

STATE OF NEW YORK

3048--A

2021-2022 Regular Sessions

IN SENATE

January 27, 2021

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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".

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

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.

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

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1 § 283. Partnerships; production and distribution of prescription
2 drugs. 1. (a) The commissioner shall enter into partnerships, consistent
3 with paragraph (b) of subdivision two of this section, in consultation
4 with all appropriate state agencies and the department of health or
5 equivalent institution of any other state as determined by the commis-
6 sioner, to increase competition, lower prices, and address shortages in
7 the market for generic prescription drugs, to reduce the cost of
8 prescription drugs for public and private purchasers, taxpayers, and
9 consumers, and to increase patient access to affordable drugs.

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

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

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

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

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

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

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

37 (3) Mandatory rebates.

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

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

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

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

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

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

55 (ii) The partnerships entered into pursuant to paragraph (a) of this
56 subdivision shall include the production of at least one form of insu-

1 lin, provided that a viable pathway for manufacturing a more affordable
2 form of insulin exists.

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

5 (d) The department shall consult with all of the following public and
6 private purchasers to assist in developing a list of generic
7 prescription drugs to be manufactured or distributed through partner-
8 ships and to determine the volume of each generic prescription drug that
9 can be procured over a multiyear period to support a market for a lower
10 cost generic prescription drug:

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

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

16 (iii) Hospitals.

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

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

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

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

29 § 284. Reporting. 1. On or before January first, two thousand twenty-
30 five, the department shall submit a report to the legislature that
31 assesses the feasibility of directly manufacturing generic prescription
32 drugs and selling generic prescription drugs at a fair price. The report
33 shall include, but not be limited to, an analysis of governance struc-
34 ture options for manufacturing functions, including chartering a private
35 organization, a public-private partnership, or a public board of direc-
36 tors.

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

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

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

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

48 § 3. Severability. If any clause, sentence, paragraph, section or part
49 of this act shall be adjudged by any court of competent jurisdiction to
50 be invalid and after exhaustion of all further judicial review, the
51 judgment shall not affect, impair or invalidate the remainder thereof,
52 but shall be confined in its operation to the clause, sentence, para-
53 graph, section or part of this act directly involved in the controversy
54 in which the judgment shall have been rendered.

55 § 4. This act shall take effect immediately.