New Hampshire targets Rx costs, joins other states to add insulin cap

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In this article

A comprehensive New Hampshire law (2020 Ch. 13, HB 1280) sets price limits for insulin, requires coverage for certain prescription drugs, establishes a prescription drug affordability board to set pricing targets for public sector plans, creates a "competitive prescription drug marketplace," and authorizes a wholesale importation program to purchase prescription drugs from Canada, subject to federal approval.

Drug price limits and coverage

Beginning Sept. 1, 2020, the new law requires that health insurers that cover insulin limit individuals' insulin costs to $30 per 30-day supply without applying a deductible. The cost limit must apply for the initial prescription and each refill, including early refills. Beginning Jan. 1, 2021, health insurers must provide each enrolled New Hampshire resident with coverage for epinephrine auto-injectors. The coverage can't impose cost-sharing amounts higher than for other similar benefits. These mandates don't apply to self-insured ERISA plans.

Other insulin cost restrictions

As the price of insulin skyrocketed, New Hampshire implemented restrictions for insured plans. In 2019, federal regulators, under IRS Notice 2019-45, added insulin to the list of preventive care benefits that high-deductible health plans (HDHPs) paired with health savings accounts (HSAs) can cover before enrollees have met the deductible, allowing for more cost-sharing restrictions. Insulin cost-sharing restrictions have been instituted in additional states as follows:

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- A 2019 Colorado law (Ch. 248, HB 1216) caps cost sharing at $100 for a 30-day supply of insulin, regardless of the quantity or type of insulin needed to fill the covered person's prescription. The law applies to insured policies issued or renewed in Colorado on or after Jan. 1, 2020.

- An Illinois law (2020 Ch. 73, SB 667) limits cost sharing to $100 for a 30-day supply of insulin, regardless of quantity or type. The law applies to HMOs, individual and group health insurance policies, and state and local self-insured governmental health plans issued or renewed in the state on or after Jan. 1, 2021.

- A Maine law (2020 Ch. 666, LD 2096) requires health plans issued or renewed on or after Jan. 1, 2021, to cap cost sharing at $35 per 30-day supply of insulin before any deductible applies, regardless of the quantity.

- The New York budget (2020 Part DDD, SB 7506,), effective June 30, 2020, imposes a cost-sharing limit of $100 for a 30-day supply of insulin, regardless of the amount or type needed or any other cost-sharing requirements

- In New Mexico, health insurance policies with plan years beginning on or after Jan. 1, 2021, can't require an individual with diabetes to pay more than $25 for a preferred formulary prescription insulin drug or a medically necessary alternative per 30-day supply. The law (2020 HB 292) restricts the cost sharing, but doesn't include indexing for the amount.

- In Utah, for insured health plans issued on or after Jan. 1, 2021, cost sharing for at least one insulin prescription in each therapy category can't exceed $30 for a 30-day supply before any plan deductible applies — under the new law (2020 HB 207). The plan can base cost sharing on participation in wellness-related activities for diabetes; purchasing the insulin at an in-network pharmacy; or choosing an insulin prescription from the lowest tier of the health benefit plan's formulary.

- A new Virginia law (2020 Ch. 881, HB 66) limits cost sharing to $50 for a 30-day supply of insulin — regardless of the amount or type of insulin needed — for plans issued or renewed on or after Jan. 1, 2021.

- A Washington law (2020 Ch. 245, SB 6087) requires health plans issued or renewed on or after Jan. 1, 2021, to cap cost sharing to $100 for a 30-day supply of insulin before any deductible applies. The law applies to insured policies issued in Washington and may apply to insured plans issued elsewhere to the extent they cover Washington residents. The cost restriction expires after 2022.

- A West Virginia law (2020 Ch. 5, HB 4543) requires health insurance plans issued or renewed on or after July 1, 2020, to cap an individual's cost sharing at $100 for a 30-day supply of insulin, regardless of the quantity or type of prescription insulin needed.

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Affordability board

Beginning Nov. 1, 2020, the New Hampshire Prescription Affordability Board must annually report to state lawmakers strategies for optimizing prescription drug affordability for public plans that provide health coverage for state, county and municipal employees. The board also will set price targets and develop and implement policies and procedures for collecting, processing, storing and analyzing clinical, financial, quality restructuring and drug price data. Prescription drug manufacturers also must report to certain cost increase data and annually register with the board beginning Jan. 1, 2021.

Assessment

Funding for the affordability board will come, in part, from assessments on health insurer premiums, third-party administrators, administrative services providers for health plan sponsors, prescription benefit managers, and drug manufacturers. The annual assessment amount will be determined by affordability board rules and will depend on the board's expenses.

Prescription drug competitive marketplace

The legislation also authorizes the Department of Administrative Services (DAS) to establish the New Hampshire prescription drug competitive marketplace. The agency is charged with developing a dynamically competitive "reverse auction" process for selecting the state health plan's pharmacy benefit managers (PBMs) through an automated, transparent bidding process conducted online. It will start with an opening round of bids and allows qualified PBM bidders to counteroffer a lower price for as many rounds of bidding as the DAS determines. After completing the first PBM reverse auction, DAS could open the process to self-insured private employers.

Drug imports

Following the Trump administration's Safe Import Action plan and proposed regulations from the federal Food and Drug Administration (FDA), the New Hampshire law authorizes state regulators to work with the US Department of Health and Human Services (HHS) to design the structure and operation of a program to import drugs from Canada. The law calls for the state's Department of Health and Human Services to organize the plan and submit a request for approval to HHS by Feb. 1, 2021.

Other states' importation proposals

The concept of importing drugs, long discussed by several states, has garnered renewed attention at the state level since the president announced his plan. In addition to New Hampshire, Florida, Vermont and Maine have moved forward on drug importation.

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- A Florida concept paper, submitted in August 2019, calls for narrower payer participation. Florida's legislation (2019 Ch. 2019-99) would import drugs only for consumers served by public payers, including the state's agencies and its Medicaid program. In contrast, a Vermont program would comprise residents with commercial health plans, with possible expansion to public payers.

- A Vermont concept paper for the state's wholesale prescription drug importation program was submitted to HHS. Preliminary projections estimate Vermont's proposed program to import drugs from Canada would generate $5 million in annual savings. State regulators expect to pass these savings along to consumers via lowered premiums, deductibles and copays. Regulators had planned to submit a formal application to HHS as soon as July 2020. However, there's no indication they have.

- A 2019 Maine law (2019 Ch. 472, LD 1272), authorized state regulators to seek HHS approval to establish a wholesale prescription drug importation program. In the absence of guidance from the federal government, the Maine Department of Health and Human Services released a regulation to authorize application for federal approval of a drug importation program as soon as practicable after federal rules are finalized.

Employer impact

The most immediate impact of the New Hampshire law may be insulin cost-sharing restrictions. These caps might be welcome by patients, but likely mean the insurer will need to absorb costs that exceed the wholesale acquisition price and could pass that extra cost to employers purchasing insured healthcare for employees in New Hampshire. Additionally, any assessments the new board applies to health plans could raise premiums for insured plans and also may apply directly to third-party administrators and health carriers that provide administrative services only to plan sponsors.

The long-range intention is to reduce prescription drug prices for New Hampshire residents. However, drug importation proposals at the federal level have stalled as federal regulators focus on COVID-19 treatments and vaccine options. New Hampshire's efforts to address prescription drug pricing in their state employee health plans may be instructive for testing different reforms, but it's unclear whether the state's new affordability board can successfully implement price targets without more systemic changes. Employers will want to continue monitoring federal actions that may signal additional options at the state level.

Related resources

Non-Mercer resources

- 2020 Ch. 13, HB 1280 (New Hampshire General Court, June 30, 2020)

- IRS Notice 2019-45 (IRS, July 17, 2019)

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- Safe Importation Action plan (HHS and FDA, July 31, 2019)
- FDA proposed regulations (Federal Register, Dec. 23, 2019)

Mercer Law & Policy resources

- Top 10 compliance issues for health and leave benefits in 2021 (July 20, 2020)
- Prescription drug importation gets renewed attention (Feb. 21, 2020)

Other Mercer resource

- Insulin cost is falling for Medicare members — what about for yours? (June 4, 2020)

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