§ 202. Drug accountability board. (a) A nine member drug accountability board is hereby created in the department.

(b) The members of the board shall be appointed by the superintendent, provided however that one member shall be appointed at the suggestion of the temporary president of the senate and one member shall be appointed at the suggestion of the speaker of the assembly, and shall serve a three-year term. Members may be reappointed upon the completion of other terms. In making appointments to the board the superintendent shall give consideration to persons:

(1) licensed and actively engaged in the practice of medicine in the state;

(2) licensed and actively practicing in pharmacy in the state;

(3) with expertise in drug utilization review who are health care professionals licensed under title eight of the education law and who are pharmacologists;

(4) that are consumers or consumer representatives of organizations with a regional or statewide constituency and who have been involved in activities related to health care consumer advocacy;

(5) who are health care economists;

(6) who are actuaries; and

(7) who are experts from the department of health.

(c) The superintendent shall designate a person from the department to serve as chairperson of the board.

(d) Members of the board and all its agents shall be deemed to be an "employee" for purposes of section seventeen of the public officers law.

(e) (1) The department shall have authority on all fiscal matters relating to the board.

(2) The board may utilize or request assistance of any state agency or authority subject to the approval of the superintendent.

(f) (1) Whenever the superintendent determines it would aid an investigation under section one hundred eleven of this chapter, the superintendent shall refer a drug to the board for a report thereon to be prepared.

(2) If a drug is referred to the board under paragraph one of this subsection the board shall determine:

(A) the drug's impact on the premium costs for commercial insurance in this state, and the drug's affordability and value to the public;

(B) whether increases in the price of the drug over time were significant and unjustified;

(C) whether the drug may be priced disproportionately to its therapeutic benefits; and

(D) any other question the superintendent may certify to the board in aid of an investigation under section one hundred eleven of this chapter.

(3) In formulating its determinations, the board may consider:

(A) publicly available information relevant to the pricing of the drug;

(B) information supplied by the department relevant to the pricing of the drug;

(C) information relating to value-based pricing;

(D) the seriousness and prevalence of the disease or condition that is treated by the drug;

(E) the extent of utilization of the drug;

(F) the effectiveness of the drug in treating the conditions for which it is prescribed, or in improving a patient's health, quality of life, or overall health outcomes;

(G) the likelihood that use of the drug will reduce the need for other medical care, including hospitalization;

(H) the average wholesale price, wholesale acquisition cost, retail price of the drug, and the cost of the drug to the Medicaid program minus rebates received by the state;

(I) in the case of generic drugs, the number of pharmaceutical manufacturers that produce the drug;

(J) whether there are pharmaceutical equivalents to the drug;

(K) information supplied by the manufacturer, if any, explaining the relationship between the pricing of the drug and the cost of development of the drug and/or the therapeutic benefit of the drug, or that is otherwise pertinent to the manufacturer's pricing decision; any such information provided shall be considered confidential and shall not be disclosed by the drug utilization review board in a form that identifies a specific manufacturer or prices charged for drugs by such manufacturer; and

(L) information from the department of health, including from the drug utilization review board.

(4) Following its review, the board shall report its findings to the superintendent. Such report shall include the determinations required by paragraph two of this subsection and any other information required by the superintendent.

(g) Notwithstanding any law to the contrary, the papers and information considered by the board and any report thereof shall be confidential and not subject to disclosure. The superintendent, in his or her sole discretion, may determine that the release of the board's report would not harm an ongoing investigation and would be in the public interest, and thereafter may release the report or any portion thereof to the public.

(h) The superintendent may call a public hearing on the determinations of the board, notice of such hearing shall be given to the manufacturer of the drug and shall be published on the website of the department for not less than fifteen days before the hearing.