

Introduced by

Senator Anderson

Representative M. Nelson

1 A BILL for an Act to create and enact chapter 19-03.7 of the North Dakota Century Code,  
2 relating to prescription drug costs; and to provide a penalty.

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

4 **SECTION 1.** Chapter 19-03.7 of the North Dakota Century Code is created and enacted as  
5 follows:

6 **19-03.7-01. Definitions.**

7 As used in this chapter:

- 8 1. "Employee Retirement Income Security Act plan" means a plan qualified under the  
9 federal Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002 et seq.].
- 10 2. "Health plan" has the same meaning as accident and health insurance policy under  
11 section 26.1-36-02.
- 12 3. "Participating Employee Retirement Income Security Act plan" means an Employee  
13 Retirement Income Security Act plan that has elected to participate in the  
14 requirements and restrictions of this chapter as described in section 19-03.7-03.
- 15 4. "Prescription drug" has the same meaning as stated in section 43-15.1-01.
- 16 5. "Referenced drugs" means prescription drugs subject to a referenced rate.
- 17 6. "Referenced rate" means the maximum rate established by the insurance  
18 commissioner utilizing the wholesale acquisition cost and other pricing data described  
19 in section 19-03.7-04.
- 20 7. "State entity" means any agency of state government that purchases prescription  
21 drugs on behalf of the state for an individual whose health care is paid for by the state,  
22 including any agent, vendor, fiscal agent, contractor, or other party acting on behalf of  
23 the state. The term does not include the medical assistance program established  
24 under 42 U.S.C. section 1396 et seq.

1       8.   "Wholesale acquisition cost" has the meaning stated in 42 U.S.C. section 1395w-3a.

2       **19-03.7-02. Payment in excess of referenced rate prohibited.**

3       1.   It is a violation of this chapter for a state entity, health plan, or participating Employee  
4       Retirement Income Security Act plan to purchase referenced drugs to be dispensed or  
5       delivered to a consumer in the state, whether directly or through a distributor, for a  
6       cost higher than the referenced rate as determined in section 19-03.7-04.

7       2.   It is a violation of this chapter for a retail pharmacy licensed in this state to purchase  
8       for sale or distribution referenced drugs for a cost that exceeds the referenced rate to  
9       an individual whose health care is provided by a state entity, health plan, or  
10      participating Employee Retirement Income Security Act plan.

11      **19-03.7-03. Employee Retirement Income Security Act plan opt-in.**

12      An Employee Retirement Income Security Act plan may elect to participate in the provisions  
13      of this chapter. Any Employee Retirement Income Security Act plan that desires its purchase of  
14      prescription drugs to be subject to the prohibition described in section 19-03.7-02 shall notify  
15      the insurance commissioner in writing by October first of each year.

16      **19-03.7-04. Referenced drugs determined.**

17      1.   As of October first of each year, the public employees retirement system shall transmit  
18      to the insurance commissioner a list of the two hundred fifty most costly prescription  
19      drugs based upon net price times utilization. For each of these prescription drugs, the  
20      public employees retirement system also shall provide the total net spend on each of  
21      those prescription drugs for the previous calendar year.

22      2.   Utilizing the information described in subsection 1, as of January first of each year, the  
23      insurance commissioner shall create and publish a list of two hundred fifty referenced  
24      drugs subject to the referenced rate.

25      3.   The insurance commissioner shall determine the referenced rate by comparing the  
26      wholesale acquisition cost to reference costs such as the cost from the Ontario  
27      ministry of health and long-term care and most recently published on the Ontario Drug  
28      Benefit Formulary; régime de l'assurance maladie du Québec and most recently  
29      published on the Quebec Public Drug Programs List of Medications; British Columbia  
30      ministry of health and most recently published on the BC PharmaCare Formulary; and  
31      Alberta ministry of health and most recently published on the Alberta Drug Benefit List.

1       4. The referenced rate for each prescription drug must be calculated as the lowest cost  
2       among those resources and the wholesale acquisition cost. If a specific referenced  
3       drug is not included within resources described in subsection 3, the insurance  
4       commissioner shall utilize as a reference for the purpose of determining the  
5       referenced rate a reference such as, the ceiling price for drugs as reported by the  
6       government of Canada patented medicine prices review board.

7       5. The insurance commissioner shall calculate annually the savings expected to be  
8       achieved by subjecting prescription drugs to the referenced rate. In making this  
9       determination the commissioner shall consult with the public employees retirement  
10      system and the state board of pharmacy.

11      6. The insurance commissioner may adopt rules to implement fully the requirements of  
12      this chapter.

13      **19-03.7-05. Registered agent and office within the state.**

14      An entity that sells, distributes, delivers, or offers for sale any prescription drug in the state  
15      must be a registered agent and maintain an office within the state.

16      **19-03.7-06. Use of savings.**

17      1. Any savings generated as a result of the requirements in section 19-03.7-02 must be  
18      used to reduce costs to consumers. A state entity, health plan, or participating  
19      Employee Retirement Income Security Act plan shall calculate the savings and utilize  
20      the savings directly to reduce costs for its members.

21      2. No later than April first of each year, each state entity, health plan, and participating  
22      Employee Retirement Income Security Act plan subject to this chapter shall submit a  
23      report to the insurance commissioner describing the savings achieved for each  
24      referenced drug for the previous calendar year and how those savings were used to  
25      achieve the requirements of subsection 1.

26      **19-03.7-07. Enforcement - Penalty.**

27      Each violation of this chapter is subject to a fine of one thousand dollars. Every individual  
28      transaction in violation of section 19-03.7-02 is determined to be a separate violation. The  
29      attorney general may enforce this chapter on behalf of any state entity or consumers of  
30      prescription drugs. The refusal of a manufacturer or distributor to negotiate in good faith as

1 described in subsection 4 of section 19-03.7-08 is a valid affirmative defense in any  
2 enforcement action brought under this chapter.

3 **19-03.7-08. Prohibition on withdrawal of referenced drugs for sale.**

4 1. It is a violation of this chapter for a manufacturer or distributor of a referenced drug to  
5 withdraw the referenced drug from sale or distribution within this state for the purpose  
6 of avoiding the impact of the rate limitations set forth in section 19-03.7-02.

7 2. A manufacturer that intends to withdraw a referenced drug from sale or distribution  
8 from within the state shall provide a notice of withdrawal in writing to the insurance  
9 commissioner and to the attorney general at least one hundred eighty days before the  
10 withdrawal.

11 3. The insurance commissioner shall assess a penalty on a manufacturer or distributor  
12 that the insurance commissioner determines has withdrawn a referenced drug from  
13 distribution or sale in the state in violation of subsection 1 or 2. With respect to each  
14 referenced drug for which the insurance commissioner has determined the  
15 manufacturer or distributor has withdrawn from the market, the penalty must be equal  
16 to five hundred thousand dollars or the amount of annual savings determined by the  
17 insurance commissioner as described in subsection 5 of section 19-03.7-04,  
18 whichever is greater.

19 4. It is a violation of this chapter for a manufacturer or distributor of a referenced drug to  
20 refuse to negotiate in good faith with a payor or seller of prescription drugs a price that  
21 is within the referenced rate as determined in section 19-03.7-04.

22 5. The insurance commissioner shall assess a penalty on a manufacturer or distributor  
23 the insurance commissioner determines has failed to negotiate in good faith in  
24 violation of subsection 4. With respect to each referenced drug for which the insurance  
25 commissioner has determined the manufacturer or distributor has failed to negotiate in  
26 good faith, the penalty must be equal to five hundred thousand dollars or the amount  
27 of annual savings determined by the insurance commissioner as described in  
28 subsection 4 of section 19-03.7-04, whichever is greater.