INSULIN ACCESS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill creates mechanisms to increase Utahns' access to affordable insulin.

Highlighted Provisions:

This bill:

- creates an incentive for health benefit plans to reduce the required copayments for insulin;
- directs the Insurance Department to conduct a study on insulin pricing;
- directs the Public Employees' Benefit and Insurance Program to purchase insulin at discounted prices and to create a program that allows Utahns to purchase the discounted insulin;
- increases the number of days for which an insulin prescription can be refilled; and
- authorizes a pharmacist to refill an expired insulin prescription.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

31A-22-626, as last amended by Laws of Utah 2015, Chapter 258

58-17b-609, as last amended by Laws of Utah 2005, Chapter 160

ENACTS:

31A-22-626.5, Utah Code Annotated 1953

49-20-420, Utah Code Annotated 1953

58-17b-608.2, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-22-626** is amended to read:

31A-22-626. Coverage of diabetes.

(1) As used in this section[~~, "diabetes"~~]:

(a) "Diabetes" includes individuals with:

[~~(a)~~] (i) complete insulin deficiency or type 1 diabetes;

[~~(b)~~] (ii) insulin resistant with partial insulin deficiency or type 2 diabetes; [~~and~~] or

[~~(c)~~] (iii) elevated blood glucose levels induced by pregnancy or gestational diabetes.

(b) "High deductible health plan" means the same as that term is defined in Section 223(c)(2), Internal Revenue Code.

(c) "Lowest tier" means:

(i) the lowest cost tier of a health benefit plan;

(ii) the lowest cost-sharing level of a high deductible health plan that preserves the enrollee's ability to claim tax exempt contributions from the enrollee's health savings account under federal laws and regulations; or

(iii) a discount or other cost-savings program that has the effect of equating cost-sharing of insulin to the health plan's lowest-cost tier.

(d) "Therapy category" means a type of insulin that is distinct from other types of insulin due to a difference in onset, peak time, or duration.

(2) The commissioner shall establish, by rule, minimum standards of coverage for diabetes for accident and health insurance policies that provide a health insurance benefit before July 1, 2000.

(3) In making rules under Subsection (2), the commissioner shall require rules:

(a) with durational limits, amount limits, deductibles, and coinsurance for the treatment of diabetes equitable or identical to coverage provided for the treatment of other illnesses or diseases; and

(b) that provide coverage for:

(i) diabetes self-management training and patient management, including medical nutrition therapy as defined by rule, provided by an accredited or certified program and referred by an attending physician within the plan and consistent with the health plan provisions for self-management education:

(A) recognized by the federal Centers for Medicare and Medicaid Services; or

(B) certified by the Department of Health; and

(ii) the following equipment, supplies, and appliances to treat diabetes when medically necessary:

(A) blood glucose monitors, including those for the legally blind;

(B) test strips for blood glucose monitors;

(C) visual reading urine and ketone strips;

(D) lancets and lancet devices;

(E) insulin;

(F) injection aides, including those adaptable to meet the needs of the legally blind, and infusion delivery systems;

(G) syringes;

(H) prescriptive oral agents for controlling blood glucose levels; and

(I) glucagon kits.

(4) If a health benefit plan entered into or renewed on or after January 1, 2021, provides coverage for insulin for diabetes, the health benefit plan shall:

(a) cap the total amount that an insured is required to pay for at least one insulin in each therapy category at an amount not to exceed $30 per prescription of a 30-day supply of insulin for the treatment of diabetes; and

(b) apply the cap to an insured regardless of whether the insured has met the plan's deductible.

(5) Subsection (4) does not apply to a health benefit plan that:

(a) covers at least one insulin for the treatment of diabetes in each therapy category under the lowest tier of drugs; and

(b) does not require cost-sharing other than a co-payment of an insured before the plan will cover insulin at the lowest tier.

(6) Subsection (4) does not apply to a health benefit plan that:

(a) guarantees an insured that the insured will not pay more out-of-pocket for insulin the insured obtains through the health benefit plan than the insured would pay to obtain insulin through the discount program described in Section 49-20-420; and

(b) caps the total amount that an insured is required to pay for at least one insulin in each therapy category at an amount not to exceed $100 per prescription of a 30-day supply of insulin for the treatment of diabetes.

(7) A health benefit plan that provides coverage for insulin may condition the coverage of insulin at a cost-sharing method described in Subsection (4), (5), or (6) on:

(a) the insured's participation in wellness-related activities for diabetes;

(b) purchasing the insulin at an in-network pharmacy; or

(c) choosing an insulin from the lowest tier of the health benefit plan's formulary.

(8) The department may issue a waiver from the requirements described in Subsection (4) to a health benefit plan if the health benefit plan can demonstrate to the department that the plan provides an insured with substantially similar consumer cost reductions to those that result from Subsections (4) and (5).

(9) The department shall annually adjust the caps described in Subsections (4)(a) and (6)(b) for inflation based on an index that reflects the change in the previous year in the average wholesale price of insulin sold in Utah.

(10) The department shall annually provide the price of insulin available under the discount program described in Section 49-20-420 to a health benefit plan that adopts the cost-sharing method described in Subsection (6).

(11) A health benefit plan entered into or renewed on or after January 1, 2021, that provides coverage of insulin is not required to reimburse a participant, as that term is defined in Subsection 49-20-420(1), for insulin the participant obtains through the discount program described in Section 49-20-420.

(12) The department may request information from insurers to monitor the impact of the requirements of this section on insulin prices charged by pharmaceutical manufacturers.

(13) The department shall classify records provided in response to the request described in Subsection (12) as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

(14) The department may not publish information submitted in response to the request described in Subsection (12) in a manner that:

(a) makes a specific submission from a contracting insurer identifiable; or

(b) discloses information that is a trade secret, as defined in Section 13-24-2.

Section 2. Section **31A-22-626.5** is enacted to read:

31A-22-626.5. Affordable insulin study.

(1) As used in this section, "insulin" means a prescription drug that contains insulin.

(2) The department shall obtain funding through grants to fund a study on insulin costs.

(3) If the department obtains the funding described in Subsection (2), the department shall, on or before October 30, 2020, complete a study on the cost of insulin manufacturing and factors that determine the price of insulin.

(4) The department shall use public, readily available data accessible to the department to conduct the study described in Subsection (3).

(5) The study described in Subsection (3) shall investigate:

(a) current and historical trend information about the wholesale acquisition cost of insulin;

(b) the cost to produce insulin;

(c) explanations for increases in insulin costs;

(d) expenditures of drug manufacturers in marketing insulin;

(e) manufacturers' net profits from insulin;

(f) the portion of a drug manufacturers' total net profits that is composed of insulin net profits;

(g) financial assistance currently available to individuals who use insulin through patient prescription assistance programs;

(h) value to individuals who use insulin benefits including:

(i) coupons provided directly to individuals who use insulin; and

(ii) programs to assist individuals who use insulin in paying co-payments and coinsurance;

(i) costs to drug manufacturers of the programs described in Subsection (5)(h);

(j) total value of benefits manufacturers provide in the form of rebates for insulin to health plans or pharmacy benefit managers in Utah; and

(k) additional information that the department determines will aid the Legislature in developing policy to reduce insulin prices in Utah.

(6) (a) On or before October 30, 2020, the department shall submit a final report on the study described in Subsection (3) to the Health and Human Services Interim Committee and the Business and Labor Interim Committee.

(b) The department's report may include recommendations on legislation for:

(i) increased drug pricing transparency; and

(ii) programs that would meaningfully reduce the cost of insulin.

(c) The final report shall include references to all sources of information and data used in the report and study, except the department may not disclose information that is proprietary

or protected under state law or federal law or regulation.

Section 3. Section **49-20-420** is enacted to read:

49-20-420. Insulin discount program.

(1) As used in this section:

(a) "Diabetes" means:

(i) complete insulin deficiency or type 1 diabetes;

(ii) insulin resistant with partial insulin deficiency or type 2 diabetes; or

(iii) elevated blood glucose levels induced by pregnancy or gestational diabetes.

(b) "Discount program" means a process developed by the program that allows participants to purchase insulin at a discounted, post-rebate rate.

(c) "Individual with diabetes" means an individual who has been diagnosed with diabetes and who uses insulin to treat diabetes.

(d) "Insulin" means a prescription drug that contains insulin.

(e) "Participant" means a resident of Utah who:

(i) uses insulin to treat diabetes;

(ii) does not receive health coverage under the program; and

(iii) enrolls in the discount program.

(f) "Prescription drug" means the same as that term is defined in Section 58-17b-102.

(g) "Rebate" means the same as that term is defined in Section 31A-46-102.

(2) Notwithstanding Subsection 49-20-201(1), and for the purpose of the insulin discount program only, the program shall offer an insulin discount program that allows participants to purchase insulin at a discounted, post-rebate price.

(3) The discount program described in Subsection (2) shall:

(a) provide a participant with a card or electronic document that identifies the participant as eligible for the discount;

(b) provide a participant with information about pharmacies that will honor the discount;

(c) allow a participant to purchase insulin at a discounted, post-rebate price; and

(d) provide a participant with instructions to pursue a reimbursement of the purchase price from the participant's health insurer.

(4) The discount program shall charge a price for insulin that allows the program to retain only enough of any rebate for the insulin to make the state risk pool whole for providing discounted insulin to participants.

Section 4. Section **58-17b-608.2** is enacted to read:

58-17b-608.2. Insulin prescriptions and diabetes supplies.

(1) As used in this section, "exhausted prescription" means a prescription for an insulin that the patient is currently using that:

(a) expired no earlier than six months before the patient requests the pharmacist for a refill; or

(b) is not expired and has no refills remaining.

(2) If a valid prescription for insulin includes an authorization for one or more refills, a pharmacist may combine refills to dispense a supply for 90 days but may not exceed the total supply authorized by the refills.

(3) Notwithstanding Section 58-17b-608 and Subsection (2), a pharmacist may, on an emergency basis, dispense a refill for an exhausted prescription based on the prescribing practitioner's instructions for the exhausted prescription in an amount up to a supply for 60 days.

(4) A pharmacist may dispense insulin for an exhausted prescription described in Subsection (3) no more than one time per exhausted prescription.

(5) Before a pharmacist may dispense insulin under Subsection (3), the pharmacist shall:

(a) attempt to contact the prescribing practitioner to inform the prescribing practitioner that the patient's prescription has expired; and

(b) notify the patient of the outcome of the attempt described in Subsection (5)(a).

(6) Within 30 days after the day on which a pharmacist dispenses insulin under Subsection (3), the pharmacist shall inform the prescribing practitioner of:

(a) the amount of insulin dispensed; and

(b) the type of insulin dispensed.

(7) The division, in consultation with the Board of Pharmacy and the Physicians Licensing Board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the safe dispensing of insulin under Subsection (3).

(8) Notwithstanding Section 58-17b-605.5, a pharmacist, when filling a prescription for insulin, may dispense an interchangeable biological product, as defined in Subsection 58-17b-605.5(1), except that the pharmacist may not dispense an interchangeable biological product if a prescribing practitioner prohibits the substitution through a method described in Subsection 58-17b-605.5(6).

(9) A pharmacist may dispense the therapeutic equivalent when filling a prescription for:

(a) a glucometer;

(b) diabetes test strips;

(c) lancets; or

(d) syringes.

Section 5. Section **58-17b-609** is amended to read:

58-17b-609. Limitation on prescriptions and refills -- Controlled Substances Act not affected -- Legend drugs.

(1) Except as provided in [~~Section~~] Sections 58-16a-102 and 58-17b-608.2, a prescription for any prescription drug or device may not be dispensed after one year from the date it was initiated except as otherwise provided in Chapter 37, Utah Controlled Substances Act.

(2) [~~A~~] Except as provided in Section 58-17b-608.2, a prescription authorized to be refilled may not be refilled after one year from the original issue date.

(3) A practitioner may not be prohibited from issuing a new prescription for the same drug orally, in writing, or by electronic transmission.

(4) Nothing in this chapter affects Chapter 37, Utah Controlled Substances Act.

(5) A prescription for a legend drug written by a licensed prescribing practitioner in another state may be filled or refilled by a pharmacist or pharmacy intern in this state if the pharmacist or pharmacy intern verifies that the prescription is valid.

Section 6. **Effective date.**

This bill takes effect on May 12, 2020, except that the amendments to Sections 31A-22-626 and 49-20-420 take effect on January 1, 2021.