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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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


As used in this chapter:

1. "Commissioner" means the insurance commissioner.

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

3. "Pharmacy benefits manager" has the same meaning as provided under section 19-03.6-01.

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

5. "Referenced drug" means a prescription drug subject to a referenced rate.

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

7. "State entity" means an agency of the state government which purchases prescription drugs on behalf of the state for an individual whose health care is paid by the state, including any agent, vendor, fiscal agent, contractor, or other party acting on behalf of the state. The term does not include the medical assistance program.
8. "Wholesale acquisition cost" has the same meaning as provided under section 26.1-36.10-01.

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

19-25-03. Violation of chapter - Penalty.
1. It is a violation of this chapter for a state entity or health plan to purchase a referenced drug that is dispensed or delivered to a consumer in the state, whether directly or through a distributor, for a cost higher than the referenced rate established under this chapter.
2. It is a violation of this chapter for a pharmacy licensed in this state to purchase for sale or distribution a referenced drug for a cost that exceeds the referenced rate to an individual whose health care is provided by a state entity or health plan.
3. A violation of this chapter by a state entity, health plan, or pharmacy is a class A misdemeanor.

1. The public employees retirement system shall identify the twenty-five most costly prescription drugs utilized under the public employees retirement system health benefits coverage based upon net price times utilization.
2. Before October of each year, the public employees retirement system shall transmit to the commissioner the list of prescription drugs referenced in subsection 1. For each of these prescription drugs, the public employees retirement system also shall provide the commissioner with data on the total public employees retirement system net spend on each of those prescription drugs for the previous calendar year.
3. Using the information submitted under subsection 2, before December of each year, the commissioner shall create and publish a list on the department's website of the twenty-five drugs subject to the referenced rate and the referenced rate.
4. The commissioner shall determine the referenced rate by comparing the wholesale acquisition cost to the cost from all the following sources:
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1. Ontario ministry of health and long term care and most recently published on the Ontario drug benefit formulary;
2. Regie de l’assurance maladie du Quebec 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.

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

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


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

19-25-06. Reporting.

1. Annually, on forms provided by the commissioner, each state entity and health plan subject to this chapter shall submit to the commissioner a report describing any savings achieved for each referenced drug and how those savings were used to comply with section 19-25-05.

2. The commissioner shall use this data to publish an annual report on the pilot program. The report must include recommendations on the feasibility of expanding the pilot program to other prescription drugs; recommendations on improvements to the pilot program.
program; and any other findings, recommendations, or conclusions the commissioner
deems necessary to assess the broader effects of the pilot program.


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

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

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

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

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

SECTION 2. LEGISLATIVE MANAGEMENT REPORT - PRESCRIPTION DRUG

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