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:

Section 1. The insurance law is amended by adding a new section 111-b to read as follows:

§ 111-b. Pilot program on referenced rate 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) New Yorkers pay as much as three times more than what Canadians pay for prescription drugs, and such excessive prices negatively impact the ability of New York residents to obtain prescription drugs, thereby endangering the health and safety of New Yorkers to maintain or achieve good health;

(2) 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;

(3) 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;

(4) 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.

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

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

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

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

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

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

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

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

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

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

(7) "Referenced rate" means the maximum rate established by the superintendent utilizing the wholesale acquisition cost and other pricing data described in subsection (f) of this section.

(8) "Referenced drugs" means any prescription drug subject to a referenced rate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Application of savings. (1) The department shall require plans to report savings from this program in their annual rate review applications.

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

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

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

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

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

(A) five hundred thousand dollars; or

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

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

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

(A) five hundred thousand dollars; or

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

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