

STATE OF NEW YORK

398--A

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 -- recommitted to the Committee on Insurance 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 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-b
2 to read as follows:

3 § 111-b. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of determining the referenced rate for that drug, the superintendent
2 shall utilize the ceiling price for drugs as reported by the government
3 of Canada Patented Medicine Prices Review Board.

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

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

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

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

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

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

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

45 (A) five hundred thousand dollars; or

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

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

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

1 turer or distributor has failed to negotiate in good faith, the penalty
2 shall be equal to:
3 (A) five hundred thousand dollars; or
4 (B) the amount of annual savings determined by the superintendent as
5 described in this subdivision, whichever is greater.

6 § 2. This act shall take effect June 1, 2024. Effective immediately,
7 the addition, amendment and/or repeal of any rule or regulation neces-
8 sary for the implementation of this act on its effective date are
9 authorized to be made and completed on or before such effective date.