Support Updates to SB 2378 to Protect North Dakotans from High-Cost Drugs, While Providing Choice

Everyone should be able to get the medications they need at a cost they can afford. But drug prices are out of control, and hardworking families feel the consequences every day. Health insurance providers are fighting for patients by developing innovative solutions to make prescription drugs more affordable. One of these solutions is leveraging the use of lower-cost pharmacies – called specialty pharmacies – to safely distribute clinician-administered drugs (sometimes called either "white bagging" or "brown bagging").

As proposed, SB 2378 limits consumer choice and will increase health care costs for North Dakotans. SB 2378 eliminates the tools utilized by health plans to address high-cost clinician-administered drugs by narrowing and eliminating efforts to cut wasteful spending within the drug cycle. Of greatest concern is the restriction on where health plans can purchase clinician-administered drugs, which are typically the most expensive drugs, and treat diseases such as cancer, multiple sclerosis, and Rheumatoid arthritis. Data illustrates hospitals include exorbitant markups on clinician-administered drugs:

> **Costs per SINGLE treatment for drugs administered in hospitals were an average $7,000 more than purchased through pharmacies. Hospitals, on average, charged DOUBLE the prices for the same drugs, compared to specialty pharmacies.**

Health plans utilize specialty pharmacies (pharmacies that meet specific and rigorous standards to handle very sensitive drugs, such as cold storage) to ship drugs directly to hospitals to bypass their profit markups. Cost savings are then utilized to lower consumer's out of pocket costs or premiums.

Amendment Language Is Needed:

Amendment language for SB 2378 provides:

- Specialty pharmacies will work closely with hospitals and patients to deliver medications effectively and safely, while providing consumers protections from hospitals' exorbitant markups, saving patients thousands of dollars.
- The ability for pharmacies to be considered a vendor of specialty drugs if they meet rigorous safety standards to protect patient safety, while providing a seamless experience for patients.
- Limiting the circumstances when health plans may purchase clinician-administered drugs from specialty pharmacies and ship them to hospitals.
- Requiring health plans and PBMs to include appeals and exceptions within their programs, such as when a drug prescription changes, and on-site drugs are required to be used.

Myth v Fact:

Myth: SB 2378 is necessary to protect pharmacists from health plans and PBMs circumventing their services.

Fact: This is false. North Dakota law includes an "Any Willing Pharmacy" which requires payors to add any pharmacy to join a payors network if they can be credentialed and meet specified cost, quality, and service requirements.

Myth: There are safety concerns when drugs are mailed to a hospital or patient from an outside source.

Fact: This is false. Specialty pharmacies employ sophisticated supply chain processes to ensure products shipped are equipped with packaging specific to the safety standards required with each individual drug.

Myth: Health plans/PBMs use these methods to favor specific pharmacies.

Fact: This is false. If hospitals charged the same price as other suppliers, payors would reimburse them directly.

AHIP strongly urges the Human Services Committee to support updates to SB 2378 to support competition among providers and to not take away lower-cost choices from patients.

Prepared by the Legislative Council staff for
Senator K. Roers
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PROPOSED AMENDMENTS TO SENATE BILL NO. 2378

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to health insurance coverage of clinician-administered drugs; and to amend and reenact section 26.1-36-12.2 of the North Dakota Century Code, relating to freedom of choice for pharmacy services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-12.2 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-12.2. Freedom of choice for pharmacy services.

1. ~~No~~A third-party payer, including a health care insurer as defined in section 26.1-47-01, providing pharmacy services and prescription drugs to any beneficiary may not:

   a. Prevent a beneficiary from selecting the pharmacy or pharmacist of the beneficiary's choice to provide pharmaceutical goods and services, provided that pharmacist or pharmacy is licensed in this state;

   b. Impose upon any beneficiary selecting a participating or contracting provider a copayment, fee, or other condition not equally imposed upon all beneficiaries in the plan selecting a participating or contracting provider; ~~or~~

   c. Deny ~~any~~a pharmacy or pharmacist the right to participate as a preferred provider under chapter 26.1-47 or as a contracting provider for ~~any~~a policy or plan, provided the pharmacist or pharmacy is licensed in this state, and accepts the terms of the third-party payer's contract; or

   d. Require a patient to purchase pharmaceutical goods and services, except specialty drugs as defined under section 19-02.1-16.2, exclusively through a mail order pharmacy or a pharmacy owned by a pharmacy benefits manager.

2. Notwithstanding the provisions of subsection 1, the department of health and human services may exclude, from participation in the medical assistance program administered under chapter 50-24.1 and title XIX of the Social Security Act [Pub. L. 89-97; 79 Stat. 343; 42 U.S.C. 1396 et seq.], as amended, any provider of pharmacy services who does not agree to comply with state and federal requirements governing the program, or who, after so agreeing, fails to comply with those requirements.

3. ~~Any~~A provision in a health insurance policy in this state which violates the provisions in subsection 1 is void.

4. ~~Any~~A person ~~who~~that violates this section is guilty of a class A misdemeanor and each violation is a separate offense. The commissioner may levy an administrative penalty not to exceed ten thousand dollars for a violation of this section.

5. The commissioner may not require a third-party payer that is a self-insurance plan governed by the federal Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.] to comply with this section.

6. The ~~insurance~~ commissioner shall enforce ~~the provisions of~~ this section.

SECTION 2. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Clinician-administered drugs.

1. As used in this section, "clinician-administered drug" means an outpatient prescription drug, other than a vaccine that:

   a. Cannot reasonably be self-administered by the patient to whom the drug is prescribed or by an individual assisting the patient with the self-administration; and

   b. Is typically administered:

      (1) By a health care provider authorized to administer the drug, including when acting under a physician's delegation and supervision; and

      (2) In a physician's office, a hospital outpatient infusion center, or other clinically supervised setting.

2. A third-party payer, including a health care insurer as defined under section 26.1-47-01, may not require a clinician-administered drug to be dispensed by a pharmacy selected by the third-party payer and delivered to a participating or contracting provider for administration.

   a. This subsection does not apply if the third-party payer has offered a participating or contracting provider administering a clinician-administered prescription drug the ability to participate in the third-party payer's network on the same terms and conditions the third-party payer offers to the third-party payer's preferred providers.

   b. A third-party payer that requires a clinician-administered drug to be dispensed by a pharmacy selected by the third-party payer under subdivision a shall provide a process by which a provider administering a clinician-administered drug may request an exception if:

      (1) A delay caused by the pharmacy makes it impossible for the patient to receive the drug as scheduled; or

(2) Damage to the drug occurs which causes the drug to be unsafe to administer to the patient.

c. A pharmacy that dispenses a covered clinician-administered drug:

(1) Must be properly licensed in the state as a pharmacy and be accredited by a nationally recognized accrediting body for specialty pharmacy as a specialty pharmacy.

(2) Must have policies in place for safety recalls which are consistent with national accreditation standards for safety recalls issued by a nationally recognized accrediting body for specialty pharmacy.

(3) Shall provide tracking details to the prescribing provider for the shipment of a covered clinician-administered drug and shall require a signature upon receipt of the shipment when shipped to a physician's office to the extent required to do so by the nationally recognized pharmacy accreditation body by which the pharmacy is accredited.

(4) Shall require advance confirmation of the date, time, and place of delivery of a covered clinician-administered drug by the prescribing provider's office or the member.

(5) Shall employ appropriate packaging or other environmental safety controls to ensure clinician-administered drugs remain at the appropriate temperature, as indicated by the manufacturer, through all stages of supply and shipping to the extent required to do so by the nationally recognized pharmacy accreditation body by which the pharmacy is accredited.

(6) Shall maintain at all times pharmacist or nurse availability for prescribing clinicians and patients to ask questions.

d. A third-party payer that requires a clinician-administered drug to be dispensed through one or more designated pharmacies shall establish a process to allow for appeals and exceptions to these limitations.

3. A third-party payer, including a health care insurer as defined under section 26.1-47-01, may offer, but may not require, the use of a pharmacy to dispense a clinician-administered drug directly to a beneficiary with the intention the beneficiary will transport the drug to a provider for administration.

4. The insurance commissioner may not require a third-party payer that is a self-insurance plan governed by the federal Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.] to comply with this section."

Renumber accordingly