

# STATE OF NEW YORK

1351

2025-2026 Regular Sessions

## IN SENATE

January 9, 2025

Introduced by Sens. CLEARE, ADDABBO, BRISPORT, SALAZAR -- 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-b  
2 to read as follows:

3 § 111-b. Pilot program on referenced rate for prescription drugs. (a)  
4 Program creation. A pilot program is hereby created to study the possi-  
5 bility of controlling excessive and unconscionable prices for  
6 prescription drugs.

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

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

23 (2) "Wholesale acquisition cost" shall have the same meaning as  
24 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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1 (3) "State entity" means any agency of the state government that  
2 purchases prescription drugs on behalf of the state for a person whose  
3 health care is paid for by the state, including any agent, vendor,  
4 fiscal agent, contractor, or other party acting on behalf of the state.  
5 "State entity" shall not include the medical assistance program estab-  
6 lished pursuant to 42 U.S.C. § 1396 et seq.

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

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

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

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

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

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

29 (e) Referenced drugs determined. (1) Beginning no later than one year  
30 after the effective date of this section, the director of the employee  
31 benefits division within the department of civil service shall transmit  
32 to the superintendent the list of prescription drugs referenced in  
33 subsection (d) of this section. For each of these prescription drugs,  
34 such director shall also provide the total net spend on each of those  
35 prescription drugs for the previous calendar year.

36 (2) Utilizing the information described in paragraph one of this  
37 subsection, no later than one year and five months after the effective  
38 date of this section, the superintendent shall create and publish a list  
39 on the department's website of such drugs that shall be subject to the  
40 referenced rate.

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

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

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

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

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

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

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

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

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

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

15 (2) No later than sixty days after the conclusion of the pilot  
16 program, each state entity or health plan subject to this section shall  
17 submit to the superintendent a report describing the savings achieved  
18 for each referenced drug and how those savings were used to achieve the  
19 requirements of paragraph one of this subsection. The superintendent  
20 shall submit a report of the savings, if any, of the pilot program  
21 conducted pursuant to this section, to the governor, the temporary pres-  
22 ident of the senate, the speaker of the assembly, and the minority lead-  
23 ers of the senate and assembly no later than one hundred eighty days  
24 following the conclusion of the plan year subject to this section. The  
25 report shall also include recommendations on the feasibility of expand-  
26 ing this program to other prescription drugs, recommendations on  
27 improvements to the program, and any other findings, recommendations, or  
28 conclusions the superintendent deems necessary to understand the broader  
29 effects of this pilot program.

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

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

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

44 (A) five hundred thousand dollars; or

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

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

52 (5) The superintendent shall assess a penalty on any manufacturer or  
53 distributor that it determines has failed to negotiate in good faith in  
54 violation of paragraph four of this subsection. With respect to each  
55 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 subsection, whichever is greater.  
6 § 2. This act shall take effect on the thirtieth day after it shall  
7 have become a law. Effective immediately, the addition, amendment and/or  
8 repeal of any rule or regulation necessary for the implementation of  
9 this act on its effective date are authorized to be made and completed  
10 on or before such effective date.