

Introduced by

Legislative Management
(Health Care Committee)

1 A BILL for an Act to create and enact chapter 19-25 of the North Dakota Century Code, relating
2 to a prescription drug reference rate pilot program; to provide for a legislative management
3 report; to provide a penalty; and to provide an expiration date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 19-25 of the North Dakota Century Code is created and enacted as
6 follows:

7 **19-25-01. Definitions.**

8 As used in this chapter:

- 9 1. "Commissioner" means the insurance commissioner.
- 10 2. "Health plan" means an entity for which a pharmacy benefits manager provides
11 pharmacy benefits management services and which is a health benefit plan or other
12 entity that approves, provides, arranges for, or pays or reimburses in whole or in part
13 for health care items or services, to include at least prescription drugs, for
14 beneficiaries who work or reside in this state.
- 15 3. "Pharmacy benefits manager" has the same meaning as provided under section
16 19-03.6-01.
- 17 4. "Prescription drug" has the same meaning as provided under section 19-02.1-14.1.
- 18 5. "Referenced drug" means a prescription drug subject to a referenced rate.
- 19 6. "Referenced rate" means the maximum rate established by the commissioner under
20 section 19-25-04.
- 21 7. "State entity" means an agency of the state government which purchases prescription
22 drugs on behalf of the state for an individual whose health care is paid by the state,
23 including any agent, vendor, fiscal agent, contractor, or other party acting on behalf of
24 the state. The term does not include the medical assistance program.

1 8. "Wholesale acquisition cost" has the same meaning as provided under section
2 26.1-36.10-01.

3 **19-25-02. Prescription drug reference rate pilot program - Rules.**

4 Under this chapter, the commissioner shall design and implement a prescription drug
5 reference rate pilot program to study the possibility of controlling excessive prices for
6 prescription drugs. The commissioner shall adopt rules to carry out this pilot program.

7 **19-25-03. Violation of chapter - Penalty.**

- 8 1. It is a violation of this chapter for a state entity or health plan to purchase a referenced
9 drug that is dispensed or delivered to a consumer in the state, whether directly or
10 through a distributor, for a cost higher than the referenced rate established under this
11 chapter.
- 12 2. It is a violation of this chapter for a pharmacy licensed in this state to purchase for sale
13 or distribution a referenced drug for a cost that exceeds the referenced rate to an
14 individual whose health care is provided by a state entity or health plan.
- 15 3. A violation of this chapter by a state entity, health plan, or pharmacy is a class A
16 misdemeanor.

17 **19-25-04. Referenced drug identification.**

- 18 1. The public employees retirement system shall identify the twenty-five most costly
19 prescription drugs utilized under the public employees retirement system health
20 benefits coverage based upon net price times utilization.
- 21 2. Before October of each year, the public employees retirement system shall transmit to
22 the commissioner the list of prescription drugs referenced in subsection 1. For each of
23 these prescription drugs, the public employees retirement system also shall provide
24 the commissioner with data on the total public employees retirement system net spend
25 on each of those prescription drugs for the previous calendar year.
- 26 3. Using the information submitted under subsection 2, before December of each year,
27 the commissioner shall create and publish a list on the department's website of the
28 twenty-five drugs subject to the referenced rate and the referenced rate.
- 29 4. The commissioner shall determine the referenced rate by comparing the wholesale
30 acquisition cost to the cost from all the following sources:

- 1 a. Ontario ministry of health and long term care and most recently published
- 2 on the Ontario drug benefit formulary;
- 3 b. Regie de l'assurance maladie du Quebec and most recently published on
- 4 the Quebec public drug programs list of medications;
- 5 c. British Columbia ministry of health and most recently published on the BC
- 6 pharmacare formulary; and
- 7 d. Alberta ministry of health and most recently published on the Alberta drug
- 8 benefit list.

9 5. In determining the referenced rate for each prescription drug, the commissioner shall
10 consider the lowest cost among the resources under subsection 4 and the wholesale
11 acquisition cost. If a referenced drug is not included within the resources under
12 subsection 4, for the purpose of determining the referenced rate for that drug, the
13 commissioner shall consider the ceiling price for drugs as reported by the government
14 of Canada patented medicine prices review board.

15 6. The commissioner shall calculate the annual savings expected to be achieved by
16 subjecting prescription drugs to the referenced rate for one plan year. In making this
17 determination the commissioner shall consult with the public employees retirement
18 system.

19 **19-25-05. Application of savings.**

20 Any savings realized as a result of the requirements under section 19-25-04 must be used
21 to reduce costs to consumers. A state entity or health plan shall calculate the savings and use
22 these savings directly to reduce costs for its members or insureds.

23 **19-25-06. Reporting.**

- 24 1. Annually, on forms provided by the commissioner, each state entity and health plan
- 25 subject to this chapter shall submit to the commissioner a report describing any
- 26 savings achieved for each referenced drug and how those savings were used to
- 27 comply with section 19-25-05.
- 28 2. The commissioner shall use this data to publish an annual report on the pilot program.
- 29 The report must include recommendations on the feasibility of expanding the pilot
- 30 program to other prescription drugs; recommendations on improvements to the pilot

1 program; and any other findings, recommendations, or conclusions the commissioner
2 deems necessary to assess the broader effects of the pilot program.

3 **19-25-07. Withdrawal of referenced drugs - Prohibition.**

4 1. It is a violation of this chapter for a manufacturer or distributor of a referenced drug to
5 withdraw that drug from sale or distribution within the state for the purpose of avoiding
6 the impact of this pilot program.

7 2. A manufacturer that intends to withdraw a referenced drug from sale or distribution
8 within the state shall provide a notice of withdrawal in writing to the commissioner and
9 to the attorney general no fewer than one hundred eighty days before the withdrawal.

10 3. The commissioner shall assess a penalty on any manufacturer or distributor the
11 commissioner determines to have withdrawn a referenced drug from distribution or
12 sale in the state in violation of this section. The commissioner shall assess a penalty
13 for each referenced drug the commissioner determines the manufacturer or distributor
14 has withdrawn from the market. The penalty must be equal to five hundred thousand
15 dollars; or the amount of annual savings determined by the commissioner under
16 section 19-25-04, whichever is greater.

17 4. It is a violation of this section for a manufacturer or distributor of a referenced drug to
18 refuse to negotiate in good faith with any payor or seller of prescription drugs a price
19 that is within the referenced rate as determined by the commissioner.

20 5. The commissioner shall assess a penalty on a manufacturer or distributor the
21 commissioner determines failed to negotiate in good faith in violation of this section.
22 The commissioner shall assess a penalty for each referenced drug the commissioner
23 determines the manufacturer or distributor has failed to negotiate in good faith. The
24 penalty must be equal to five hundred thousand dollars; or the amount of annual
25 savings determined by the commissioner under section 19-25-04, whichever is
26 greater.

27 **SECTION 2. LEGISLATIVE MANAGEMENT REPORT - PRESCRIPTION DRUG**

28 **REFERENCE RATE PILOT PROGRAM.** During the 2023-24 and 2025-26 interims, the
29 insurance commissioner shall provide an annual report to the legislative management on the
30 status of the prescription drug reference rate pilot program. The report must include any savings
31 recognized as a result of the pilot program; recommendations on the feasibility of expanding the

1 pilot program to other prescription drugs; recommendations on improvements to the pilot
2 program; and any other findings, recommendations, or conclusions the commissioner deems
3 necessary to assess the broader effects of the pilot program.

4 **SECTION 3. EXPIRATION DATE.** This Act is effective though July 31, 2027, and after that
5 date is ineffective.