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Memorandum

October 20, 2021

TO: Interested Persons

FROM: Julia Group, Research Analyst, 303-866-4780

SUBJECT: Legislative Efforts to Control Prescription Drug Prices

Summary

This memorandum summarizes legislative efforts since 2017 to control prescription drug prices. It includes information on both bills that failed as well as those that became law.

Price Limits on Prescription Drugs

The legislature considered several bills to directly prevent increases in costs for prescriptions drugs or prescription drug benefits.

[Senate Bill 17-084](#) and [House Bill 18-1370](#) would have prevented a health insurer from excluding or limiting coverage for a drug for an individual if the following three conditions existed: the drug was covered at the time the individual enrolled in the health plan; a health care provider continued to prescribe the drug for the individual; and the drug is considered safe and effective. Additionally, the health insurer would have been prevented from increasing a covered individual's copayment, coinsurance, or deductible for prescription drug benefits during the plan year or setting limitations on maximum coverage for prescription drugs. If a health insurer uses a tiered formulary, it could not move drugs to a disadvantaged tier if the three conditions listed above are met. Both bills were postponed indefinitely.

[House Bill 19-1216](#) requires that insurance carriers regulated by the Division of Insurance cap the amount that a patient is required to pay for a prescription insulin drug at \$100 per month. The Division of Insurance regulates all fully insured health benefit plans and health maintenance organization subscriber contracts offered in Colorado. The bill also directs the Department of Law to investigate insulin drug pricing and determine whether additional consumer protections are necessary.¹ This bill became effective in 2019.

¹ Report can be found here:

<http://www.leg.state.co.us/library/reports.nsf/ReportsDoc.xsp?documentId=63250D014F897CAD87258624006224FA>

[House Bill 21-1307](#) establishes that the \$100 cap on a person's 30-day supply of prescription insulin is for the person's entire insulin supply, regardless of the number of prescriptions they may have. It also provides access to one emergency prescription insulin supply within a 12-month period for no more than \$35 for a 30-day supply, and creates the insulin affordability program in the Division of Insurance through which eligible individuals may obtain prescription insulin for 12 months at a cost of not more than \$50 for a 30-day supply. The cap applies to all plans regulated by the Division of Insurance, and not self-funded or government plans such as Medicaid or Medicare.

[Senate Bill 21-175](#) creates the Prescription Drug Affordability Review Board. The board is directed to:

- collect and evaluate information on the cost of prescription drugs sold to Colorado consumers;
- perform affordability reviews;
- establish prescription drug upper payment limits applicable to all carriers dispensed in Colorado, capped at 12 drugs in each of the first three years;
- make policy recommendations to the General Assembly to improve drug affordability;
- and report annually to the Governor and General Assembly on drug prices, board activity, and impacts to health care providers and pharmacies.

The bill also requires specific reporting by health insurers and pharmacy benefit managers to the Division of Insurance on the cost of prescription drugs.

Importation of Prescription Drugs

The legislature considered several bills and passed two bills related to the importation of prescription drugs from Canada and other nations in an attempt to provide cost savings to the state.

[Senate Bill 19-005](#) created the Canadian Drug Importation Program, which required the Department of Health Care Policy and Financing (HCPF) to design a wholesale importation program for prescription pharmaceutical products from Canada, and, subject to federal approval, to implement the program and contract with vendors to import prescription drugs from Canadian suppliers. The bill specifies that the vendor must meet certain U.S. standards, and must provide cost savings to the state. Once approved and implemented, anyone in Colorado may purchase the discounted drugs from participating pharmacies. A similar bill, [Senate Bill 18-080](#), was postponed indefinitely.

Since the passage of SB 19-005, the U.S. Department of Health and Human Services issued a final rule allowing importation of certain prescription drugs from Canada. Under this rule, states may submit importation proposals to the federal Food and Drug Administration for authorization. HCPF is currently soliciting vendors to operate the program; the department estimates that an importation program could be operational by mid-2022 at the earliest.

[Senate Bill 21-123](#) authorizes HCPF to expand the Canadian Drug Importation Program to allow drug importation from nations other than Canada, conditional upon the enactment of federal legislation permitting states to do so. A similar bill, [Senate Bill 20-119](#), was postponed indefinitely.

Price Gouging

The legislature considered bills prohibiting price gouging, but neither bill became law.

[House Bill 18-1179](#) and [Senate Bill 18-152](#), two identical bills, were proposed during the 2018 legislative session to prohibit price gouging of essential off-patent or generic drugs. The bills defined price gouging as the practice of increasing the price of a drug by 50 percent or more within one year. Price gouging would have been classified a deceptive trade practice under the bills. The bills would have required certain state agencies to notify the Colorado Attorney General of price gouging, and created penalties for manufacturers found guilty of price gouging. HB 18-1179 was deemed lost and SB 18-152 was postponed indefinitely.

Prescription Drug Price Disclosures

Two bills addressed disclosing prescription drug prices and potentially more affordable drug options to providers and patients.

[House Bill 19-1131](#) requires prescription drug manufacturers or their employees to disclose the wholesale acquisition cost of a prescription drug when providing information on the prescription drug to a prescriber. Manufacturers or employees must also list the names of generic drugs from the same therapeutic class to a prescriber. This bill became effective in 2019.

[House Bill 18-1284](#) enacts the Patient Drug Costs Savings Act. The act establishes that health insurance carriers and pharmacy benefit managers may not prohibit pharmacists from discussing cost-sharing requirements or more affordable alternative drugs with covered patients. Carriers or benefits managers may not require pharmacists to collect a copayment that exceeds the total charges billed by the pharmacy. This bill became effective in 2018.