

# STATE OF NEW YORK

9020

## IN SENATE

October 2, 2020

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law, in relation to enacting the "New York affordable drug manufacturing act of 2020"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "New York affordable drug manufacturing act of 2020".

3 § 2. Article 2-A of the public health law is amended by adding a new  
4 title IV to read as follows:

### TITLE IV

#### NEW YORK AFFORDABLE DRUG MANUFACTURING ACT OF 2020

##### Section 282. Definitions.

8 283. Partnerships; production and distribution of prescription  
9 drugs.

10 284. Reporting.

11 285. Proprietary information.

12 § 282. Definitions. As used in this title, the following terms shall  
13 have the following meanings:

14 1. "Generic drug" means a drug that is approved pursuant to subdivi-  
15 sion (j) of section 355 of the Federal Food, Drug, and Cosmetic Act (21  
16 U.S.C. Sec. 301 et seq.), or a biosimilar, as defined under the federal  
17 Public Health Service Act (42 U.S.C. Sec. 262).

18 2. "Partnerships" shall include, but are not limited to, agreements  
19 for the procurement of generic prescription drugs by way of contracts or  
20 purchasing by a payer, state governmental agency, group purchasing  
21 organization, nonprofit organization, or other entity.

22 § 283. Partnerships; production and distribution of prescription  
23 drugs. 1. (a) The commissioner shall enter into partnerships, consistent  
24 with paragraph (b) of subdivision two of this section, in consultation  
25 with all appropriate state agencies and the department of health or  
26 equivalent institution of any other state as determined by the commis-  
27 sioner, to increase competition, lower prices, and address shortages in  
28 the market for generic prescription drugs, to reduce the cost of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 prescription drugs for public and private purchasers, taxpayers, and  
2 consumers, and to increase patient access to affordable drugs.

3 (b) The department shall have the ability to hire staff to oversee and  
4 project-manage the partnerships for manufacturing or distribution of  
5 generic prescription drugs.

6 2. (a) The commissioner shall enter into partnerships resulting in the  
7 production or distribution of generic prescription drugs, with the  
8 intent that these drugs be made widely available to public and private  
9 purchasers, facilities licensed pursuant to article twenty-eight of this  
10 chapter, and pharmacies as defined in section six thousand eight hundred  
11 two of the education law, as appropriate. The generic prescription drugs  
12 shall be produced or distributed by a drug company or generic drug  
13 manufacturer that is registered with the United States Food and Drug  
14 Administration.

15 (b) (i) The commissioner shall only enter into partnerships pursuant  
16 to paragraph (a) of this subdivision to produce a generic prescription  
17 drug at a price that results in savings, targets failures in the market  
18 for generic drugs, and improves patient access to affordable medica-  
19 tions.

20 (ii) For top drugs identified pursuant to the criteria listed in  
21 subparagraph (v) of this paragraph, the department shall determine if  
22 viable pathways exist for partnerships to manufacture or distribute  
23 generic prescription drugs by examining the relevant legal, market,  
24 policy, and regulatory factors.

25 (iii) The department shall consider the following, if applicable, when  
26 setting the price of the generic prescription drug:

27 (1) United States Food and Drug Administration user fees.

28 (2) Abbreviated new drug application acquisition costs amortized over  
29 a five-year period.

30 (3) Mandatory rebates.

31 (4) Total contracting and production costs for the drug, including a  
32 reasonable amount for administrative, operating, and rate-of-return  
33 expenses of the drug company or generic drug manufacturer.

34 (5) Research and development costs attributed to the drug over a five-  
35 year period.

36 (6) Other initial start-up costs amortized over a five-year period.

37 (iv) Each drug shall be made available to providers, patients, and  
38 purchasers at a transparent price and without rebates, other than feder-  
39 ally required rebates.

40 (v) The department shall prioritize the selection of generic  
41 prescription drugs that have the greatest impact on lowering drug costs  
42 to patients, increasing competition and addressing shortages in the  
43 prescription drug market, improving public health, or reducing the cost  
44 of prescription drugs to public and private purchasers.

45 (c) (i) In identifying generic prescription drugs to be produced, the  
46 department shall consider prescription drug retail price lists made  
47 pursuant to section two hundred seventy-eight of this article.

48 (ii) The partnerships entered into pursuant to paragraph (a) of this  
49 subdivision shall include the production of at least one form of insu-  
50 lin, provided that a viable pathway for manufacturing a more affordable  
51 form of insulin exists.

52 (iii) The department shall prioritize drugs for chronic and high-cost  
53 conditions.

54 (d) The department shall consult with all of the following public and  
55 private purchasers to assist in developing a list of generic  
56 prescription drugs to be manufactured or distributed through partner-

1 ships and to determine the volume of each generic prescription drug that  
2 can be procured over a multiyear period to support a market for a lower  
3 cost generic prescription drug:

4 (i) The department of mental hygiene, the office for people with  
5 developmental disabilities, the office of general services, and the  
6 department of corrections and community supervision, or the entities  
7 acting on behalf of each of those state purchasers.

8 (ii) Health insurers licensed pursuant to the insurance law.

9 (iii) Hospitals.

10 (iv) Any other entity as determined by the commissioner.

11 (e) Before effectuating a partnership pursuant to this section, the  
12 commissioner shall determine minimum thresholds for procurement of an  
13 entity's expected volume of a targeted drug from the company or manufac-  
14 turer over a multiyear period.

15 (f) All state agencies shall be required to purchase prescription  
16 drugs from the department or entities that contract or partner with the  
17 department pursuant to this chapter.

18 (g) The department shall not be required to consult with every entity  
19 listed in subparagraphs (ii), (iii) and (iv) of paragraph (d) of this  
20 subdivision, so long as purchaser engagement includes a reasonable  
21 representation from these groups.

22 § 284. Reporting. 1. On or before January first, two thousand twenty-  
23 three, the department shall submit a report to the legislature that  
24 assesses the feasibility of directly manufacturing generic prescription  
25 drugs and selling generic prescription drugs at a fair price. The report  
26 shall include, but not be limited to, an analysis of governance struc-  
27 ture options for manufacturing functions, including chartering a private  
28 organization, a public-private partnership, or a public board of direc-  
29 tors.

30 2. On or before March first, two thousand twenty-two, the department  
31 shall report to the legislature on both of the following:

32 (a) A description of the status of all drugs targeted under this chap-  
33 ter.

34 (b) An analysis of how the activities of the department may impact  
35 competition, access to targeted drugs, the costs of those drugs, and the  
36 costs of generic prescription drugs to public and private purchasers.

37 § 285. Proprietary information. Notwithstanding any provision of law  
38 to the contrary, all nonpublic information and documents obtained by the  
39 department pursuant to this title shall not be required to be disclosed  
40 pursuant to article six of the public officers law.

41 § 3. Severability. If any clause, sentence, paragraph, section or part  
42 of this act shall be adjudged by any court of competent jurisdiction to  
43 be invalid and after exhaustion of all further judicial review, the  
44 judgment shall not affect, impair or invalidate the remainder thereof,  
45 but shall be confined in its operation to the clause, sentence, para-  
46 graph, section or part of this act directly involved in the controversy  
47 in which the judgment shall have been rendered.

48 § 4. This act shall take effect immediately.