

HB

227

<TARGET><BILL>HB 227</BILL><SUBJECT>HB
227</SUBJECT><COMM>HHSS27</COMM></TARGET>

Representative Bob Herron

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State Capitol • Juneau, Alaska 99801-1182

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House District 38
Kuskokwim & Johnson Rivers
Kuskokwim Bay & Nelson Island

Akiachak
Akiak
Atmautluak
Bethel
Chefornak
Eek
Goodnews Bay
Kasigluk
Kipnuk
Kongiganak
Kwethluk
Kwigillingok
Lower Kalskag
Mekoryuk
Mertarvik
Napakiak
Napaskiak
Newtok
Nightmute
Nunapitchuk
Oscarville
Platinum
Quinhagak
Toksook Bay
Tuluksak
Tununak
Tuntutuliak
Upper Kalskag

March 22, 2012

Representative Wes Keller, Chair
House Health and Social Services Committee
State Capitol Room 432
Juneau, AK 99801

Representative Keller,

I respectfully request a hearing of HB 227, "Drug Pricing: Medical Assistance Recipients," in the House Health and Social Services Committee.

Essentially, HB 227 would require the Department of Health and Social Services to integrate generic pharmaceuticals into its existing competitive bid process for name-brand equivalents dispensed through Alaska's Medicaid program. Currently, the program uses both generic and name-brand drugs, but only the name-brands are required to go through the bid process. Some advocates believe adding generics as proposed by HB 227 will save the State a significant amount of money.

A hearing on this issue would be a good conversation starter.

A copy of the bill is attached. My office will forward additional information and support documents as soon as they are available to us.

Thank you for your consideration. Please feel free to contact me, or aide Liz Clement (x6576 direct), with any questions.

A handwritten signature in black ink, appearing to read "Bob Herron".

Representative Bob Herron

ALASKA STATE LEGISLATURE

Representative Bob Herron

Official Business



State Capitol
Juneau, Alaska
99801-1182

House Bill 227 – Drug Pricing: Medical Assistance Recipients

Version 27-LS05521B

SPONSOR STATEMENT

Over the last 25 years, the United States' generic pharmaceutical industry has grown into a multi-billion dollar industry, providing United States Food and Drug Administration (FDA) approved generic versions of brand-name medicines. With every prescription filled with a generic drug, the consumer receives a product similar to its brand-name equivalent - with the same quality and the same result, but at a much lower cost. Typical savings range 30-80%

Millions of Medicaid recipients nationwide now use generics to treat a variety of medical conditions, including infection, heart disease, and cancer. With FDA approval, today there are thousands of generic drugs available - all manufactured and inspected under the same strict quality guidelines as their brand-name equivalents.

For most brand-name products there are multiple generics produced by multiple manufacturers and these drugs vary greatly in price.

While the Alaska Medicaid program has encouraged the use of generic drugs by its internal mechanisms such as the Preferred Drug List (PDL) and other tools, some interested parties believe it has not yet taken advantage of open market competition among generic manufacturers whose pricing of generic drugs vary greatly.

HB 227 requires that the Department of Health & Social Services (DHSS) list on its Preferred Drug List (PDL) only generic and brand name drugs that have gone through an open and competitive bid process, to realize the lowest cost possible for the Alaska Medicaid Program.

Currently generic drugs set their own sales price while brand name drugs are required to go through a competitive bid process. Additionally, brand-name manufacturers pay supplemental rebates to have their products listed as a first choice requiring no special authorization on the Preferred Drug List (PDL) for Alaska's Medicaid patients.

By treating generics equally as a commodity and requiring competitive bidding, some advocates believe the cost of the drugs will be driven down and the State can be assured it is getting the lowest possible price for its product. What that cost might be is unknown – and the only way to ensure that the State of Alaska pays the lowest price is to subject these commodities to open and competitive bid.

HB 227 is unlikely to impose significant administrative costs on the State, as a competitive bid process is already in use for name brand drugs – and it has the potential to, over time, save the Alaska Medicaid program millions of dollars in prescription drug costs.

I appreciate your consideration of HB 227.

27-LS0552VB
Mischel
3/16/12

CS FOR HOUSE BILL NO. 227()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE HERRON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to prescription drug coverage for medical assistance recipients; and**
2 **providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 47.07.065 is amended to read:

5 **Sec. 47.07.065. Payment for prescribed drugs.** The department shall pay for
6 prescribed drugs under AS 47.07.030(b) under regulations adopted by the
7 commissioner in conformity with applicable federal regulations. **The regulations**
8 **must include a uniform procedure for inclusion of a generic and name-brand**
9 **prescription drug on a list of preferred drugs for coverage under the medical**
10 **assistance program under this chapter by an open and competitive process that is**
11 **designed to obtain a prescription drug at the lowest price and without influence.**

12 *** Sec. 2.** AS 47.07.065 is amended by adding a new subsection to read:

13 (b) In this section,

14 (1) "competitive process" means a procedure by which name-brand

1 and generic prescription drugs are selected, by open advertisement and based on
2 scope, specification, terms, and conditions, for placement on a preferred list of
3 prescription drugs for sale to a medical assistance recipient in the state; the procedure
4 must include publicly available criteria by which prescription drugs will be evaluated;

5 (2) "generic drug" means a copy of a name-brand drug that is no
6 longer protected by patents and that is

7 (A) identical in strength, dosage form, and route of
8 administration as the name-brand equivalent;

9 (B) has the same indications, dosing, and labeling; and

10 (C) provides the same efficacy and safety to patients as the
11 name-brand equivalent.

12 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **APPLICABILITY.** Six months after the effective date of this Act the Department of
15 Health and Social Services shall remove from the preferred drug list established and
16 maintained by the department all prescription drugs that have not undergone a competitive
17 process consistent with this Act.

18 * **Sec. 4.** This Act takes effect July 1, 2012.

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF HEALTH CARE SERVICES

Sean Parnell, Governor

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Suite 24 Bldg L
Anchorage, AK 99503-7167
Telephone: (907) 334-2400
FAX (907) 561-1684*

April 6, 2012

The Honorable Wes Keller
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Re: HB 227 – Alaska Medicaid Pharmacy Program Concerns

Dear Representative Keller:

As requested during the April 5, 2012 House Health and Social Services Committee meeting, I have summarized the Department's concerns with the competitive bidding provisions for Medicaid prescriptions drugs proposed in House Bill 227.

Current Program

The Department currently operates a Preferred Drug List program and receives supplemental rebate from brand name medications that are placed on the Preferred Drug List as preferred drugs. These rebates are supplemental because under federal Medicaid rules, prescription drugs are already subject to mandatory rebates. Supplemental rebates are not currently collected on generic medications, though generic manufacturers are not excluded from participating in the supplemental bidding process. With few exceptions, generic medications are significantly less expensive than their brand name counterpart and the Department encourages the use of generic medications to realize this cost savings.

Concern 1: Access to generic medications

Generic medications are commonly available from a variety of manufacturers. Pharmacies will generally only stock one generic manufacturer based on the availability of the product from their wholesaler and the acquisition costs. Generally pharmacies will purchase the least expensive generic product available so that the payment for the medication from Medicaid, or other insurance plans, adequately covers their acquisition costs. Wholesalers may only stock a few particular manufacturers' products due to contracting agreements. These contracting agreements would prohibit a pharmacy from obtaining a non-contract manufacturer's product through their wholesaler if the non-contract manufacturer was selected as the "authorized generic" manufacturer on the Preferred Drug List. If the

pharmacy was unable to obtain the “authorized generic” then the recipient may be denied access to their prescription medications because the Department would not be able to pay for the particular generic manufacturer’s medication that the pharmacy had in stock.

Another concern is that if a pharmacy is unable to obtain or stock the “authorized generic” then they may be forced to dispense the more expensive brand name medication in lieu of the less expensive generic medication. On average a prescription for a generic medication is \$170 less than the same prescription for the brand name version of the same drug. Any potential savings from HB 227 would quickly be exhausted if the Department was forced to reimburse for the more expensive brand name products due to supply chain or access issues.

Concern 2: Rebates (Mandatory and Supplemental)

HB 227 Medicaid would be required to operate a Preferred Drug List whether or not it yielded a positive return on investment for the State. While the Preferred Drug List program has yielded positive returns in the past, changes in the Affordable Care Act may trigger changes in the way the State is currently running the Medicaid Pharmacy program. The Affordable Care Act raised the mandatory federal Medicaid rebates from 15.1% of AMP (“Average Manufacturing Price”) for brand name medications and 11.1% of AMP for generic medications to 23.1% and 13.1% of AMP respectively. The changes in the mandatory federal rebate have begun to impact the collection of supplemental rebates currently seen with the current Preferred Drug List Program. Below is an example of how the increased mandatory federal rebates can impact the State’s supplemental rebates (note: this example does not include actual AMP values or manufacturer bids as those numbers are confidential):

Before ACA (brand)

Federal Rebate = 15.1% of AMP
AMP = \$50
Manufacturer Rebates (bid) = 25% of AMP total
Supplemental Rebate = 25% - 15.1% = 9.9% AMP
Supplemental Rebate \$ = \$4.95

After ACA (brand)

Federal Rebate = 23.1% of AMP
AMP = \$50
Manufacturer Rebates (bid) = 25% of AMP total
Supplemental Rebate = 25% - 23.1% = 1.9% AMP
Supplemental Rebate \$ = \$0.95

Manufacturers have been buffered by the increased federal rebates in the Affordable Care Act as the increase has been taken from the supplemental rebates offered as part of the Preferred Drug List programs. From the manufacturers perspective they are still paying the same amount of rebates to “government” and whether the rebates go to the federal or State government is of little concern. If manufacturers continue to pull back on their supplemental rebates due to the increased federal rebates, the Department may find that operating a Preferred Drug List program no longer yields a positive return on investment. The Department will continue to monitor the return on investment over the next 12 – 18 months to determine whether continuing the Preferred Drug List program is in the best interest of the State or whether alternate initiatives are needed to address changes in the industry. The Department would like to retain the option of discontinuing the Preferred Drug List program if the return on investment falls below 1:1 or if alternate options could yield a better return for the State.

Concern 3: State Maximum Allowable Cost Pricing

While the Department does not currently collect supplemental rebates from generic medication manufacturers, the Department does realize significant savings through the operation of a State Maximum Allowable Cost pricing program. The State Maximum Allowable Cost encourages pharmacies to purchase and dispense the most cost effective generic manufacturer's medications by setting a ceiling for reimbursement for a generic product. If the pharmacy chooses to purchase a more expensive generic product they would still only be paid the State Maximum Allowable Cost price and not a higher price.

The State Maximum Allowable Cost prices are derived from a variety of published list prices and designed to adequately cover a pharmacy's acquisition cost to preserve access to generic medications for recipients and maximize cost savings for the State. The State Maximum Allowable Cost prices are adjusted weekly to account for supply chain issues, drug shortages, and manufacturer pricing changes of medications that may impact a pharmacy's ability to purchase generic medications below the established State Maximum Allowable Cost price. The State Maximum Allowable Cost program has yielded significant savings for the State while preserving recipient's access to medications and encouraging pharmacies to purchase the lowest cost generic products without incurring supply chain issues that would be expected with an "authorized generic" bidding program.

An example of how the State Maximum Allowable Cost price is below (note: this example does not include actual wholesale acquisition cost ("WAC") but is derived from the reimbursement data for a commonly used cholesterol medication):

<u>Drug</u>	<u>Dosage Units</u>	<u>WAC</u>	<u>SMAC</u>	<u>Medicaid Amt</u>	<u>Savings</u>
Branded Drug A	30	\$170.00	\$2.00	\$2.00	\$168.00
Generic Drug A (1)	30	\$6.15	\$2.00	\$2.00	\$4.15
Generic Drug A (2)	30	\$4.35	\$2.00	\$2.00	\$2.35
Generic Drug A (3)	30	\$2.70	\$2.00	\$2.00	\$0.70
Generic Drug A (4)	30	\$2.00	\$2.00	\$2.00	\$0.00

The use of a State Maximum Allowable Cost price severely reduces, if not eliminates, any savings potential from a competitive bidding process for generic medications because the lowest cost generic manufacturers will be unlikely to offer rebates on their products.

Concern 4: Generic manufacturer participation in a bidding process

HB 227 would, by law, require the Department to operate a Preferred Drug List and establish a competitive bidding process to include brand or generic medications on the Preferred Drug List. A few states have attempted to engage generic manufacturers in a bidding process to establish an "authorized generic" program with little to no success. Florida has the authorization to establish an "authorized generic" program but received no participation by generic manufacturers, which led to the initiative never being implemented. California also attempted to establish an "authorized generic" program but it was abandoned before implementation due to supply chain, access, and legal issues that were encountered prior to implementation. West Virginia did pilot a similar program but discontinued

Representative Wes Keller

April 6, 2012

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the program shortly after it began because it failed to realize savings and it created numerous access issues and a lot of confusion from providers. Based on these previous attempts to establish similar programs, the Department is concerned that the generic manufacturers would not participate in a bidding process and that HB 227 would not yield additional savings through generic medication supplemental rebates.

Thank you for the opportunity to address these concerns with HB 227 to the House Health and Social Services Committee. I would be happy to address any follow-up questions you have to this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chad Hope', with a horizontal line extending to the right.

Chad Hope, Pharm.D.
Medicaid Pharmacy Program Manager

cc: William J. Streur, Commissioner
Kimberli Poppe-Smart, Deputy Commissioner
Jon Sherwood
Wilda Laughlin