GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL DRH10310-MR-124B

Short Title:	Reference Pricing for Rx Drugs.	(Public)
Sponsors:	Representative Insko.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE SAFETY, HEALTH, AND ECONOMIC WELL-BEING OF NORTH CAROLINIANS BY SAFEGUARDING THEM FROM THE NEGATIVE AND HARMFUL IMPACT OF EXCESSIVE PRICES FOR PRESCRIPTION DRUGS.

Whereas, access to prescription drugs is necessary for the people of North Carolina to maintain or acquire good health; and

Whereas, excessive prices negatively impact the ability of the people to obtain prescription drugs, and price increases that exceed reasonable levels thereby endanger the health and safety of the people of our State to maintain or acquire good health; and

Whereas, excessive prices for prescription drugs threaten the economic well-being of North Carolinians and endanger their ability to pay for other necessary and essential goods and services, including housing, food, and utilities; and

Whereas, excessive prices for prescription drugs contribute significantly to a dramatic and unsustainable rise in health care costs and health insurance that threatens the overall ability of North Carolinians to obtain health coverage and maintain or acquire good health; and

Whereas, excessive prices for prescription drugs contribute significantly to rising State costs for health care provided and paid for through health insurance programs for public employees, including employees of the State, municipalities and counties, school districts, institutions of higher education, and retirees whose health care costs are funded by public programs, thereby threatening the ability of the State to fund those programs adequately and further threatening the ability of the State to fund other programs necessary for the public good and safety, such as public education and public safety; and

Whereas, because the costs of prescription drugs and health insurance are tax-deductible, excessive costs for prescription drugs result in a reduction in the tax base and a resultant reduction in State revenue; and

Whereas, the costs to consumers, health insurers, and the State for prescription drug coverage are higher than the costs in other countries because the prices charged by manufacturers and distributors of drugs in the State are higher; and

Whereas, the General Assembly finds that excessive prices for prescription drugs threaten the safety and well-being of North Carolinians and finds it is necessary to act in order to protect North Carolinians from the negative impact of excessive costs; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-222. Referenced rate for prescription drugs.**

(a) Definitions. – The following definitions apply in this section:

(1) ERISA plan. – A health plan qualified under the Employee Retirement Income Security Act of 1974.
(2) Health benefit plan. – As defined under G.S. 58-3-167.
(3) Insurer. – As defined under G.S. 58-3-167.
(4) Participating ERISA Plan. – An ERISA plan that has elected to participate in the requirements and restrictions of this section.
(5) Referenced drugs. – Prescription drugs subject to a referenced rate.
(6) Referenced rate. – The maximum rate established by the Commissioner utilizing the Wholesale Acquisition Cost and other pricing data.
(7) State entity. – Any agency of State government that purchases prescription drugs on behalf of the State for an individual whose health care is paid for by the State, including any agent, vendor, fiscal agent, contractor, or other party acting on behalf of the State. State entity does not include the North Carolina Medicaid program or NC Health Choice program established under Chapter 108A of the General Statutes.
(8) State Health Plan. – The North Carolina State Health Plan for Teachers and State Employees established under Article 3B of Chapter 135 of the General Statutes.
(9) Wholesale acquisition cost. – As defined in 42 U.S.C. § 1395w-3a.

(b) Referenced Rate Determination. – The following steps shall be taken to determine the referenced rate for referenced drugs:

(1) Beginning with calendar year 2022, no later than June 1 of each calendar year, the State Treasurer shall transmit to the Commissioner a list of the 250 most costly prescription drugs for members of the State Health Plan. The cost of a prescription drug shall be based upon net price times utilization. For each of the 250 most costly prescription drugs, the State Treasurer shall also provide the net total amount spent for each of those prescription drugs for the previous calendar year. These 250 prescription drugs shall be the prescription drugs subject to the referenced rate for the next calendar year.
(2) Utilizing the information described in subdivision (1) of this subsection, no later than July 1 of each year, the Commissioner shall create and publish a list on the Department of Insurance website of 250 referenced drugs and each drug's referenced rate for the next calendar year.
(3) The Commissioner shall determine the referenced rate for the referenced drugs by comparing the wholesale acquisition cost to the cost from all of the following sources:
a. The Ontario Ministry of Health and Ministry of Long-Term Care, and most recently published on the Ontario Drug Benefit Formulary.
b. Régie de l'Assurance Maladie du Québec, and most recently published on the Quebec Public Drug Programs List of Medications.
c. British Columbia Ministry of Health, and most recently published on the BC Pharmacare Formulary.
d. Alberta Ministry of Health, and most recently published on the Alberta Drug Benefit List.
(4) The referenced rate for each referenced prescription drug shall be calculated as the lowest cost among those resources listed in subdivision (3) of this subsection and the wholesale acquisition cost. If a specific referenced drug is not included within the resources described in subdivision (3) of this subsection, then, for the purpose of determining the referenced rate for that drug, the Commissioner shall utilize the ceiling price for drugs as reported by the Government of Canada Patented Medicine Prices Review Board.

(c) Referenced Rate Health Benefit Plan Requirements. – An ERISA plan may elect for its purchase of prescription drugs to be subject to this section and shall notify the Commissioner in writing by October 1 of each calendar year only if that election is made. No health benefit plan that is not an ERISA plan offered by an insurer in this State and no participating ERISA plan shall purchase referenced drugs to be dispensed or delivered to an insured in this State, whether directly or through a distributor, for a cost higher than the referenced rate.

(d) Savings Calculation. – The Commissioner shall calculate annually the savings that are expected to be achieved by subjecting prescription drugs to the referenced rate. In making this determination the Superintendent of Insurance shall consult with the State Treasurer and the Chair of the North Carolina Board of Pharmacy.

(e) Use of Savings. – Any State entity, health benefit plan that is not an ERISA plan, or participating ERISA plan shall utilize the savings derived from using the referenced rate in accordance with this section to reduce costs to insureds and shall, no later than April 1 of each calendar year, submit a report on these savings to the Commissioner. The report shall describe the savings achieved for each referenced drug for the previous calendar year and how those savings were used to reduce costs to insureds.

(f) Enforcement. – Each violation of this section shall be subject to the maximum fine of one thousand dollars ($1,000) under G.S. 58-2-70. Every individual transaction shall be considered a separate violation. The refusal of a manufacturer or distributor to negotiate in good faith a price for a referred drug that is within the referenced rate shall be a valid affirmative defense in any enforcement action brought by the Commissioner under Article 2 of this Chapter and may be reported to the Attorney General. The Commissioner shall report a manufacturer or distributor that refuses to negotiate in good faith to the Attorney General."

SECTION 2. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 3. This act becomes effective October 1, 2021, and applies to health benefit plan contracts entered into, renewed, or amended on or after that date.