

STATE OF NEW YORK

2126--B

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, GONZALEZ-ROJAS, HEVESI, RAMOS, MORENO, VALDEZ -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to requiring an upper payment limit 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-b to read as follows:

§ 111-b. Pilot program on upper payment limits for prescription drugs.

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

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

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

(3) Excessive prices for prescription drugs contribute significantly 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.

LBD00232-08-6

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;

8 (4) The federal government, as required by law, has entered into
9 agreements with certain drug manufacturers resulting in a determination
10 of a maximum fair price for certain high-cost prescription drugs covered
11 by the Medicare program. The adoption of those maximum fair prices to
12 drug reimbursements in the state would result in health care savings to
13 the benefit of the people of the state; and

14 (5) Based on findings of paragraphs one, two, three and four of this
15 subsection, the legislature finds that excessive prices for prescription
16 drugs threaten the safety and well-being of New York residents and find
17 it is necessary to act in order to protect New York residents from the
18 negative impact of excessive costs.

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

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

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

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

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

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

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

40 (6) "Maximum fair price" or "MFP" means the maximum rate for a drug
41 published by the secretary of the United States department of health and
42 human services pursuant to section 1195 of P.L. 117-169 (2022), includ-
43 ing any adjustments to an initial determination of Medicare Fair Price
44 based upon annual inflationary adjustments or renegotiations.

45 (7) "Price applicability period" means the period of time defined in
46 section 1191 of Public Law 117-169 (2022).

47 (8) "MFP drug" means a drug subject to a maximum fair price.

48 (9) "Upper payment limit" means the maximum amount that a state enti-
49 ty, health plan, or participating ERISA plan may reimburse for an MFP
50 drug.

51 (d) Payment in excess of upper payment limit prohibited. (1) It shall
52 be a violation of this section for a state entity, health plan or
53 participating ERISA plan to purchase MFP drugs or reimburse any entity
54 for dispensing MFP drugs subject to this program for a cost higher than
55 the upper payment limit determined in subsection (f) of this section.
56 The upper payment limit is the maximum payment for an MFP drug and

applies to all purchases of the MFP drug and reimbursements for a claim for the MFP drug during the price applicability period when the MFP drug is dispensed, delivered, or administered to an individual in the state in person, by mail, or by other means. The upper payment limit does not include a dispensing fee paid to a pharmacy for dispensing an MFP drug, and nothing in this chapter shall be interpreted to prevent a retail pharmacy from receiving a dispensing fee in addition to the upper payment limit.

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

(e) ERISA plan opt-in. An ERISA plan may elect to participate in the provisions of this section. Any ERISA plan that desires its purchase of prescription drugs to be subject to the prohibition described in subsection (d) of this section shall notify the superintendent in writing at least one month before upper payment limits go into effect as described in paragraph seven of subsection (g) of this section.

(f) Costly prescription drugs. The superintendent shall annually review the list of MFP drugs for which the centers for Medicare and Medicaid services has negotiated a price with manufacturers.

(g) Calculation of savings. (1) For each MFP drug, the superintendent shall estimate the total cost savings to the health care system in the state if the state were to implement the MFP as an upper payment limit for the MFP drug.

(2) In making their determination of cost savings the superintendent:

(i) May consult as necessary with the Medicaid pharmacy director and the director of the employee benefits division within the department of civil service;

(ii) Shall have the authority to contract with third party entities for the purpose of analyzing potential savings; and

(iii) Shall have the authority to procure third party data sources necessary for estimating savings.

(3) Upon request from the superintendent, any payers, participating ERISA plans, and pharmacy benefit managers shall submit to the superintendent:

(i) its current net price for the MFP drugs; and

(ii) its annual spending on a per unit, per prescription, and aggregate basis.

(4) No later than six months after the effective date of this section and then annually for each year of the pilot thereafter, each health plan and participating ERISA plan shall provide to the superintendent the estimated savings that it would expect to achieve with respect to each MFP drug if the MFP were implemented as an upper payment limit.

(5) No later than nine months after the effective date of this section and then annually for each year of the pilot thereafter, the superintendent shall publish the estimated aggregate annual savings with respect to each of the MFP drugs and the estimated overall savings. The information published by the superintendent shall describe how the superintendent calculated the savings and in addition shall also include:

(i) An estimate of the number of people in the state who use the MFP drug annually; and

(ii) The total amount spent on each of the MFP drugs in the state.

(6) After publishing the estimated annual savings, the superintendent shall invite and receive public comments. The superintendent shall specifically notify each of the manufacturers of MFP drugs subject to

1 this pilot program of the opportunity to submit public comment. The
2 superintendent shall specifically invite public comments on whether the
3 state should use the MFP as a basis for an upper payment limit.

4 (7) If, after the public hearing described in this subsection, the
5 superintendent determines that there are significant savings with
6 respect to any of the MFP drugs, the superintendent shall establish an
7 upper payment limit for the MFP drug. An upper payment limit shall not
8 be less than the MFP. If the superintendent establishes an upper payment
9 limit that is above the MFP, the superintendent shall explain their
10 reasoning.

11 (8) Only the establishment of an upper payment limit shall constitute
12 final action for the purpose of this title and any person or entity
13 alleging to be aggrieved by the decision of the superintendent to estab-
14 lish an upper payment limit may request judicial review within thirty
15 days of the board's decision.

16 (9) The superintendent shall promulgate such rules and regulations as
17 may be necessary to carry out this pilot program. The pilot program
18 shall regulate drug prices for three years.

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

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

25 (3) No later than sixty days after the conclusion of each year subject
26 to this pilot program, each state entity, health plan, and participating
27 ERISA plan subject to this section shall submit to the superintendent a
28 report describing the savings achieved for each MFP drug and how those
29 savings were used to achieve the requirements of paragraph two of this
30 subsection. The superintendent in coordination with the department's
31 drug accountability board shall submit a report of the savings, if any,
32 of the pilot program conducted pursuant to this section, to the gover-
33 nor, the temporary president of the senate, the speaker of the assembly,
34 and the minority leaders of the senate and assembly no later than one
35 hundred eighty days following the conclusion of each year of the pilot
36 subject to this section. The report shall also include recommendations
37 on the feasibility of expanding this program to other prescription
38 drugs, recommendations on improvements to the program, and any other
39 findings, recommendations, or conclusions the superintendent deems
40 necessary to understand the broader effects of this pilot program.

41 (i) Registered agent and office within the state. Any entity that
42 sells, distributes, delivers, or offers for sale any drug in the state
43 is required to maintain a registered agent and office within the state.

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

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

52 (3) The superintendent shall assess a penalty on any manufacturer or
53 distributor that they determine to have withdrawn an MFP drug from
54 distribution or sale in the state in violation of paragraph one or two
55 of this subsection. With respect to each MFP drug for which the super-

1 intendent has determined the manufacturer or distributor has withdrawn
2 from the market, the penalty 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 paragraph five of this subsection, whichever is greater.

6 (4) It shall be a violation of this section for any manufacturer or
7 distributor of an MFP drug to refuse to negotiate in good faith with any
8 payor or seller of prescription drugs a price that does not exceed the
9 upper payment limit as determined in paragraph seven of subsection (g)
10 of this section.

11 (5) The superintendent shall assess a penalty on any manufacturer or
12 distributor that it determines has failed to negotiate in good faith in
13 violation of paragraph four of this subsection. With respect to each MFP
14 drug for which the superintendent has determined the manufacturer or
15 distributor has failed to negotiate in good faith, the penalty shall be
16 equal to:

17 (A) five hundred thousand dollars; or

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

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