

STATE OF NEW YORK

8901

IN SENATE

April 27, 2022

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

AN ACT to amend the insurance law, in relation to requiring a referenced rate for prescription drugs

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

1 Section 1. The insurance law is amended by adding a new section 111-a
2 to read as follows:

3 § 111-a. Pilot program on referenced rate for prescription drugs. (a)
4 A pilot program is hereby created to study the possibility of control-
5 ling excessive and unconscionable prices for prescription drugs.

6 (b) Definitions. As used in this section, the following terms shall
7 have the following meanings:

8 (1) "Prescription drug" shall have the same meaning as in subdivision
9 seven of section sixty-eight hundred two of the education law, for which
10 a prescription is required under the federal food, drug and cosmetic
11 act. Any drug that does not require a prescription under such act, but
12 which would otherwise meet the criteria under article two-A of the
13 public health law for inclusion on the preferred drug list may be added
14 to the preferred drug list under article two-A of the public health law;
15 and, if so included, shall be considered to be a prescription drug for
16 purposes of this section; provided that it shall be eligible for
17 reimbursement under a state public health plan when ordered by a pres-
18 criber authorized to prescribe under the state public health plan and
19 the prescription is subject to the applicable provisions of this section
20 and paragraph (a) of subdivision four of section three hundred sixty-
21 five-a of the social services law.

22 (2) "Wholesale acquisition cost" shall have the same meaning as
23 defined in 42 U.S.C. § 1395w-3a.

24 (3) "State entity" means any agency of the state government that
25 purchases prescription drugs on behalf of the state for a person whose
26 health care is paid for by the state, including any agent, vendor,
27 fiscal agent, contractor, or other party acting on behalf of the state.

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

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1 "State entity" shall not include the medical assistance program estab-
2 lished pursuant to 42 U.S.C. § 1396 et seq.

3 (4) "Health plan" shall have the same meaning as defined in paragraph
4 (a) of subdivision one of section two hundred eighty-a of the public
5 health law.

6 (5) "Referenced rate" means the maximum rate established by the super-
7 intendent utilizing the wholesale acquisition cost and other pricing
8 data described in subsection (e) of this section.

9 (6) "Referenced drugs" means any prescription drug subject to a refer-
10 enced rate.

11 (c) Payment in excess of referenced rate prohibited. (1) It shall be a
12 violation of this section for a state entity or health plan to purchase
13 the referenced drugs subject to this pilot program and which shall be
14 dispensed or delivered to a consumer in the state, whether directly or
15 through a distributor, for a cost higher than the referenced rate as
16 determined pursuant to paragraph two of subsection (e) of this section.

17 (2) It shall be a violation of this section for any pharmacy licensed
18 in this state to purchase for sale or distribution referenced drugs for
19 a cost that exceeds the referenced rate to a person whose health care is
20 provided by a state entity or health plan.

21 (d) Costly prescription drugs. As part of this pilot program, the
22 director of the employee benefits division within the department of
23 civil service shall identify the five most costly prescription drugs
24 based upon net price times utilization.

25 (e) Referenced drugs determined. (1) Beginning with calendar year two
26 thousand twenty-three, no later than June thirtieth, the director of the
27 employee benefits division within the department of civil service shall
28 transmit to the superintendent the list of prescription drugs referenced
29 in subsection (d) of this section. For each of these prescription drugs,
30 such director shall also provide the total net spend on each of those
31 prescription drugs for the previous calendar year.

32 (2) Utilizing the information described in paragraph one of this
33 subsection, no later than November first, two thousand twenty-three, the
34 superintendent shall create and publish a list on the department's
35 website of such drugs that shall be subject to the referenced rate.

36 (3) The superintendent shall determine the referenced rate by compar-
37 ing the wholesale acquisition cost to the cost from all of the following
38 sources:

39 (A) Ontario Ministry of Health and long term care and most recently
40 published on the Ontario Drug Benefit Formulary;

41 (B) Regie de l'Assurance Maladie du Quebec and most recently published
42 on the Quebec Public Drug Programs List of Medications;

43 (C) British Columbia Ministry of Health and most recently published on
44 the BC Pharmacare Formulary; and

45 (D) Alberta Ministry of Health and most recently published on the
46 Alberta Drug Benefit List.

47 (4) The referenced rate for each prescription drug shall be calculated
48 as the lowest cost among those resources and the wholesale acquisition
49 cost. If a specific referenced drug is not included within the resources
50 described in paragraph three of this subsection, then, for the purpose
51 of determining the referenced rate for that drug, the superintendent
52 shall utilize the ceiling price for drugs as reported by the government
53 of Canada Patented Medicine Prices Review Board.

54 (5) The superintendent shall calculate the savings that are expected
55 to be achieved by subjecting prescription drugs to the referenced rate
56 for one plan year. In making this determination the superintendent shall

1 consult with the director of the employee benefits division within the
2 department of civil service and the drug accountability board.

3 (6) The superintendent shall promulgate such rules and regulations as
4 may be necessary to carry out this pilot program.

5 (f) Application of savings. (1) Any savings generated because of the
6 requirements pursuant to subsection (c) of this section shall be used to
7 reduce costs to consumers. Any state entity or health plan shall calcu-
8 late such savings and utilize such savings directly to reduce costs for
9 its members or insureds.

10 (2) No later than April first of the calendar year after the conclu-
11 sion of the pilot program, each state entity or health plan subject to
12 this section shall submit to the superintendent a report describing the
13 savings achieved for each referenced drug and how those savings were
14 used to achieve the requirements of paragraph one of this subsection.
15 The superintendent shall submit a report of the savings, if any, of the
16 pilot program conducted pursuant to this section, to the governor, the
17 temporary president of the senate, the speaker of the assembly, and the
18 minority leaders of the senate and assembly no later than one hundred
19 eighty days following the conclusion of the plan year subject to this
20 section. The report shall also include recommendations on the feasibil-
21 ity of expanding this program to other prescription drugs, recommenda-
22 tions on improvements to the program, and any other findings, recommen-
23 dations, or conclusions the superintendent deems necessary to understand
24 the broader effects of this pilot program.

25 (g) Withdrawal of referenced drugs for sale; prohibited. (1) It shall
26 be a violation of this section for any manufacturer or distributor of a
27 referenced drug to withdraw that drug from sale or distribution within
28 this state for the purpose of avoiding the impact of this pilot program.

29 (2) Any manufacturer that intends to withdraw a referenced drug from
30 sale or distribution from within the state shall provide a notice of
31 withdrawal in writing to the superintendent and to the attorney general
32 not less than one hundred eighty days prior to such withdrawal.

33 (3) The superintendent shall assess a penalty on any manufacturer or
34 distributor that they determine to have withdrawn a referenced drug from
35 distribution or sale in the state in violation of paragraph one or two
36 of this subsection. With respect to each referenced drug for which the
37 superintendent has determined the manufacturer or distributor has with-
38 drawn from the market, the penalty shall be equal to:

39 (A) five hundred thousand dollars; or

40 (B) the amount of annual savings determined by the superintendent as
41 described in paragraph five of this subsection, whichever is greater.

42 (4) It shall be a violation of this section for any manufacturer or
43 distributor of a referenced drug to refuse to negotiate in good faith
44 with any payor or seller of prescription drugs a price that is within
45 the referenced rate as determined in paragraph two of subsection (e) of
46 this section.

47 (5) The superintendent shall assess a penalty on any manufacturer or
48 distributor that it determines has failed to negotiate in good faith in
49 violation of paragraph four of this subsection. With respect to each
50 referenced drug for which the superintendent has determined the manufac-
51 turer or distributor has failed to negotiate in good faith, the penalty
52 shall be equal to:

53 (A) five hundred thousand dollars; or

54 (B) the amount of annual savings determined by the superintendent as
55 described in this subdivision, whichever is greater.

1 § 2. This act shall take effect June 1, 2022. Effective immediately,
2 the addition, amendment and/or repeal of any rule or regulation neces-
3 sary for the implementation of this act on its effective date are
4 authorized to be made and completed on or before such effective date.