

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 643
Apr 21, 2021
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10310-MR-124B

Short Title: Reference Pricing for Rx Drugs. (Public)

Sponsors: Representative Insko.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT THE SAFETY, HEALTH, AND ECONOMIC WELL-BEING OF
3 NORTH CAROLINIANS BY SAFEGUARDING THEM FROM THE NEGATIVE AND
4 HARMFUL IMPACT OF EXCESSIVE PRICES FOR PRESCRIPTION DRUGS.

5 Whereas, access to prescription drugs is necessary for the people of North Carolina
6 to maintain or acquire good health; and

7 Whereas, excessive prices negatively impact the ability of the people to obtain
8 prescription drugs, and price increases that exceed reasonable levels thereby endanger the health
9 and safety of the people of our State to maintain or acquire good health; and

10 Whereas, excessive prices for prescription drugs threaten the economic well-being of
11 North Carolinians and endanger their ability to pay for other necessary and essential goods and
12 services, including housing, food, and utilities; and

13 Whereas, excessive prices for prescription drugs contribute significantly to a dramatic
14 and unsustainable rise in health care costs and health insurance that threatens the overall ability
15 of North Carolinians to obtain health coverage and maintain or acquire good health; and

16 Whereas, excessive prices for prescription drugs contribute significantly to rising
17 State costs for health care provided and paid for through health insurance programs for public
18 employees, including employees of the State, municipalities and counties, school districts,
19 institutions of higher education, and retirees whose health care costs are funded by public
20 programs, thereby threatening the ability of the State to fund those programs adequately and
21 further threatening the ability of the State to fund other programs necessary for the public good
22 and safety, such as public education and public safety; and

23 Whereas, because the costs of prescription drugs and health insurance are
24 tax-deductible, excessive costs for prescription drugs result in a reduction in the tax base and a
25 resultant reduction in State revenue; and

26 Whereas, the costs to consumers, health insurers, and the State for prescription drug
27 coverage are higher than the costs in other countries because the prices charged by manufacturers
28 and distributors of drugs in the State are higher; and

29 Whereas, the General Assembly finds that excessive prices for prescription drugs
30 threaten the safety and well-being of North Carolinians and finds it is necessary to act in order to
31 protect North Carolinians from the negative impact of excessive costs; Now, therefore,
32 The General Assembly of North Carolina enacts:

33 **SECTION 1.** Article 3 of Chapter 58 of the General Statutes is amended by adding
34 a new section to read:

35 **"§ 58-3-222. Referenced rate for prescription drugs.**

36 (a) **Definitions.** – The following definitions apply in this section:



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- 1 (1) ERISA plan. – A health plan qualified under the Employee Retirement Income
2 Security Act of 1974.
- 3 (2) Health benefit plan. – As defined under G.S. 58-3-167.
- 4 (3) Insurer. – As defined under G.S. 58-3-167.
- 5 (4) Participating ERISA Plan. – An ERISA plan that has elected to participate in
6 the requirements and restrictions of this section.
- 7 (5) Referenced drugs. – Prescription drugs subject to a referenced rate.
- 8 (6) Referenced rate. – The maximum rate established by the Commissioner
9 utilizing the Wholesale Acquisition Cost and other pricing data.
- 10 (7) State entity. – Any agency of State government that purchases prescription
11 drugs on behalf of the State for an individual whose health care is paid for by
12 the State, including any agent, vendor, fiscal agent, contractor, or other party
13 acting on behalf of the State. State entity does not include the North Carolina
14 Medicaid program or NC Health Choice program established under Chapter
15 108A of the General Statutes.
- 16 (8) State Health Plan. – The North Carolina State Health Plan for Teachers and
17 State Employees established under Article 3B of Chapter 135 of the General
18 Statutes.
- 19 (9) Wholesale acquisition cost. – As defined in 42 U.S.C. § 1395w-3a.
- 20 (b) Referenced Rate Determination. – The following steps shall be taken to determine the
21 referenced rate for referenced drugs:
- 22 (1) Beginning with calendar year 2022, no later than June 1 of each calendar year,
23 the State Treasurer shall transmit to the Commissioner a list of the 250 most
24 costly prescription drugs for members of the State Health Plan. The cost of a
25 prescription drug shall be based upon net price times utilization. For each of
26 the 250 most costly prescription drugs, the State Treasurer shall also provide
27 the net total amount spent for each of those prescription drugs for the previous
28 calendar year. These 250 prescription drugs shall be the prescription drugs
29 subject to the referenced rate for the next calendar year.
- 30 (2) Utilizing the information described in subdivision (1) of this subsection, no
31 later than July 1 of each year, the Commissioner shall create and publish a list
32 on the Department of Insurance website of 250 referenced drugs and each
33 drug's referenced rate for the next calendar year.
- 34 (3) The Commissioner shall determine the referenced rate for the referenced
35 drugs by comparing the wholesale acquisition cost to the cost from all of the
36 following sources:
- 37 a. The Ontario Ministry of Health and Ministry of Long-Term Care, and
38 most recently published on the Ontario Drug Benefit Formulary.
- 39 b. Régie de l'Assurance Maladie du Québec, and most recently published
40 on the Quebec Public Drug Programs List of Medications.
- 41 c. British Columbia Ministry of Health, and most recently published on
42 the BC Pharmacare Formulary.
- 43 d. Alberta Ministry of Health, and most recently published on the Alberta
44 Drug Benefit List.
- 45 (4) The referenced rate for each referenced prescription drug shall be calculated
46 as the lowest cost among those resources listed in subdivision (3) of this
47 subsection and the wholesale acquisition cost. If a specific referenced drug is
48 not included within the resources described in subdivision (3) of this
49 subsection, then, for the purpose of determining the referenced rate for that
50 drug, the Commissioner shall utilize the ceiling price for drugs as reported by
51 the Government of Canada Patented Medicine Prices Review Board.

1 (c) Referenced Rate Health Benefit Plan Requirements. – An ERISA plan may elect for
2 its purchase of prescription drugs to be subject to this section and shall notify the Commissioner
3 in writing by October 1 of each calendar year only if that election is made. No health benefit plan
4 that is not an ERISA plan offered by an insurer in this State and no participating ERISA plan
5 shall purchase referenced drugs to be dispensed or delivered to an insured in this State, whether
6 directly or through a distributor, for a cost higher than the referenced rate.

7 (d) Savings Calculation. – The Commissioner shall calculate annually the savings that
8 are expected to be achieved by subjecting prescription drugs to the referenced rate. In making
9 this determination the Superintendent of Insurance shall consult with the State Treasurer and the
10 Chair of the North Carolina Board of Pharmacy.

11 (e) Use of Savings. – Any State entity, health benefit plan that is not an ERISA plan, or
12 participating ERISA plan shall utilize the savings derived from using the referenced rate in
13 accordance with this section to reduce costs to insureds and shall, no later than April 1 of each
14 calendar year, submit a report on these savings to the Commissioner. The report shall describe
15 the savings achieved for each referenced drug for the previous calendar year and how those
16 savings were used to reduce costs to insureds.

17 (f) Enforcement. – Each violation of this section shall be subject to the maximum fine of
18 one thousand dollars (\$1,000) under G.S. 58-2-70. Every individual transaction shall be
19 considered a separate violation. The refusal of a manufacturer or distributor to negotiate in good
20 faith a price for a referred drug that is within the referenced rate shall be a valid affirmative
21 defense in any enforcement action brought by the Commissioner under Article 2 of this Chapter
22 and may be reported to the Attorney General. The Commissioner shall report a manufacturer or
23 distributor that refuses to negotiate in good faith to the Attorney General."

24 **SECTION 2.** If any provision of this act or its application is held invalid, the
25 invalidity does not affect other provisions or applications of this act that can be given effect
26 without the invalid provisions or application, and to this end the provisions of this act are
27 severable.

28 **SECTION 3.** This act becomes effective October 1, 2021, and applies to health
29 benefit plan contracts entered into, renewed, or amended on or after that date.