STATE OF NEW YORK

398

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. CLEARE, ADDABBO -- 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:

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

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

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

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

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

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

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(3) "State entity" means any agency of the state government that purchases prescription drugs on behalf of the state for a person whose health care is paid for by the state, including any agent, vendor, fiscal agent, contractor, or other party acting on behalf of the state. "State entity" shall not include the medical assistance program established pursuant to 42 U.S.C. § 1396 et seq.

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

(5) "Referenced rate" means the maximum rate established by the superintendent utilizing the wholesale acquisition cost and other pricing data described in subsection (e) of this section.

(6) "Referenced drugs" means any prescription drug subject to a referenced rate.

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

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

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

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

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

(3) The superintendent shall determine the referenced rate by comparing the wholesale acquisition cost to the cost from all of the following sources:

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

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

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

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

(4) The referenced rate for each prescription drug shall be calculated as the lowest cost among those resources and the wholesale acquisition cost. If a specific referenced drug is not included within the resources described in paragraph three of this subsection, then, for the purpose of determining the referenced rate for that drug, the superintendent

shall utilize the ceiling price for drugs as reported by the government of Canada Patented Medicine Prices Review Board.

(5) The superintendent shall calculate the savings that are expected to be achieved by subjecting prescription drugs to the referenced rate for one plan year. In making this determination the superintendent shall consult with the director of the employee benefits division within the department of civil service and the drug accountability board.

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

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

(2) No later than April first of the calendar year after the conclusion of the pilot program, each state entity or health plan subject to this section shall submit to the superintendent a report describing the savings achieved for each referenced drug and how those savings were used to achieve the requirements of paragraph one of this subsection. The superintendent shall submit a report of the savings, if any, of the pilot program conducted pursuant to this section, to the governor, the temporary president of the senate, the speaker of the assembly, and the minority leaders of the senate and assembly no later than one hundred eighty days following the conclusion of the plan year subject to this section. The report shall also include recommendations on the feasibility of expanding this program to other prescription drugs, recommendations on improvements to the program, and any other findings, recommendations, or conclusions the superintendent deems necessary to understand the broader effects of this pilot program.

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

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

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

(A) five hundred thousand dollars; or

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

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

(5) The superintendent shall assess a penalty on any manufacturer or distributor that it determines has failed to negotiate in good faith in violation of paragraph four of this subsection. With respect to each referenced drug for which the superintendent has determined the manufac-

turer or distributor has failed to negotiate in good faith, the penalty shall be equal to:

(A) five hundred thousand dollars; or

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

§ 2. This act shall take effect June 1, 2023. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.