HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

H.B. NO. 18

A BILL FOR AN ACT

RELATED TO PRESCRIPTION DRUG COSTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that prescription drug prices in the United States are among the highest in the world. Before applying any insurance benefits, the average United States resident spends about $1,200 annually on prescription drugs, compared to about $625 for residents in similar countries. Excessive prescription drug prices reduce the ability of people to obtain proper medical treatment, threaten the economic well-being of individuals, and increase health insurance premiums. Additionally, since the costs of prescription drugs and health insurance premiums are tax-deductible, higher prescription drug prices ultimately reduce tax revenues.

The legislature further finds that one reason for the disparity among drug prices in the United States and other countries is that the United States federal government does not regulate drug prices. While the United States Food and Drug Administration approves drugs that are shown to be safe and

effective, the approval process does not consider the cost of the drug. After a drug is approved, hundreds of health insurers in the United States must then individually negotiate with drug makers for the cost of the drug. Since this negotiation process is fragmented, drug companies have little incentive to set the lowest possible prices. In contrast, the Canadian government considers drug prices in its approval process and negotiates directly with drug makers to obtain the best prices for its residents. If a drug maker refuses to sell a prescription drug at a reasonable cost, the Canadian government will not approve that drug for sale in Canada. This process results in drug prices that are typically one third cheaper than drug prices in the United States.

The purpose of this Act is to reduce prescription drug costs for Hawaii residents by establishing maximum wholesale drug prices that are the same as the prices in Canada.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new part to chapter 328, Hawaii Revised Statutes, to be appropriately designated and to read as follows:

"**PART .**

§328-A Definitions. As used in this part:

"ERISA Plan" means a plan qualified under the Employee Retirement Income Security Act of 1974.

"Participating ERISA Plan" means an ERISA plan that has elected to participate in the requirements and restrictions of this subchapter pursuant to section 328-C.

"Referenced drug" means a prescription drug subject to a referenced rate.

"Referenced rate" means the maximum rate established by the insurance commissioner pursuant to section 328-D.

"State entity" means any agency of state government that purchases prescription drugs on behalf of the State for a person whose health care is paid for by the State, including any agent, vendor, fiscal agent, contractor, or other party acting on behalf of the State. The term shall not include the medical assistance program established pursuant to title 42 United States Code section 1396 et seq.

"Wholesale acquisition cost" shall have the same meaning as in title 42 United States Code section 1395w-3a(c)(6)(B).

§328-B Payment in excess of referenced rate; prohibited. (a) No state entity, health plan, or participating ERISA plan shall purchase referenced drugs to be dispensed or delivered to

an individual in the State, whether directly or through a distributor, for an amount in excess of the referenced rate.

(b) No pharmacy shall purchase for sale or distribution referenced drugs for a person whose health care is provided by a state entity, health plan, or participating ERISA plan for an amount in excess of the referenced rate.

§328-C ERISA plan opt-in. An ERISA Plan may elect to participate in the provisions of this part by notifying the insurance commissioner in writing in a manner prescribed by the insurance commissioner.

§328-D Referenced drugs; reference rate. (a) Each year, the insurance commissioner shall compile a list of not less than the two hundred fifty most costly prescription drugs, based upon the total amount spent by consumers in Hawaii on each drug, before applying any insurance benefits, during the previous calendar year.

(b) The insurance commissioner shall then compare the wholesale acquisition cost for each prescription drug in the list compiled pursuant to subsection (a) to the cost of that prescription drug from the:

(1) Ontario Ministry of Health and Ministry of Long-Term Care and most recently published in the Ontario Drug Benefit Formulary;

(2) Régie de l'Assurance Maladie du Québec and most recently published in the Quebec public drug program's list of medications;

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

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

(c) The referenced rate for each prescription drug in the list compiled pursuant subsection (a) shall be the lowest cost among the resources in subsection (b) and the wholesale acquisition cost. If a specific referenced drug is not included within the publications in subsection (b), the referenced rate shall be the lower of the:

(1) Ceiling price for drugs as reported by the Government of Canada Patented Medicine Prices Review Board; or

(2) Wholesale acquisition cost.

(d) No later than August 1 of each year, the insurance commissioner shall publish a list of not less than two hundred

fifty referenced drugs that shall be subject to the referenced rate for the next calendar year.

(e) Each year, the insurance commissioner shall calculate and publish the expected savings that will be achieved by applying the referenced rate to each prescription drug in subsection (d). In making this determination, the insurance commissioner shall consult with the chair of the board of trustees of the Hawaii employer-union health benefits trust and the chairperson of the board of pharmacy.

§328-E Application of savings. (a) Any savings generated as a result of this part above shall be used to reduce costs to consumers. Any state entity, health plan, or participating ERISA plan shall calculate the savings and use the savings to directly reduce costs for its members or insureds.

(b) No later than April 1 of each year, each State entity, health plan, and participating ERISA plan subject to this part shall submit to the insurance commissioner a report describing the savings achieved for each referenced drug for the previous calendar year and how those savings were used to achieve the requirements of subsection (a). The insurance commissioner shall timely publish the reports on its website.

§328-F Withdrawal of referenced drugs for sale; prohibited. (a) It shall be a violation of this part for any manufacturer or distributor of a referenced drug to withdraw that drug from sale or distribution in the State for the purpose of avoiding the impact of the rate limitations imposed by this part.

(b) Any manufacturer that intends to withdraw a referenced drug from sale or distribution in the State for reasons unrelated to the rate limitations imposed by this part shall provide a notice of withdrawal in writing to the insurance commissioner and to the attorney general not less than one hundred eighty days before a withdrawal; provided that the insurance commissioner may approve a shorter notice in the interest of the health or safety of the public.

(c) It shall be a violation of this part for any manufacturer or distributor of a referenced drug to refuse to:

(1) Sell; or

(2) Negotiate in good faith the sale of,

a referenced drug to the payor or seller of prescription drugs for a price that is at or less than the referenced rate.

§328-G Penalties. (a) A violation of section 346-F shall be subject to a fine of $500,000 or the amount of annual savings determined by the insurance commissioner as described in section 346-D(e), whichever is greater.

(b) Any manufacturer, distributor, or pharmacy that violates section 328-B shall be subject to a fine of $1,000. Every individual transaction in violation of section 328-B shall be considered a separate violation. The attorney general may enforce the provisions of this part on behalf of any State entity or consumer of prescription drugs.

(c) The refusal of a manufacturer or distributor to negotiate in good faith or to sell a prescription drug at or less than the referenced rate shall be a valid affirmative defense for a state entity, health plan, participating ERISA plan, or pharmacy that violates section 328-B.

§328-H Rules. The insurance commissioner may adopt rules pursuant to chapter 91 for the purpose of this part."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. This Act shall take effect on July 1, 2021.

INTRODUCED BY: B Fahrn

JAN 20 2021

H.B. NO. 18

Report Title:
Prescription Drugs; Costs; International Pricing; Insurance Commissioner

Description:
Requires the Insurance Commissioner to set the maximum wholesale prices of common prescription drugs based upon Canadian price regulations. Prohibits drug makers and distributors from removing prescription drugs from Hawaii markets. Prohibits various health plans and pharmacies from purchasing prescription drugs in excess of the maximum wholesale price.

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