Lowering Prescription Drug Costs Frequently Asked Questions- Amendments to SB 2031

The high cost of prescription drugs impacts all North Dakotans, especially those 50 and older. That's why AARP North Dakota supports policy solutions to help lower prescription drug costs, including SB 2031, the ND Public Employees Retirement System (ND PERS) Prescription Drug Pilot Program.

Q. What are the key features of the amendments to SB 2031?

A. The amendments to SB 2031 bill now reference a model for North Dakota to leverage Medicare negotiated prices* or the Inflation Reduction Act (IRA) maximum fair price using a model developed by the National Academy for Health Policy (NASHP).

The federal price negotiation process will begin in 2023 and Medicare will publish its negotiated price for the first ten drugs by September 1, 2024. Although the list of drugs that will be subject to negotiated prices is not yet known, it is expected that the list will include drugs that are costly to state purchasers, such as state employee health plans and retirement systems like ND PERS. Other key features of the amendments:

- Uses new Medicare negotiated rates as reference price.
- Requires payors to pay no more than the Medicare negotiated rate or face a penalty.
- Does not dictate what a manufacturer can charge for a drug but does limit how much purchasers in a state pay for a drug
- Savings from the program must be used to reduce costs to the consumer.
- Reporting requirements include an annual form demonstrating savings by each payor and a final report.
- Violations are a Class A misdemeanor instead of the $1,000/day fine found in the model bill.

Q. What is the Medicare negotiated rate?
A. The IRA details the process for selecting drugs and negotiating prices. Medicare will compile a list of drugs that meet the criteria described in the statute.

Negotiations are limited to single-source drugs that (1) are at least 7 years (small molecule) or 11 years (biologic) beyond Food and Drug Administration approval; and (2) account for at least $200 million spend across Medicare Parts B and D.

The IRA excludes from negotiation drugs marketed as generic/biosimilar (or biologics with reference biosimilar pending entrance within 2 years), orphan drugs targeting a single approved disease, and plasma products.

From those drugs, Medicare selects the top 10 drugs in order of highest to lowest spending.

Medicare will negotiate prices for up to 10 drugs in 2026, up to 15 drugs in 2027 and 2028, and up to 20 drugs in 2029 and beyond. By 2029, that means a total of up to 60 drugs could be subject to negotiation.

Q. How will SB 2031 work if it passes?

A. As a pilot program with a sunset clause, SB 2031 applies only to the ND Public Employee Retirement System. If it passes, a process will be established to determine the upper payment limit for drugs sold in the state based on the Medicare negotiated rate and apply to ND PERS. The Medicare negotiated rate will act as the ceiling for all purchases of a referenced drug and reimbursements for a claim for a referenced drug when the drug is dispensed, delivered, or administered to a person in the state. This bill does not set prices or dictate what a manufacturer can charge for a drug, but it does limit how much ND PERS can pay.

Q. Will policies leveraging the Medicare negotiated rates save the state and consumers money?

A. North Dakota consumers with Medicare will begin to benefit from the first 10 prescription drugs under Part D that will be subject to price negotiations. If SB 2031 passes the benefits from the price negotiations also will benefit PERS members.

While it is not possible at this time to determine the savings purchasers and consumers in individual states would realize if the states leveraged the Medicare negotiated rate, the savings estimated by Medicare are significant -- estimated at $98.5 billion over ten years. This would undoubtedly translate into large savings at the state level or PERS. Depending on how long a drug has been on the market, the Medicare negotiated rate will be capped at 40% to 70% of average manufacturer price.

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*"Maximum fair price" is used in federal law to refer to the "Medicare negotiated rate."

References

- NASHP Blog- https://nashp.org/new-nashp-model-legislation-supports-state-efforts-to-lower-drug-costs-by-leveraging-medicare-negotiations/
- Model bill on Medicare Negotiated Prices- https://nashp.org/an-act-to-reduce-prescription-drug-costs-using-reference-based-pricing/
- Q/A on Medicare Negotiated Prices- https://nashp.org/qa-a-model-act-to-reduce-prescription-drug-costs-using-reference-based-pricing/

AARP North Dakota

SB 2031 ND PERS Prescription Drug Pilot Program

Original Version

- ND PERS health plan pilot program
- Insurance Commissioner to find price references from Alberta, British Columbia, Ontario, and Quebec for 25 most costly drugs in ND PERS
- Using lowest price found, Insurance Commissioner would establish upper reference rate state would pay for those 25 drugs
- Takes effect in August 2023
- Sunsets in 2027

Amended Version

- ND PERS health plan pilot program
- ND PERS would use Medicare negotiated rates under new federal law as upper reference rate
- Starts with 10 drugs in 2026
- Doesn't dictate what manufacturers can charge
- Takes effect January 1, 2025
- Sunsets in 2029