

An Act to Reduce Prescription Drug Costs Using International Pricing

Section 1. Statement of Legislative Intent; Purpose

The purpose of this Chapter is to protect the safety, health and economic well-being of [Name the State] people by safeguarding them from the negative and harmful impact of excessive and unconscionable prices for prescription drugs. In enacting this Act, the legislature finds that

Access to prescription drugs is necessary for [Name the State] people to maintain or acquire good health;

- 1) Excessive prices negatively impact the ability of [Name the State] people to obtain prescription drugs and price increases that exceed reasonable levels thereby endanger the health and safety of [Name the State] people to maintain or acquire good health;
- 2) Excessive prices for prescription drugs threaten the economic well-being of [Name the State] people 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 [Name the State] people to obtain health coverage and maintain or acquire good health;
- 4) Excessive prices for prescription drugs contribute significantly to rising state costs for health care provided and paid for through 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 public safety;
- 5) Because the costs of prescription drugs and health insurance are tax-deductible, excessive costs for prescription drugs result in a reduction in the tax base and a resultant reduction in state revenue;
- 6) The costs to consumers, health plans, and the state for prescription drug coverage is higher than the costs in other countries because the prices charged by manufacturers and distributors of drugs in [Name of State] are higher; and
- 7) Based on findings (1) through (7), the legislature finds that excessive prices for prescription drugs threaten the safety and well-being of [Name the State] people and find it is necessary to act in order to protect [Name the State] people from the negative impact of excessive costs.

Section 2. Definitions

- (a) “Prescription Drug” has the same meaning stated in [Cite to State’s Pharmacy Act].
- (b) “Wholesale Acquisition Cost” has the meaning stated in 42 U.S.C. § 1395w-3a.
- (c) “State Entity” means any agency of 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 does not include the medical assistance program established under 42 U.S.C. §1396 et seq.
- (d) “Health Plan” means [State’s definition of health plan as defined in insurance statute].

- (e) “ERISA Plan” means a plan qualified under the Employee Retirement Income Security Act of 1974.
- (f) “Participating ERISA Plan” means an ERISA plan that has elected to participate in the requirements and restrictions of this subchapter as described in Section 4 below.
- (g) “Referenced Rate” means the maximum rate established by the Superintendent of Insurance utilizing the Wholesale Acquisition Cost and other pricing data described in Section 5 below.
- (h) “Referenced Drugs” means Prescription Drugs subject to a Referenced Rate.

Section 3. Payment in Excess of Referenced Rate Prohibited

(a) It is a violation of this Chapter for a State Entity or Health Plan or Participating ERISA Plan to purchase Referenced Drugs to 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 in Section 5 below. Contracts entered into by a State Entity or Health Plan or Participating ERISA Plan and a third party for the purchase of Prescription Drugs shall expressly provide that rates paid for Referenced Drugs shall not exceed the Referenced Rate.

(b) It is a violation of this Chapter for a retail pharmacy licensed in this state to purchase for sale or distribution to a person whose health care is provided by a State Entity or Health Plan Referenced Drugs for a cost that exceeds the Referenced Rate.

Section 4. ERISA Plan Opt-In

An ERISA Plan may elect to participate in the provisions of this chapter. Any ERISA Plan that desires its purchase of Prescription Drugs to be subject to the prohibition described in Section 3 shall notify the Superintendent of Insurance in writing by [PICK A DATE] of each year.

Section 5. Referenced Drugs Determined

(a) As of [PICK A DATE] of each calendar year, the Director of the State Employee Health Insurance Plan shall transmit to the Superintendent of Insurance a list of the 250 most costly Prescription Drugs based upon net price times utilization. For each of these Prescription Drugs, the Director of the State Employee Health Insurance Plan shall also provide the total net spend on each of those Prescription Drugs for the previous calendar year.

(b) Utilizing this information described in subsection (a) above, as of [PICK A DATE] of each year the Superintendent of Insurance shall create and publish a list of 250 Referenced Drugs that shall be subject to the Referenced Rate.

(c) The Superintendent of Insurance shall determine the Referenced Rate by comparing the Wholesale Acquisition Cost to the cost from the: 1) Ontario Ministry of Health and Long Term Care and most recently published on the Ontario Drug Benefit Formulary; 2) Régie de l'Assurance Maladie du Québec and most recently published on the Quebec Public Drug Programs List of Medications; 3) British

Columbia Ministry of Health and most recently published on the BC Pharmacare Formulary; and 4) Alberta Ministry of Health and most recently published on the Alberta Drug Benefit List.

(d) 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 resources described in subsection (c) above, the Superintendent of Insurance shall utilize for the purpose of determining the Referenced Rate the ceiling price for drugs as reported by the Government of Canada Patented Medicine Prices Review Board.

(e) The determination by the Superintendent of Insurance of which Prescription Drugs to include on the list of Referenced Drugs shall be based upon an analysis of the savings that could be achieved by subjecting those Prescription Drugs to the Referenced Rate. In making this determination the Superintendent of Insurance shall consult with the Director of the State Employee Health Insurance Plan and the Chair of the State Board of Pharmacy.

(f) The Superintendent of Insurance shall have the authority to implement regulations under [Cite state's Administrative Procedures Act] to fully implement the requirements of this chapter.

Section 6. Registered Agent and Office within the State

Any entity that sells, distributes, delivers, or offers for sale any Prescription Drug in the state is required to maintain a registered agent and office within the state.

Section 7. Use of Savings

(a) Any savings generated as a result of the requirements in Section 3 above must be used to reduce costs to consumers. Any State Entity, Health Plan or Participating ERISA Plan must calculate such savings and utilize such savings directly to reduce costs for its members.

(b) No later than April 1 of each calendar year, each State Entity, Health Plan and Participating ERISA Plan subject to this Chapter shall submit to the Superintendent of Insurance a report describing the savings achieved for each Referenced Drug for the previous calendar year and how those savings were used to achieve the requirements of subsection (a) above.

Section 8. Enforcement

Each violation of this Chapter shall be subject to a fine of \$1,000. Every individual transaction in violation of Section 3 is determined to be a separate violation. The Attorney General is authorized to enforce the provisions of this statute on behalf of any State Entity or consumers of Prescription Drugs.

Section 9. Prohibition on Withdrawal of Referenced Drugs for Sale

(a) It shall be a prohibition of this Chapter 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 the rate limitations set forth in Section 3 above.

(b) 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 of Insurance and to the Attorney General 180 days prior to such withdrawal.

(c) The Superintendent of Insurance shall assess a penalty of \$500,000 on any entity, including any manufacturer or distributor of a Referenced Drug, that it determines has withdrawn a Referenced Drug from distribution or sale in the state in violation of subsection (a) or (b) of this Section.

Section 10. Severability Clause

If any provision of this Chapter or the application thereof is determined to be invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

August 2020