

STATE OF NEW YORK

2126--A

2025-2026 Regular Sessions

IN ASSEMBLY

January 15, 2025

Introduced by M. of A. SHRESTHA, MITAYNES, BICHOTTE HERMELYN, GALLAGHER, LEVENBERG, COLTON, SIMON, ROSENTHAL, REYES, CLARK, LUPARDO, BURDICK, SEAWRIGHT, STECK, K. BROWN, DeSTEFANO, FORREST, SIMONE, SANTABARBARA, RAGA, TAPIA, JACOBSON, BURROUGHS, ROMERO, GRIFFIN -- read once and referred to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- 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

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

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1 insurance that threaten the overall ability of New York residents to
2 obtain health coverage and maintain or achieve good health;

3 (4) Excessive prices for prescription drugs contribute significantly
4 to rising state costs for health care provided and paid for through
5 health insurance programs for public employees, including employees of
6 the state, municipalities and counties, school districts, institutions
7 of higher education, and retirees whose health care costs are funded by
8 public programs, thereby threatening the ability of the state to fund
9 those programs adequately and further threatening the ability of the
10 state to fund other programs necessary for the public good and safety,
11 such as public education; and

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

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

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

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

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

28 (3) "State entity" means any agency of the state government that
29 purchases prescription drugs on behalf of the state for a person whose
30 health care is paid for by the state, including any agent, vendor,
31 fiscal agent, contractor, or other party acting on behalf of the state.
32 "State entity" shall not include Medicaid.

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

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

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

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

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

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

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

1 (e) ERISA plan opt-in. An ERISA plan may elect to participate in the
2 provisions of this section. Any ERISA plan that desires its purchase of
3 prescription drugs to be subject to the prohibition described in
4 subsection (d) of this section shall notify the superintendent in writ-
5 ing at least one month before reference rates go into effect as
6 described in paragraph three of subsection (g) of this section.

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

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

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

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

27 (4) The superintendent shall determine the referenced rate annually by
28 comparing the wholesale acquisition cost to the cost from all of the
29 following sources:

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (A) five hundred thousand dollars; or

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

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

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

48 (A) five hundred thousand dollars; or

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

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