

Amendment No. 613

Assembly Amendment to Senate Bill No. 396 First Reprint	(BDR 38-443)
<b>Proposed by:</b> Assembly Committee on Health and Human Services	
<b>Amends:</b> Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

SRF/EWR



Date: 5/16/2021

S.B. No. 396—Revises provisions relating to the purchasing of prescription drugs.  
(BDR 38-443)





SENATE BILL NO. 396—COMMITTEE ON  
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE COMMITTEE TO CONDUCT  
AN INTERIM STUDY CONCERNING THE  
COSTS OF PRESCRIPTION DRUGS)

MARCH 26, 2021

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the purchasing of prescription drugs.  
(BDR 38-443)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to prescription drugs; authorizing public agencies of this State to enter into agreements with certain entities in other jurisdictions for the collaborative purchasing of prescription drugs; ~~exempting a contract between the Department of Health and Human Services and a pharmacy benefit manager or health maintenance organization entered into pursuant to such an agreement from certain requirements;~~ and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law authorizes a public agency of this State to enter into a joint or cooperative  
2 agreement with a public agency of this State or another state or the Federal Government to  
3 exercise any power, privilege or authority of the public agency. (NRS 277.110) Existing law  
4 additionally authorizes state agencies to cooperate with other public entities within or outside  
5 of this State to purchase prescription drugs, pharmaceutical services, or medical supplies and  
6 related services. (NRS 333.435) **Sections 3.3 and 3.6** of this bill additionally authorize public  
7 agencies in this State to enter into agreements for the purchase of prescription drugs,  
8 pharmaceutical services, or medical supplies and related services with private entities within  
9 or outside of this State. **Sections 1 and 2** of this bill authorize the Department of Health and  
10 Human Services to enter into such an agreement for the purchase of prescription drugs for  
11 Medicaid or the Children’s Health Insurance Program.

12 ~~Existing law imposes certain requirements concerning transparency, rebates and auditing~~  
13 ~~on any contract between the Department and a pharmacy benefit manager or health~~  
14 ~~maintenance organization to manage, direct and coordinate payments and rebates for~~  
15 ~~prescription drugs or other services and payments relating to the provision of prescription~~  
16 ~~drugs under the State Plan for Medicaid and the Children’s Health Insurance Program. (NRS~~  
17 ~~422.4053, 422.4056) Sections 2 and 3 of this bill exempt a contract between the Department~~  
18 ~~and a pharmacy benefit manager or health maintenance organization entered into pursuant to~~  
19 ~~an agreement for the collaborative purchasing of prescription drugs from those requirements.]~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1       **Section 1.** NRS 422.4025 is hereby amended to read as follows:

2       422.4025 1. The Department shall:

3       (a) By regulation, develop a list of preferred prescription drugs to be used for  
4       the Medicaid program and the Children's Health Insurance Program, and each  
5       public or nonprofit health benefit plan that elects to use the list of preferred  
6       prescription drugs as its formulary pursuant to NRS 287.012, 287.0433 or  
7       687B.407; and

8       (b) Negotiate and enter into agreements to purchase the drugs included on the  
9       list of preferred prescription drugs on behalf of the health benefit plans described in  
10       paragraph (a) or enter into a contract pursuant to NRS 422.4053 with a pharmacy  
11       benefit manager, ~~for~~ health maintenance organization ~~or~~ *or one or more public or*  
12       *private entities in this State, the District of Columbia or other states or territories*  
13       *of the United States*, as appropriate, to negotiate such agreements.

14       2. The Department shall, by regulation, establish a list of prescription drugs  
15       which must be excluded from any restrictions that are imposed by the Medicaid  
16       program on drugs that are on the list of preferred prescription drugs established  
17       pursuant to subsection 1. The list established pursuant to this subsection must  
18       include, without limitation:

19       (a) Prescription drugs that are prescribed for the treatment of the human  
20       immunodeficiency virus or acquired immunodeficiency syndrome, including,  
21       without limitation, protease inhibitors and antiretroviral medications;

22       (b) Antirejection medications for organ transplants;

23       (c) Antihemophilic medications; and

24       (d) Any prescription drug which the Board identifies as appropriate for  
25       exclusion from any restrictions that are imposed by the Medicaid program on drugs  
26       that are on the list of preferred prescription drugs.

27       3. The regulations must provide that the Board makes the final determination  
28       of:

29       (a) Whether a class of therapeutic prescription drugs is included on the list of  
30       preferred prescription drugs and is excluded from any restrictions that are imposed  
31       by the Medicaid program on drugs that are on the list of preferred prescription  
32       drugs;

33       (b) Which therapeutically equivalent prescription drugs will be reviewed for  
34       inclusion on the list of preferred prescription drugs and for exclusion from any  
35       restrictions that are imposed by the Medicaid program on drugs that are on the list  
36       of preferred prescription drugs; and

37       (c) Which prescription drugs should be excluded from any restrictions that are  
38       imposed by the Medicaid program on drugs that are on the list of preferred  
39       prescription drugs based on continuity of care concerning a specific diagnosis,  
40       condition, class of therapeutic prescription drugs or medical specialty.

41       4. The list of preferred prescription drugs established pursuant to subsection 1  
42       must include, without limitation, any prescription drug determined by the Board to  
43       be essential for treating sickle cell disease and its variants.

44       5. The regulations must provide that each new pharmaceutical product and  
45       each existing pharmaceutical product for which there is new clinical evidence  
46       supporting its inclusion on the list of preferred prescription drugs must be made  
47       available pursuant to the Medicaid program with prior authorization until the Board  
48       reviews the product or the evidence.

49       6. On or before February 1 of each year, the Department shall:

1 (a) Compile a report concerning the agreements negotiated pursuant to  
2 paragraph (b) of subsection 1 and contracts entered into pursuant to NRS 422.4053  
3 which must include, without limitation, the financial effects of obtaining  
4 prescription drugs through those agreements and contracts, in total and aggregated  
5 separately for agreements negotiated by the Department, contracts with a pharmacy  
6 benefit manager, ~~and~~ contracts with a health maintenance organization ~~and~~ *and*  
7 *contracts with public and private entities from this State, the District of Columbia*  
8 *and other states and territories of the United States;* and

9 (b) Post the report on an Internet website maintained by the Department and  
10 submit the report to the Director of the Legislative Counsel Bureau for transmittal  
11 to:

12 (1) In odd-numbered years, the Legislature; or

13 (2) In even-numbered years, the Legislative Commission.

14 **Sec. 2.** NRS 422.4053 is hereby amended to read as follows:

15 422.4053 1. Except as otherwise provided in subsection 2, the Department  
16 shall directly manage, direct and coordinate all payments and rebates for  
17 prescription drugs and all other services and payments relating to the provision of  
18 prescription drugs under the State Plan for Medicaid and the Children's Health  
19 Insurance Program.

20 2. The Department may enter into a contract with:

21 (a) A pharmacy benefit manager for the provision of any services described in  
22 subsection 1.

23 (b) A health maintenance organization pursuant to NRS 422.273 for the  
24 provision of any of the services described in subsection 1 for recipients of Medicaid  
25 or recipients of insurance through the Children's Health Insurance Program who  
26 receive coverage through a Medicaid managed care program.

27 (c) *One or more public or private entities from this State, the District of*  
28 *Columbia or other states or territories of the United States for the collaborative*  
29 *purchasing of prescription drugs in accordance with subsection 3 of NRS*  
30 *277.110. ~~If such a contract requires the Department to enter into a contract with~~*  
31 *a pharmacy benefit manager or health maintenance organization for the*  
32 *provision of any of the services described in subsection 1, the contract is not*  
33 *subject to the provisions of subsection 3, paragraph (b) of subsection 4 or NRS*  
34 *422.4056.*

35 3. ~~Except as otherwise provided in paragraph (c) of subsection 2, a~~  
36 contract entered into pursuant to *paragraph (a) or (b) of* subsection 2 must:

37 (a) Include the provisions required by NRS 422.4056; and

38 (b) Require the pharmacy benefit manager or health maintenance organization,  
39 as applicable, to disclose to the Department any information relating to the services  
40 covered by the contract, including, without limitation, information concerning  
41 dispensing fees, measures for the control of costs, rebates collected and paid and  
42 any fees and charges imposed by the pharmacy benefit manager or health  
43 maintenance organization pursuant to the contract.

44 4. In addition to meeting the requirements of subsection 3, a contract entered  
45 into pursuant to:

46 (a) Paragraph (a) of subsection 2 may require the pharmacy benefit manager to  
47 provide the entire amount of any rebates received for the purchase of prescription  
48 drugs, including, without limitation, rebates for the purchase of prescription drugs  
49 by an entity other than the Department, to the Department.

50 (b) Paragraph (b) of subsection 2 must ~~except as otherwise provided in~~  
51 ~~paragraph (c) of subsection 2,~~ require the health maintenance organization to  
52 provide to the Department the entire amount of any rebates received for the  
53 purchase of prescription drugs, including, without limitation, rebates for the

1 purchase of prescription drugs by an entity other than the Department, less an  
 2 administrative fee in an amount prescribed by the contract. The Department shall  
 3 adopt policies prescribing the maximum amount of such an administrative fee.

4 **Sec. 3.** ~~NRS 422.4056 is hereby amended to read as follows:~~

5 ~~422.4056 1. [Any] Except as otherwise provided in paragraph (c) of~~  
 6 ~~subsection 2 of NRS 422.4053, any contract between the Department and a~~  
 7 ~~pharmacy benefit manager or health maintenance organization entered into~~  
 8 ~~pursuant to NRS 422.4053 must require the pharmacy benefit manager or health~~  
 9 ~~maintenance organization, as applicable, to:~~

10 ~~(a) Submit to and cooperate with an annual audit by the Department to evaluate~~  
 11 ~~the compliance of the pharmacy benefit manager or health maintenance~~  
 12 ~~organization with the agreement and generally accepted accounting and business~~  
 13 ~~practices. The audit must analyze all claims processed by the pharmacy benefit~~  
 14 ~~manager or health maintenance organization pursuant to the agreement.~~

15 ~~(b) Obtain from an independent accountant, at the expense of the pharmacy~~  
 16 ~~benefit manager or health maintenance organization, as applicable, an annual audit~~  
 17 ~~of internal controls to ensure the integrity of financial transactions and claims~~  
 18 ~~processing.~~

19 ~~2. The Department shall post the results of any audit conducted pursuant to~~  
 20 ~~paragraph (a) of subsection 1 on an Internet website maintained by the~~  
 21 ~~Department.] (Deleted by amendment.)~~

22 **Sec. 3.3.** NRS 277.110 is hereby amended to read as follows:

23 277.110 Except as limited by NRS 280.105 and 711.175:

24 1. Any power, privilege or authority exercised or capable of exercise by a  
 25 public agency of this State, including, but not limited to, law enforcement, may be  
 26 exercised jointly with any other public agency of this State, and jointly with any  
 27 public agency of any other state or of the United States to the extent that the laws of  
 28 such other state or of the United States permit such joint exercise. Any agency of  
 29 this State when acting jointly with any other public agency may exercise all the  
 30 powers, privileges and authority conferred by NRS 277.080 to 277.180, inclusive,  
 31 upon a public agency.

32 2. Any two or more public agencies may enter into agreements with one  
 33 another for joint or cooperative action pursuant to the provisions of NRS 277.080 to  
 34 277.170, inclusive.

35 3. *A public agency may enter into an agreement with any other public*  
 36 *agency or private entity in this State, the District of Columbia or any other state*  
 37 *or territory of the United States or any agency of the United States for the*  
 38 *purchase of prescription drugs, pharmaceutical services, or medical supplies and*  
 39 *related services to the extent that the laws applicable to each participating agency*  
 40 *and entity permit such an agreement.*

41 4. If it is reasonably foreseeable that a participating public agency will be  
 42 required to:

43 (a) Expend more than \$25,000 to carry out ~~[such]~~ an agreement ~~[,]~~ *described in*  
 44 *this section*, the agreement:

45 (1) Must be in writing.

46 (2) Becomes effective only upon ratification by appropriate ordinance,  
 47 resolution or otherwise pursuant to law on the part of the governing bodies of the  
 48 participating public agencies.

49 (b) Expend \$25,000 or less to carry out such an agreement, each participating  
 50 public agency shall maintain written documentation of the terms of the agreement  
 51 for at least 3 years after the date on which the agreement was entered into.

1       **Sec. 3.6.** NRS 333.435 is hereby amended to read as follows:

2       333.435 1. Except as otherwise provided in subsection 2, a using agency  
3 shall purchase prescription drugs, pharmaceutical services, or medical supplies and  
4 related services, or any combination thereof, only through the Purchasing Division.

5       2. A using agency may, on its own behalf or in cooperation with one or more  
6 other using agencies or *, in accordance with the provisions of subsection 3 of NRS*  
7 *277.110*, other governmental entities *or private entities* within or outside this State,  
8 purchase prescription drugs, pharmaceutical services, or medical supplies and  
9 related services from an entity other than the Purchasing Division if the using  
10 agency or using agencies or other governmental entities, as applicable, can obtain  
11 the best value for prescription drugs, pharmaceutical services, or medical supplies  
12 and related services from the other entity and the Purchasing Division is unable to  
13 match or exceed that best value in a timely manner.

14       3. If a using agency purchases prescription drugs, pharmaceutical services, or  
15 medical supplies and related services from an entity other than the Purchasing  
16 Division pursuant to subsection 2, the using agency shall report to the Purchasing  
17 Division, within 10 days after the initial purchase:

18       (a) The purchase price for the prescription drugs, pharmaceutical services, or  
19 medical supplies and related services; and

20       (b) The name, address and telephone number of the entity that sold the using  
21 agency the prescription drugs, pharmaceutical services, or medical supplies and  
22 related services.

23       **Sec. 4.** (Deleted by amendment.)

24       **Sec. 5.** The provisions of subsection 1 of NRS 218D.380 do not apply to any  
25 provision of this act which adds or revises a requirement to submit a report to the  
26 Legislature.

27       **Sec. 6.** This act becomes effective upon passage and approval.