unless there is a clinical rational as to why the non-preferred drug is needed. We have implemented measures to allow those to receive non-preferred medications through either treatment failures or continuity of care mechanisms.

CHAIR SPEARMAN:
I will close the hearing on A.B. 473 and open the hearing on Senate Bill (S.B.) 539.

SENATE BILL 539: Revises provisions relating to prescription drugs. (BDR 40-1217)

SENATOR HEIDI S. GANSERT (Senatorial District No. 15):
Over the last few years, the news has highlighted unprecedented increases in drug prices without information to support the increases. Transparency is required in order to help address this issue.

I want to acknowledge Senator Yvanna D. Cancela for her work on S.B. 265. Senator Cancela recognized the need for transparency around prescription drugs essential for treating diabetes and S.B. 265 has gone a long way to create it.

SENATE BILL 265: Revises provisions relating to prescription drugs. (BDR 40-809)

Patients afflicted with diabetes are captive consumers. I have witnessed first-hand the plight of these patients when visiting Nevadans who have suffered from diabetes or who have family members who are impacted. It was clear that their well-being was dependent on insulin-based drugs and they were facing uncertain costs for medications they cannot live without. Thankfully, insulin products are continually improving, leading to a better quality of life for patients. The retail price paid by patients is unpredictable and can escalate to unaffordable levels over short periods. The pricing scheme from drugmakers to wholesalers, to pharmacies and to the formulary approval process, by a pharmacy benefit manager (PBM), is complex and confusing. They are shrouded in secrecy and the final price paid by a patient may be higher than the actual net cost. Simply stated, pricing is uncertain and poorly understood.

The intent of S.B. 539 is to complement the work by Senator Cancela to further increase transparency around the pricing of essential insulin medications and eliminate the "gag rule" pharmacists are required to follow. The "gag rule" precludes pharmacists from working with patients to identify the best price for life-saving medications.

Senate Bill 539 places requirements in statute to provide greater transparency with respect to drugs that are used to treat diabetes sold in this State and to provide regulation for PBMs. I will read from our mock-up of S.B. 539 which shows Proposed Amendment 5037 in conceptual form (Exhibit C).

In section 4 of Exhibit C, the Department of Health and Human Services (DHHS) is required to compile a list of prescription drugs used to treat diabetes and which have undergone a significant increase in the wholesale acquisition cost.

Section 4 also requires a manufacturer of a drug included on the list to prepare a report that explains the reasons for the increase in the wholesale acquisition cost of the drug and submit the report to the DHHS. Finally, section 4 requires a manufacturer of any drug, sold or marketed for sale in the State for the treatment of diabetes, to report annually to the DHHS the wholesale acquisition cost of the drug. The DHHS is required to analyze the information by the manufacturers and compile a report of the reasons for the increase and the effect of the price increase on the costs to residents in the State.

Section 6 of Exhibit C requires the DHHS to place the report on its Website so the public will have access to the information.

Section 8 of Exhibit C provides a penalty if a manufacturer doing business in the State fails to provide the information to the DHHS.

Section 9 of Exhibit C excludes the information that a manufacturer or PBM is required to report under this bill from the definition of trade secrets, but only to the extent that the information is required to be disclosed.

Sections 11 to 21 of Exhibit C have specific requirements for a PBM. A PBM is defined in section 11 as an entity that manages pharmacy benefits that are provided as part of a health care plan offered by an insurer.

Section 18 of Exhibit C prohibits a PBM from operating in this State without a license issued by the Insurance Commissioner and provides the procedure for obtaining a license.

Section 19 of Exhibit C places a fiduciary duty on a PBM with respect to any insurer with which the PBM has a contract to manage pharmacy benefits.

Section 20 of Exhibit C prohibits a PBM from engaging in certain acts that restrict pharmacies and pharmacists. For example, it prohibits restricting a pharmacy or pharmacist from providing certain information to an insured about an alternative drug. It prohibits a PBM from penalizing a pharmacist or pharmacy for providing certain information for less expensive drugs, and it prohibits other conduct that interferes with the conduct of a pharmacy or pharmacist.

Sections 8.4 to 8.8, 26.1, 26.2, 26.25 and 26.4 to 26.9 of Exhibit C prohibit insurers, including public insurers, from engaging in such conduct.

Section 21 of Exhibit C requires a PBM to post the rate at which the PBM reimburses each pharmacy in the State for each prescription drug used to treat diabetes that is covered by a plan and managed by the PBM on a publicly available Website that it maintains. In addition, section 21 requires the PBM to submit a report to the Division of Insurance (DOI) each year which includes certain information regarding rebates that the PBM negotiates on prescription drugs used to treat diabetes.

Senate Bill 539 will provide greater transparency regarding the cost of drugs to treat diabetes that are sold in the State and ensure that PBMs are not the sole entities benefiting from rebates provided from the sale of drugs in this State. In addition, S.B. 539 will eliminate the "gag rule" to ensure that pharmacists and pharmacies are not prohibited from discussing less expensive drugs that will meet the needs of the patient.

I would like to show a short video, "How PBMs Lead to Higher Prescription Drug Prices."

SENATOR MICHAEL ROBERSON (Senatorial District No. 20):
The video you just watched illustrates the problem of the gag rule as it applies to the concept of "spread pricing" the PBMs put on retail pharmacists. Spread pricing prevents pharmacists from helping consumers identify alternative low cost drugs or find the same drug for a lower cost.

Section 20 of Exhibit C would eliminate the ability of PBMs to impose a gag rule in the State. Whether it is through this bill or the bill of your choosing, if you do nothing else, I hope you will take action to eliminate the PBM gag rule in our State.

In addition to the gag rule, S.B. 539 focuses on providing increased transparency with regard to rebates received by PBMs from drug manufacturers and who ultimately benefits from those rebates. Forty-three states in this Country have passed laws or regulations addressing PBM transparency. To date, Nevada has done nothing to make PBMs transparent.

The PBMs control the distribution of pharmaceutical drugs in this Country by telling drug manufacturers that they will not sell their drugs or include their drugs in their formularies unless they get rebates off the list prices. This is known as the wholesale acquisition price.

CHAIR SPEARMAN:
There being no public comment and no further business before this Committee, the meeting is adjourned at 5:27 p.m.

RESPECTFULLY SUBMITTED:

_____
Tammy Lubich
Committee Secretary

APPROVED BY:

_____
Senator Pat Spearman, Chair

DATE: _____

Bill read.

Governor's message stating his objections read.

MESSAGES FROM THE GOVERNOR
STATE OF NEVADA
EXECUTIVE CHAMBER
CARSON CITY, NEVADA 89701

June 2, 2017

THE HONORABLE AARON D. FORD, Nevada State Senate
401 South Carson Street, Carson City, Nevada 89701

DEAR LEADER FORD:

I am here with forwarding to you, for filing within the constitutional time limit and without my approval, Senate Bill No. 265, which is entitled:

> AN ACT relating to prescription drugs; requiring the Department of Health and Human Services to compile a list of prescription drugs essential for treating diabetes in this State; requiring the manufacturer of a prescription drug included on the list to report certain information to the Department; requiring a manufacturer to notify the Department in advance of planned price increases for such drugs; 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 contributions 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; requiring a private school to allow a pupil to keep and self-administer certain drugs; requiring certain insurers to provide.

S.B. No. 265 contains provisions that are well-intentioned relating to legitimate concerns regarding access to affordable health care. Health care costs for patients with chronic diseases, particularly diabetes, are escalating, and in many cases prohibitively so. Rising costs mean that fewer Nevadans have access to critical—even lifesaving—health care options. Threatening to diminish the quality of life for families across our State. To be clear, I support efforts to slow these rising costs, and share the belief that greater transparency in the marketplace can be a contributing factor to more affordable care options and can support other public policy goals.

While certain aspects of this bill are laudable, including provisions benefiting students suffering from diabetes, S.B. No. 265 also poses serious risks of unintended and potentially detrimental consequences for Nevada's consumer patients, not the least of which is the possibility that access to critical care will become more expensive, more restricted, and less equitable. S.B. No. 265 fails to account for market dynamics that are inextricably linked to health care delivery and access to prescription drugs. This failure cannot be overlooked, and it could cause more harm than good for Nevada's families.

For example, S.B. No. 265 requires a manufacturer of certain prescription drugs, such as insulin, to provide a public, 90-day notice of any potential increase in the price of diabetes drugs. By requiring an advance notice of a change in price before the change is effective, this bill may create a perverse incentive for some market participants to manipulate supply in order to maximize profits. S.B. No. 265 would inevitable provide purchasers, wholesalers, and secondary distributors of health care products an even greater financial motivation to restrict access to health care products. This could potentially lead to stockpiling of drugs or other artificial mechanisms for adjusting the supply of medication based on the guarantee of higher profits in the future. In short, S.B. No. 265 risks creating a "buy-low, sell-high" culture with

regard to diabetes medication, which will only serve to exacerbate access-to-care challenges in Nevada.

The price-increase notice requirements in S.B. No. 265 will also spur the growth of the so-called "gray market" in health care products. In that gray market, the choice to sell critical shortage drugs to the highest bidder will be all the more attractive, particularly when states with less stringent rules and regulations are involved. This scenario could leave more Nevadans with higher costs, fewer choices, and less access to the medicine they need. For these reasons, S.B. No. 265 threatens to create undesirable incentives that could result in drug stockpiling, artificially inflated drug prices, and an expanded gray market for prescription drugs, thereby perpetuating the very problems S.B. No. 265 was meant to solve.

Moreover, S.B. No. 265 wholly ignores the role of pharmacy benefit managers (PBMs) and other participants along the prescription drug supply chain. S.B. No. 265 focuses exclusively on increasing transparency at the first stage of a complex process and not the others. By excluding other relevant participants from its requirements to publish pricing information, the bill provides an incomplete pricing picture for patient consumers. Complete transparency would shed light on every state of the prescription drug supply process, and require all participants to share the same disclosure responsibility. The selective and narrow approach reflected in this bill is unlikely to achieve sound public policy solutions for patients in Nevada.

In addition, constitutional and other legal concerns have been raised that render the bill problematic. Among other issues, S.B. No. 265 could be challenged under theories of federal preemption, the Fifth Amendment's prohibition on uncompensated takings, and the Dormant Commerce Clause. And while the ultimate disposition of any legal claim challenging S.B. No. 265 would be for the courts to decide, lengthy and expensive litigation and legal uncertainty could destabilize the market for diabetes drugs and jeopardize a now secure supply of these drugs.

Finally, there is insufficient evidence that S.B. No. 265 will in fact lead to lower drug costs. While other states are considering policies similar to those reflected in this bill, the results to date are inconclusive. Before I support a bill as uncertain as S.B. No. 265, which deals so directly and extensively with the health and well-being of countless Nevadans, there must be compelling evidence that the benefits are worth the risks. No convincing evidence has been offered to justify S.B. No. 265's nascent, unproven and disruptive change to public health policy.

Having reviewed the legislative record, testimony from committee hearings, and hundreds of constituent calls and letters, it is clear that there are others with deep concerns regarding this bill. In addition, many groups have opposed S.B. No. 265, including the Epilepsy Foundation, the Nevada Cancer Research Foundation, the Biotechnology Innovation Organization, and the Neuropath Action Foundation.

For these reasons, I veto S.B. No. 265 and return it without my signature or approval.

Sincerely,

BRIAN SANDOVAL
Governor of Nevada

Senator Ford moved no further consideration of vetoed Senate Bill No. 265 of the 79th Session.

Motion carried.

Vetoed Senate Bill No. 384 of the 79th Session.

Bill read.

Governor's message stating his objections read.

MESSAGES FROM THE GOVERNOR
STATE OF NEVADA
EXECUTIVE CHAMBER
CARSON CITY, NEVADA 89701

June 3, 2017