

PROPOSED AMENDMENTS TO SENATE BILL NO. 2031

Page 1, line 1, replace "19-25" with "54-52.7"

Page 1, line 2, after the first "a" insert "public employees retirement system"

Page 1, line 2, replace "reference rate" with "maximum fair price"

Page 1, line 3, after the second semicolon, insert "to provide an effective date;"

Page 1, replace lines 5 and 6 with:

"SECTION 1. Chapter 54-52.7 of the North Dakota Century Code is created and enacted as follows:"

Page 1, line 7, replace "**19-25-01**" with "**54-52.7-01**"

Page 1, line 9, remove "Commissioner" means the insurance commissioner."

Page 1, line 10, remove "2."

Page 1, line 10, remove "an entity for which a pharmacy benefits manager provides"

Page 1, remove lines 11 through 15

Page 1, line 16, replace "19-03.6-01" with "the public employees retirement system uniform group insurance health insurance benefits coverage under chapter 54-52.1."

2. "Maximum fair price" means the maximum rate for a drug published by the secretary of the United States department of health and human services under section 1195 of Pub. L. 117-169 (2022)"

Page 1, line 17, replace "4." with "3."

Page 1, line 18, replace "5." with "4." "Price applicability period" means the period of time defined in section 1191 Pub. L. 117-169 (2022).

5."

Page 1, line 18, replace "referenced rate" with "maximum fair price"

Page 1, line 19, remove "Referenced rate" means the maximum rate established by the commissioner under"

Page 1, remove line 20

Page 1, line 21, remove "7."

Page 1, line 21, remove "an agency of the state government which purchases prescription"

Page 1, remove lines 22 and 23

Page 1, line 24, replace "the state. The term does not include the medical assistance program" with "the public employees retirement system"

Page 2, remove lines 1 and 2

Page 2, line 3, replace "**19-25-02**" with "**54-52.7-02**"

Page 2, line 3, replace "**reference rate**" with "**maximum fair price**"

Page 2, line 4, replace "commissioner" with "state entity"

Page 2, line 5, replace "reference rate" with "maximum fair price"

Page 2, line 6, replace "commissioner" with "state entity"

Page 2, line 7, replace "**19-25-03**" with "**54-52.7-03**"

Page 2, line 7, remove "**- Penalty**"

Page 2, line 8, replace the second "a" with "the"

Page 2, line 8, after "or" insert "a"

Page 2, line 9, after "delivered" insert "directly"

Page 2, line 9, remove ", whether directly or"

Page 2, line 10, remove "through a distributor."

Page 2, line 10, remove "referenced rate established under this"

Page 2, line 11, replace "chapter" with "maximum fair price during the price applicability period"

Page 2, line 13, remove "or distribution"

Page 2, line 13, replace "referenced rate" with "maximum fair price"

Page 2, line 14, remove "state entity or"

Page 2, remove lines 15 through 30

Page 3, remove lines 1 through 22

Page 3, line 23, replace "**19-25-06**" with "**54-52.7-04**"

Page 3, line 23, after the first bold underscored period insert "**Savings -**"

Page 3, line 24, replace "on forms provided by the commissioner, each" with "the"

Page 3, line 24, replace "and" with "or"

Page 3, line 25, remove "subject to this chapter"

Page 3, line 25, replace "submit to the commissioner" with "calculate the savings and use these savings directly to reduce costs for the member or insureds and shall publish"

Page 3, line 26, remove "and how those savings were used to"

Page 3, line 27, remove "comply with section 19-25-05"

Page 3, line 27, after the underscored period insert "The savings must be applied to consumers and the report must indicate how the savings were applied."

Page 3, line 28, replace "commissioner" with "state entity"

Page 3, line 29, remove "the feasibility of expanding the pilot"

Page 3, line 30, remove "program to other prescription drugs; recommendations on"

Page 4, line 1, replace the underscored semicolon with an underscored comma

Page 4, line 1, replace "commissioner" with "state entity"

Page 4, line 3, replace "19-25-07" with "54-52.7-05"

Page 4, line 4, remove "or distributor"

Page 4, line 8, replace "commissioner" with "state entity"

Page 4, line 10, remove "The commissioner shall assess a penalty on any manufacturer or distributor the"

Page 4, remove lines 11 through 16

Page 4, line 17, remove "4."

Page 4, line 17, remove "or distributor"

Page 4, line 19, replace "referenced rate as determined by the commissioner" with "maximum fair price"

Page 4, replace lines 20 though 26 with:

54-52.7-06. Penalty - Enforcement.

1. A violation of this chapter by the state entity, a health plan, or a manufacturer is a class A misdemeanor.
2. The attorney general shall enforce this chapter. The attorney general may assess a civil penalty of up to one thousand dollars on a manufacturer or health plan for each violation of this chapter.
3. Failure of a manufacturer to negotiate in good faith may be an affirmative defense in a criminal or civil enforcement action brought under this chapter.

Page 4, line 28, replace "**REFERENCE RATE**" with "**MAXIMUM FAIR PRICE**"

Page 4, line 28, replace "2023-24" with "2025-26"

Page 4, line 28, replace "2025-26" with "2027-28"

Page 4, line 29, replace "insurance commissioner" with "public employees retirement system"

Page 4, line 30, replace "reference rate" with "maximum fair price"

Page 4, line 31, remove "recommendations on the feasibility of expanding the"

Page 5, line 1, replace "pilot program to other prescription drugs;" with "any"

Page 5, line 2, replace "commissioner deems" with "public employees retirement system deem"

Page 5, after line 3, insert:

"SECTION 3. EFFECTIVE DATE. This Act becomes effective on January 1, 2025."

Page 5, line 4, replace "2027" with "2029"

SENATE BILL NO. 2031

Introduced by

Legislative Management
(Health Care Committee)

1 A BILL for an Act to create and enact chapter ~~19-25~~54-52.7 of the North Dakota Century Code,-
2 relating to a public employees retirement system prescription drug ~~reference rate~~maximum fair
3 price pilot program; to provide for a legislative management report; to provide a penalty; to
4 provide an effective date; and to provide an expiration date.

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

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

8 **SECTION 1.** Chapter 54-52.7 of the North Dakota Century Code is created and enacted as
9 follows:

10 ~~19-25-01~~54-52.7-01. **Definitions.**

11 As used in this chapter:

12 1. ~~"Commissioner" means the insurance commissioner.~~

13 ~~2. "Health plan" means an entity for which a pharmacy benefits manager provides~~
14 ~~pharmacy benefits management services and which is a health benefit plan or other~~
15 ~~entity that approves, provides, arranges for, or pays or reimburses in whole or in part~~
16 ~~for health care items or services, to include at least prescription drugs, for~~
17 ~~beneficiaries who work or reside in this state.~~

18 ~~3. "Pharmacy benefits manager" has the same meaning as provided under section~~
19 ~~19-03.6-01~~the public employees retirement system uniform group insurance health
20 insurance benefits coverage under chapter 54-52.1.

21 2. "Maximum fair price" means the maximum rate for a drug published by the secretary
22 of the United States department of health and human services under section 1195 of
23 Pub. L. 117-169 (2022).

24 ~~4.3.~~ "Prescription drug" has the same meaning as provided under section 19-02.1-14.1.

1 ~~5.4.~~ "Price applicability period" means the period of time defined in section 1191 Pub. L.
2 117-169 (2022).

3 ~~5.~~ "Referenced drug" means a prescription drug subject to a ~~referenced rate~~ maximum
4 fair price.

5 ~~6.~~ "Referenced rate" means the maximum rate established by the commissioner under
6 section ~~19-25-04.~~

7 ~~7.~~ "State entity" means an agency of the state government which purchases prescription
8 drugs on behalf of the state for an individual whose health care is paid by the state,
9 including any agent, vendor, fiscal agent, contractor, or other party acting on behalf of
10 the state. The term does not include the medical assistance program the public
11 employees retirement system.

12 ~~8.~~ "Wholesale acquisition cost" has the same meaning as provided under section
13 ~~26.1-36.10-01.~~

14 ~~19-25-02~~ ~~54-52.7-02.~~ Prescription drug ~~reference rate~~ maximum fair price pilot program

15 - Rules.

16 Under this chapter, the ~~commissioner~~ state entity shall design and implement a prescription
17 drug ~~reference rate~~ maximum fair price pilot program to study the possibility of controlling
18 excessive prices for prescription drugs. The ~~commissioner~~ state entity shall adopt rules to carry
19 out this pilot program.

20 ~~19-25-03~~ ~~54-52.7-03.~~ Violation of chapter -- ~~Penalty.~~

21 1. It is a violation of this chapter for ~~a~~ the state entity or ~~a~~ health plan to purchase a
22 referenced drug that is dispensed or delivered directly to a consumer in the state,
23 whether directly or through a distributor, for a cost higher than the ~~referenced rate~~
24 established under this chapter maximum fair price during the price applicability period.

25 2. It is a violation of this chapter for a pharmacy licensed in this state to purchase for sale
26 or distribution a referenced drug for a cost that exceeds the ~~referenced rate~~ maximum
27 fair price to an individual whose health care is provided by a ~~state entity~~ or health plan.

28 ~~3.~~ A violation of this chapter by a state entity, health plan, or pharmacy is a class A
29 misdemeanor.

- 1 ~~19-25-04. Referenced drug identification.~~
- 2 ~~1. The public employees retirement system shall identify the twenty five most costly~~
- 3 ~~prescription drugs utilized under the public employees retirement system health~~
- 4 ~~benefits coverage based upon net price times utilization.~~
- 5 ~~2. Before October of each year, the public employees retirement system shall transmit to~~
- 6 ~~the commissioner the list of prescription drugs referenced in subsection 1. For each of~~
- 7 ~~these prescription drugs, the public employees retirement system also shall provide~~
- 8 ~~the commissioner with data on the total public employees retirement system net spend~~
- 9 ~~on each of these prescription drugs for the previous calendar year.~~
- 10 ~~3. Using the information submitted under subsection 2, before December of each year,~~
- 11 ~~the commissioner shall create and publish a list on the department's website of the~~
- 12 ~~twenty five drugs subject to the referenced rate and the referenced rate.~~
- 13 ~~4. The commissioner shall determine the referenced rate by comparing the wholesale~~
- 14 ~~acquisition cost to the cost from all the following sources:~~
- 15 ~~a. Ontario ministry of health and long term care and most recently published~~
- 16 ~~on the Ontario drug benefit formulary;~~
- 17 ~~b. Regie de l'assurance maladie du Quebec and most recently published on~~
- 18 ~~the Quebec public drug programs list of medications;~~
- 19 ~~c. British Columbia ministry of health and most recently published on the BC~~
- 20 ~~pharmacare formulary; and~~
- 21 ~~d. Alberta ministry of health and most recently published on the Alberta drug~~
- 22 ~~benefit list.~~
- 23 ~~5. In determining the referenced rate for each prescription drug, the commissioner shall~~
- 24 ~~consider the lowest cost among the resources under subsection 4 and the wholesale~~
- 25 ~~acquisition cost. If a referenced drug is not included within the resources under~~
- 26 ~~subsection 4, for the purpose of determining the referenced rate for that drug, the~~
- 27 ~~commissioner shall consider the ceiling price for drugs as reported by the government~~
- 28 ~~of Canada patented medicine prices review board.~~
- 29 ~~6. The commissioner shall calculate the annual savings expected to be achieved by~~
- 30 ~~subjecting prescription drugs to the referenced rate for one plan year. In making this~~

1 ~~determination the commissioner shall consult with the public employees retirement~~
2 ~~system.~~

3 ~~—~~ **19-25-05. Application of savings.**

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

7 **19-25-0654-52.7-04. Savings - Reporting.**

- 8 1. ~~Annually, on forms provided by the commissioner, each~~ the state entity ~~and~~ health
9 ~~plan subject to this chapter shall submit to the commissioner~~ calculate the savings and
10 ~~use these savings directly to reduce costs for the members or insureds and shall~~
11 ~~publish a report describing any savings achieved for each referenced drug and how~~
12 ~~those savings were used to comply with section 19-25-05. The savings must be~~
13 ~~applied to consumers and the report must indicate how the savings were applied.~~
14 2. ~~The commissioner~~ state entity shall use this data to publish an annual report on the
15 pilot program. The report must include recommendations on ~~the feasibility of~~
16 ~~expanding the pilot program to other prescription drugs; recommendations on~~
17 ~~improvements to the pilot program; and any other findings, recommendations, or~~
18 ~~conclusions the commissioner~~ state entity deems necessary to assess the broader
19 effects of the pilot program.

20 **19-25-0754-52.7-05. Withdrawal of referenced drugs - Prohibition.**

- 21 1. ~~It is a violation of this chapter for a manufacturer or distributor of a referenced drug to~~
22 ~~withdraw that drug from sale or distribution within the state for the purpose of avoiding~~
23 ~~the impact of this pilot program.~~
24 2. ~~A manufacturer that intends to withdraw a referenced drug from sale or distribution~~
25 ~~within the state shall provide a notice of withdrawal in writing to the commissioner~~ state
26 ~~entity and to the attorney general no fewer than one hundred eighty days before the~~
27 ~~withdrawal.~~
28 3. ~~The commissioner shall assess a penalty on any manufacturer or distributor the~~
29 ~~commissioner determines to have withdrawn a referenced drug from distribution or~~
30 ~~sale in the state in violation of this section. The commissioner shall assess a penalty~~
31 ~~for each referenced drug the commissioner determines the manufacturer or distributor~~

1 ~~has withdrawn from the market. The penalty must be equal to five hundred thousand~~
2 ~~dollars; or the amount of annual savings determined by the commissioner under~~
3 ~~section 19-25-04, whichever is greater.~~

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

8 ~~5.~~ ~~The commissioner shall assess a penalty on a manufacturer or distributor the~~
9 ~~commissioner determines failed to negotiate in good faith in violation of this section.~~
10 ~~The commissioner shall assess a penalty for each referenced drug the commissioner~~
11 ~~determines the manufacturer or distributor has failed to negotiate in good faith. The~~
12 ~~penalty must be equal to five hundred thousand dollars; or the amount of annual~~
13 ~~savings determined by the commissioner under section 19-25-04, whichever is~~
14 ~~greater.~~

54-52.7-06. Penalty - Enforcement.

16 1. A violation of this chapter by the state entity, a health plan, or a manufacturer is a
17 class A misdemeanor.

18 2. The attorney general shall enforce this chapter. The attorney general may assess a
19 civil penalty of up to one thousand dollars on a manufacturer or health plan for each
20 violation of this chapter.

21 3. Failure of a manufacturer to negotiate in good faith may be an affirmative defense in a
22 criminal or civil enforcement action brought under this chapter.

SECTION 2. LEGISLATIVE MANAGEMENT REPORT - PRESCRIPTION DRUG

24 ~~REFERENCE RATE~~ MAXIMUM FAIR PRICE **PILOT PROGRAM.** During the ~~2023-24~~ 2025-26
25 and ~~2025-26~~ 2027-28 interims, the ~~insurance commissioner~~ public employees retirement system
26 shall provide an annual report to the legislative management on the status of the prescription
27 drug ~~reference rate~~ maximum fair price pilot program. The report must include any savings
28 recognized as a result of the pilot program; ~~recommendations on the feasibility of expanding the~~
29 ~~pilot program to other prescription drugs;~~ any recommendations on improvements to the pilot
30 program; and any other findings, recommendations, or conclusions the commissioner-

1 ~~deems~~ public employees retirement system deem necessary to assess the broader effects of the
2 pilot program.

3 **SECTION 3. EFFECTIVE DATE.** This Act becomes effective on January 1, 2025.

4 **SECTION 4. EXPIRATION DATE.** This Act is effective though July 31, ~~2027~~2029, and after
5 that date is ineffective.