

# STATE OF NEW YORK

1351--A

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 -- 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.

4 (a) Legislative findings and declaration; statement of policy. The  
5 legislature hereby finds and declares that access to prescription drugs  
6 is necessary for the public health, general welfare, and economy of the  
7 state;

8 (1) New Yorkers pay as much as three times more than what Canadians  
9 pay for prescription drugs, and such excessive prices negatively impact  
10 the ability of New York residents to obtain prescription drugs, thereby  
11 endangering the health and safety of New Yorkers to maintain or achieve  
12 good health;

13 (2) Excessive prices for prescription drugs threaten the economic  
14 well-being of New York residents and endanger their ability to pay for  
15 other necessary and essential goods and services including housing, food  
16 and utilities;

17 (3) Excessive prices for prescription drugs contribute significantly  
18 to a dramatic and unsustainable rise in health care costs and health  
19 insurance that threaten the overall ability of New York residents to  
20 obtain health coverage and maintain or achieve good health;

21 (4) Excessive prices for prescription drugs contribute significantly  
22 to rising state costs for health care provided and paid for through

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

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1 health insurance programs for public employees, including employees of  
2 the state, municipalities and counties, school districts, institutions  
3 of higher education, and retirees whose health care costs are funded by  
4 public programs, thereby threatening the ability of the state to fund  
5 those programs adequately and further threatening the ability of the  
6 state to fund other programs necessary for the public good and safety,  
7 such as public education; and

8 (5) Based on findings of paragraphs 1, 2, 3 and 4 of this subsection,  
9 the legislature finds that excessive prices for prescription drugs  
10 threaten the safety and well-being of New York residents and find it is  
11 necessary to act in order to protect New York residents from the nega-  
12 tive impact of excessive costs.

13 (b) Program creation. A pilot program is hereby created to study the  
14 possibility of controlling excessive and unconscionable prices for  
15 prescription drugs.

16 (c) Definitions. As used in this section, unless otherwise expressly  
17 stated or the context or subject matter otherwise requires, the follow-  
18 ing terms shall have the following meanings:

19 (1) "Prescription drug" shall have the same meaning as "prescription  
20 medication or device" as defined in section 178.00 of the penal law.

21 (2) "Wholesale acquisition cost" shall have the same meaning as  
22 defined in subdivision (g) of section four hundred ninety-seven of the  
23 tax law.

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.  
28 "State entity" shall not include Medicaid.

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

32 (5) "ERISA plan" means a plan qualified under the Employee Retirement  
33 Income Security Act of 1974.

34 (6) "Participating ERISA plan" means an ERISA plan that has elected to  
35 participate in the requirements and restrictions of this section as  
36 described in subsection (e) of this section.

37 (7) "Referenced rate" means the maximum rate established by the super-  
38 intendent utilizing the wholesale acquisition cost and other pricing  
39 data described in subsection (f) of this section.

40 (8) "Referenced drugs" means any prescription drug subject to a refer-  
41 enced rate.

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

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

52 (e) ERISA plan opt-in. An ERISA plan may elect to participate in the  
53 provisions of this section. Any ERISA plan that desires its purchase of  
54 prescription drugs to be subject to the prohibition described in  
55 subsection (d) of this section shall notify the superintendent in writ-

1 ing at least one month before reference rates go into effect as  
2 described in paragraph three of subsection (g) of this section.

3 (f) Costly prescription drugs. As part of this pilot program, the  
4 director of the employee benefits division within the department of  
5 civil service shall identify the ten most costly prescription drugs  
6 based upon net price times utilization. Such list of ten drugs shall  
7 stay the same over the course of the pilot program.

8 (g) Referenced drugs determined. (1) Beginning no later than one year  
9 after the effective date of this section, the director of the employee  
10 benefits division within the department of civil service shall transmit  
11 to the superintendent the list of prescription drugs referenced in  
12 subsection (f) of this section. For each of these prescription drugs,  
13 such director shall also provide the total net spend on each of those  
14 prescription drugs for the previous calendar year.

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

20 (3) The reference rates go into effect six months from the date that  
21 the superintendent publishes the list described in paragraph two of this  
22 subsection and annually thereafter during the three-year pilot program.

23 (4) The superintendent shall determine the referenced rate annually by  
24 comparing the wholesale acquisition cost to the cost from all of the  
25 following sources:

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

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

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

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

34 (5) The referenced rate for each prescription drug shall be calculated  
35 as the lowest cost among those resources and the wholesale acquisition  
36 cost. If a specific referenced drug is not included within the resources  
37 described in paragraph four of this subsection, then, for the purpose of  
38 determining the referenced rate for that drug, the superintendent shall  
39 utilize the ceiling price for drugs as reported by the government of  
40 Canada Patented Medicine Prices Review Board.

41 (6) The superintendent shall calculate the savings that are expected  
42 to be achieved by subjecting prescription drugs to the referenced rate  
43 for each year of the pilot program. In making this determination the  
44 superintendent shall consult with the director of the employee benefits  
45 division within the department of civil service and the drug account-  
46 ability board.

47 (7) The superintendent shall promulgate such rules and regulations as  
48 may be necessary to carry out this pilot program. The pilot program  
49 shall regulate drug prices for three years.

50 (h) Application of savings. (1) The department shall require plans to  
51 report savings from this program in their annual rate review applica-  
52 tions.

53 (2) In reviewing and approving rates, the department shall ensure that  
54 savings from this program are used to benefit purchasers and consumers  
55 of health care.

1 (3) No later than sixty days after the conclusion of each year subject  
2 to this pilot program, each state entity or health plan subject to this  
3 section shall submit to the superintendent a report describing the  
4 savings achieved for each referenced drug and how those savings were  
5 used to achieve the requirements of paragraph two of this subsection.  
6 The superintendent in coordination with the department's drug account-  
7 ability board shall submit a report of the savings, if any, of the pilot  
8 program conducted pursuant to this section, to the governor, the tempo-  
9 rary president of the senate, the speaker of the assembly, and the  
10 minority leaders of the senate and assembly no later than one hundred  
11 eighty days following the conclusion of each year of the pilot subject  
12 to this section. The report shall also include recommendations on the  
13 feasibility of expanding this program to other prescription drugs,  
14 recommendations on improvements to the program, and any other findings,  
15 recommendations, or conclusions the superintendent deems necessary to  
16 understand the broader effects of this pilot program.

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

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

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

31 (A) five hundred thousand dollars; or

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

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

39 (5) The superintendent shall assess a penalty on any manufacturer or  
40 distributor that it determines has failed to negotiate in good faith in  
41 violation of paragraph four of this subsection. With respect to each  
42 referenced drug for which the superintendent has determined the manufac-  
43 turer or distributor has failed to negotiate in good faith, the penalty  
44 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 this subsection, whichever is greater.

48 § 2. This act shall take effect on the thirtieth day after it shall  
49 have become a law. Effective immediately, the addition, amendment and/or  
50 repeal of any rule or regulation necessary for the implementation of  
51 this act on its effective date are authorized to be made and completed  
52 on or before such effective date.