



# House of Representatives

General Assembly

**File No. 287**

January Session, 2019

Substitute House Bill No. 7174

*House of Representatives, April 2, 2019*

The Committee on Insurance and Real Estate reported through REP. SCANLON of the 98th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING PRESCRIPTION DRUGS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2019*) (a) For the purposes of  
2 this section:

3 (1) "Drug" has the same meaning as provided in section 21a-92 of  
4 the general statutes;

5 (2) "Participating individual" means an individual resident of this  
6 state who is participating in the program;

7 (3) "Participating pharmacist" means a pharmacist who is  
8 participating in the program;

9 (4) "Participating pharmacy" means a pharmacy that is participating  
10 in the program;

11 (5) "Pharmacist" has the same meaning as provided in section 38a-

12 479aaa of the general statutes;

13 (6) "Pharmacy" has the same meaning as provided in section 38a-  
14 479aaa of the general statutes;

15 (7) "Pharmacy benefits manager" has the same meaning as provided  
16 in section 38a-479aaa of the general statutes;

17 (8) "Program" means the Connecticut Prescription Drug Program  
18 established by the Comptroller pursuant to subsection (b) of this  
19 section; and

20 (9) "Program price" means the reimbursement rates and prescription  
21 drug prices established under the program.

22 (b) The Comptroller shall, within available appropriations, establish  
23 the Connecticut Prescription Drug Program. The purposes of the  
24 program shall be to: (1) Purchase outpatient prescription drugs,  
25 replenish supplies of outpatient prescription drugs or reimburse  
26 participating pharmacies and participating pharmacists for outpatient  
27 prescription drugs in order to secure the lowest possible prices and  
28 greatest possible rebates for outpatient prescription drugs prescribed  
29 to participating individuals; (2) make outpatient prescription drugs  
30 available at the lowest possible cost to participating individuals; (3)  
31 maintain a list of the most cost-effective and therapeutically effective  
32 outpatient prescription drugs available to participating individuals; (4)  
33 purchase and provide discounted outpatient prescription drugs to  
34 participating individuals; and (5) coordinate a comprehensive  
35 pharmacy benefit for participating individuals.

36 (c) (1) As part of the program, the Comptroller shall: (A) Establish  
37 eligibility criteria for individual residents of this state, as well as  
38 pharmacies and pharmacists, to participate in the program; (B)  
39 prescribe an application form for (i) individual residents of this state to  
40 become participating individuals, (ii) pharmacists to become  
41 participating pharmacists, and (iii) pharmacies to become participating  
42 pharmacies; (C) issue to participating individuals a prescription drug

43 identification card containing the information necessary for claims  
44 processing; (D) establish a list of preferred outpatient prescription  
45 drugs for the program; (E) negotiate with pharmaceutical  
46 manufacturers and other persons to secure discounts and rebates for  
47 outpatient prescription drugs; (F) establish program prices; (G)  
48 adjudicate pharmacy claims and reimburse participating pharmacies  
49 and participating pharmacists at program prices; (H) develop a system  
50 for allocating and distributing the operational costs of the program, as  
51 well as any rebates, to participating individuals; and (I) charge  
52 administrative fees to participating individuals, participating  
53 pharmacists and participating pharmacies to cover the operational  
54 costs of the program, and deposit such fees in the account established  
55 under section 2 of this act.

56 (2) As part of the program, the Comptroller may: (A) Purchase  
57 outpatient prescription drugs on behalf of participating individuals; or  
58 (B) cooperate with other states or regional consortia to purchase  
59 outpatient prescription drugs on behalf of participating individuals.

60 (3) The Comptroller may enter into a contract with a pharmacy  
61 benefits manager to perform the Comptroller's duties under  
62 subdivisions (1) and (2) of this subsection, provided the Comptroller  
63 shall require the pharmacy benefits manager to charge such pharmacy  
64 benefits manager's lowest available rate to perform such duties.

65 (d) The Comptroller may adopt regulations, in accordance with  
66 chapter 54 of the general statutes, to implement the provisions of this  
67 section.

68 Sec. 2. (NEW) (*Effective October 1, 2019*) There is established an  
69 account to be known as the "Connecticut Prescription Drug Program  
70 account" which shall be a separate, nonlapsing account within the  
71 General Fund. The account shall contain any moneys required by law  
72 to be deposited in the account. Moneys in the account shall be  
73 expended by the Comptroller for the purposes of the Connecticut  
74 Prescription Drug Program established pursuant to section 1 of this  
75 act.

76 Sec. 3. (NEW) (*Effective October 1, 2019*) (a) Each pharmaceutical  
77 manufacturer doing business in this state that manufactures a brand  
78 name prescription drug and enters into an agreement with another  
79 pharmaceutical manufacturer for the purpose of delaying or  
80 preventing such other manufacturer from introducing a generic  
81 substitute for such drug into the marketplace shall, not later than thirty  
82 days after entering into such agreement, send notice to the Insurance  
83 Commissioner, in a form and manner prescribed by the commissioner,  
84 disclosing the name of such drug.

85 (b) (1) The commissioner shall, not later than thirty days after  
86 receiving a notice pursuant to subsection (a) of this section, send notice  
87 to each health carrier, as defined in section 38a-1080 of the general  
88 statutes, and pharmacy benefits manager, as defined in section 38a-  
89 479aaa of the general statutes, doing business in this state. Such notice  
90 shall, at a minimum:

91 (A) Disclose the name of the brand name prescription drug that is  
92 the subject of the notice the commissioner received pursuant to  
93 subsection (a) of this section; and

94 (B) Instruct such health carrier, if such health carrier includes such  
95 drug on such health carrier's drug formulary or list of covered drugs,  
96 or pharmacy benefits manager, if such pharmacy benefits manager  
97 administers a prescription drug benefit that includes such drug, to  
98 immediately reduce the cost of such drug to covered individuals by an  
99 amount that is equal to fifty per cent of the manufacturer's wholesale  
100 list price for such drug.

101 (2) For the purposes of this subsection, "manufacturer's wholesale  
102 list price" has the same meaning as provided in section 21a-126 of the  
103 general statutes.

104 (c) The provisions of this section shall apply to the maximum extent  
105 permitted by applicable law.

106 (d) The commissioner may adopt regulations, in accordance with

107 chapter 54 of the general statutes, to implement the provisions of this  
108 section.

109 Sec. 4. Subdivision (3) of subsection (m) of section 5-259 of the  
110 general statutes is repealed and the following is substituted in lieu  
111 thereof (*Effective October 1, 2019*):

112 (3) (A) [(i)] For the purposes of this subdivision:

113 (i) "Nonstate public employer" means (I) a municipality or other  
114 political subdivision of the state, including a board of education, quasi-  
115 public agency or public library, as defined in section 11-24a, or (II) the  
116 Teachers' Retirement Board; and

117 (ii) "Qualified private employer" means a self-insured private  
118 employer doing business in this state.

119 (B) The Comptroller shall offer nonstate public employers and  
120 qualified private employers the option to purchase prescription drugs  
121 for their employees, employees' dependents and retirees under the  
122 purchasing authority of the state pursuant to section 1 of public act 09-  
123 206, subject to the provisions of subparagraph [(E)] (F) of this  
124 subdivision.

125 [(ii) For purposes of this subdivision, "nonstate public employer"  
126 means (I) a municipality or other political subdivision of the state,  
127 including a board of education, quasi-public agency or public library,  
128 as defined in section 11-24a, or (II) the Teachers' Retirement Board.]

129 [(B)] (C) The Comptroller shall establish procedures to determine (i)  
130 the eligibility requirements for, (ii) the enrollment procedures for, (iii)  
131 the duration of, (iv) requirements regarding payment for, and (v) the  
132 procedures for withdrawal from and termination of, the purchasing of  
133 prescription drugs for nonstate public employers and qualified private  
134 employers under subparagraph [(A)] (B) of this subdivision.

135 [(C)] (D) The Comptroller may offer to nonstate public employers  
136 and qualified private employers that choose to purchase prescription

137 drugs pursuant to subparagraph [(A)] (B) of this subdivision the  
138 option to purchase stop loss coverage from an insurer at a rate  
139 negotiated by the Comptroller.

140 [(D)] (E) Two or more nonstate public employers or qualified  
141 private employers may join together for the purpose of purchasing  
142 prescription drugs for their employees, employees' dependents and  
143 retirees. Such arrangement shall not constitute a multiple employer  
144 welfare arrangement, as defined in Section 3 of the Employee  
145 Retirement Income Security Act of 1974, as amended from time to  
146 time.

147 [(E)] (F) (i) The Comptroller shall offer nonstate public employers  
148 and qualified private employers the option to purchase prescription  
149 drugs through the plan set forth in the State Employees' Bargaining  
150 Agent Coalition's collective bargaining agreement with the state only if  
151 the Health Care Cost Containment Committee, established in  
152 accordance with the ratified agreement between the state and said  
153 coalition pursuant to subsection (f) of section 5-278, has indicated in  
154 writing to the Comptroller that allowing such nonstate public  
155 employers and qualified private employers such option is consistent  
156 with said coalition's collective bargaining agreement.

157 (ii) Such writing shall not be required if the Comptroller establishes  
158 a separate prescription drugs purchasing plan or plans for nonstate  
159 public employers and qualified private employers.

160 (iii) Nonstate public employers and qualified private employers that  
161 purchase prescription drugs pursuant to this subdivision shall pay the  
162 full cost of their own claims and prescription drugs.

163 Sec. 5. Section 38a-477cc of the general statutes is repealed and the  
164 following is substituted in lieu thereof (*Effective October 1, 2019*):

165 (a) [On and after January 1, 2018, no] No contract for pharmacy  
166 services entered into in the state between a health carrier, as defined in  
167 section 38a-591a, or pharmacy benefits manager, as defined in section

168 38a-479aaa, and a pharmacy or pharmacist shall:

169 (1) On and after January 1, 2018, contain a provision prohibiting or  
170 penalizing, including through increased utilization review, reduced  
171 payments or other financial disincentives, a pharmacist's disclosure to  
172 an individual purchasing prescription medication of information  
173 regarding: [(1) the]

174 (A) The cost of the prescription medication to the individual; [,] or  
175 [(2) the]

176 (B) The availability of any therapeutically equivalent alternative  
177 medications or alternative methods of purchasing the prescription  
178 medication, including, but not limited to, paying a cash price, that are  
179 less expensive than the cost of the prescription medication to the  
180 individual; [,] and

181 (2) On and after January 1, 2020, contain a provision permitting the  
182 health carrier or pharmacy benefits manager to recoup, directly or  
183 indirectly, from a pharmacy or pharmacist any portion of a claim that  
184 such health carrier or pharmacy benefits manager has paid to the  
185 pharmacy or pharmacist, unless such recoupment is permitted under  
186 section 38a-479iii or required by applicable law.

187 (b) (1) On and after January 1, 2018, no health carrier or pharmacy  
188 benefits manager shall require an individual to make a payment at the  
189 point of sale for a covered prescription medication in an amount  
190 greater than the lesser of: [(1) the]

191 (A) The applicable copayment for such prescription medication; [,]  
192 (2) the]

193 (B) The allowable claim amount for the prescription medication; [,]  
194 or [(3) the]

195 (C) The amount an individual would pay for the prescription  
196 medication if the individual purchased the prescription medication  
197 without using a health benefit plan, as defined in section 38a-591a, or

198 any other source of prescription medication benefits or discounts.

199 (2) For the purposes of this subsection, "allowable claim amount"  
200 means the amount the health carrier or pharmacy benefits manager  
201 has agreed to pay the pharmacy for the prescription medication.

202 (c) Any provision of a contract that violates the provisions of this  
203 section shall be void and unenforceable. Any general business practice  
204 that violates the provisions of this section shall constitute an unfair  
205 trade practice pursuant to chapter 735a. The invalidity or  
206 unenforceability of any contract provision under this subsection shall  
207 not affect any other provision of the contract.

208 (d) The Insurance Commissioner may: [, (1) pursuant to the  
209 provisions of chapter 697, enforce]

210 (1) Enforce the provisions of this section [,] pursuant to chapter 697;  
211 and

212 (2) [upon] Upon request, audit a contract for pharmacy services for  
213 compliance with the provisions of this section.

214 Sec. 6. (*Effective from passage*) (a) There is established a task force to  
215 study drug reimportation. Such study shall include, but need not be  
216 limited to, an examination of the feasibility of implementing a drug  
217 reimportation program for the purpose of lowering the cost of  
218 prescription drugs and health insurance in this state.

219 (b) The task force shall consist of the following members:

220 (1) Two appointed by the speaker of the House of Representatives;

221 (2) Two appointed by the president pro tempore of the Senate;

222 (3) One appointed by the majority leader of the House of  
223 Representatives;

224 (4) One appointed by the majority leader of the Senate;



225 (5) One appointed by the minority leader of the House of  
226 Representatives;

227 (6) One appointed by the minority leader of the Senate;

228 (7) The Attorney General, or the Attorney General's designee;

229 (8) The Comptroller, or the Comptroller's designee;

230 (9) The Insurance Commissioner, or the commissioner's designee;

231 (10) The Commissioner of Public Health, or the commissioner's  
232 designee;

233 (11) The Commissioner of Social Services, or the commissioner's  
234 designee;

235 (12) The executive director of the Office of Health Strategy, or the  
236 executive director's designee;

237 (13) The Healthcare Advocate, or the Healthcare Advocate's  
238 designee; and

239 (14) Two persons appointed by the Governor.

240 (c) Any member of the task force appointed under subdivision (1),  
241 (2), (3), (4), (5) or (6) of subsection (b) of this section may be a member  
242 of the General Assembly.

243 (d) All appointments to the task force shall be made not later than  
244 thirty days after the effective date of this section. Any vacancy shall be  
245 filled by the appointing authority.

246 (e) The speaker of the House of Representatives and the president  
247 pro tempore of the Senate shall select the chairpersons of the task force  
248 from among the members of the task force. Such chairpersons shall  
249 schedule the first meeting of the task force, which shall be held not  
250 later than sixty days after the effective date of this section.

251 (f) The administrative staff of the joint standing committee of the

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252 General Assembly having cognizance of matters relating to insurance  
253 shall serve as administrative staff of the task force.

254 (g) Not later than January 1, 2020, the task force shall submit a  
255 report on its findings and recommendations to the joint standing  
256 committee of the General Assembly having cognizance of matters  
257 relating to insurance, in accordance with the provisions of section 11-  
258 4a of the general statutes. The task force shall terminate on the date  
259 that it submits such report or January 1, 2020, whichever is later.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	New section
Sec. 2	October 1, 2019	New section
Sec. 3	October 1, 2019	New section
Sec. 4	October 1, 2019	5-259(m)(3)
Sec. 5	October 1, 2019	38a-477cc
Sec. 6	from passage	New section

**Statement of Legislative Commissioners:**

In Section 3(b)(2), "subdivision" was changed to "subsection" for accuracy.

**INS**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
Comptroller; State Comptroller - Fringe Benefits <sup>1</sup>	GF - Potential Cost	Up to \$50,000	None
State Comptroller - Fringe Benefits (State Employee and Retiree Health Plan)	GF&TF - Potential Savings	See Below	See Below
Insurance Dept.	IF - Cost	Up to \$2,250	Up to \$3,000

Note: GF=General Fund; GF&TF=General Fund & Transportation Fund; IF=Insurance Fund

**Municipal Impact:**

Municipalities	Effect	FY 20 \$	FY 21 \$
All Municipalities	Potential Savings	See Below	See Below

**Explanation**

The bill's requirements result in the following fiscal impact to the state and municipalities:

**Sections 1 and 2** may result in a cost of up to \$50,000 to the Office of the State Comptroller (OSC) in FY 20 related to start-up costs for the Connecticut Prescription Drug Program (CPDP). The potential cost is related to (1) outside consultant services, including those of a pharmacy benefit manager (PBM) to design and provide the

<sup>1</sup> The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.19% of payroll in FY 20 and FY 21.

framework for the plan, and (2) \$45,000 to support partial year salary and fringe benefit costs for an additional Retirement and Benefits Officer (\$31,500 in salary and \$13,000 in fringe benefits)<sup>2</sup>. In addition the cost of providing member support and outreach for participating individuals prior to administrative fees being realized by OSC.

The bill requires OSC to charge administrative fees to participating individuals, pharmacists and pharmacies to cover the operational costs of the program and deposit those fees in a separate non-lapsing account within the General Fund. Therefore ongoing administrative costs of the program including but not limited staff costs are anticipated to be covered by revenue generate by the fee.

The bill permits OSC to contract with a PBM to fulfill the requirements of the bill with respect to the CPDP but does not expressly require it. Provided the level of expertise required and based on the current provision of pharmacy benefits operated by OSC it is likely OSC will use a PBM for the CPDP.<sup>3</sup>

**Section 3** may result in a savings to the state and municipalities to the extent drug manufactures, doing business in the state, engage in agreements to delay generic drug manufacturing and therefore are required to reduce the cost of the named drug by 50% in accordance with the bill. The savings will depend on (1) the specific drug for which the agreement applies; (2) the manufacturer's wholesale list price, or equivalent<sup>4</sup>, of the drug; and (3) the extent to which the provisions of this section are permissible under federal law.<sup>5</sup> For reference the state employee and retiree health plan spent

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<sup>2</sup> Based on entry level annual salary for a retirement benefits officer of approximately \$63,200.

<sup>3</sup> The Oregon Health Authority and Washington State Health Authority operate prescription drug discount programs consistent with the program established in the bill. Both states utilize a PBM to administer the program including paying claims and negotiating with manufacturers.

<sup>4</sup> Pursuant to CGS 21a-126, a "manufacturer's wholesale list price" is a manufacturer's published wholesale price or, if there is no such published or list price, the wholesaler's invoice price, excluding discounts, to the retailer.

<sup>5</sup> Source: Testimony submitted to Insurance Committee: Pharmaceutical Research and Manufacturers of America (February 28, 2019).

approximately \$359 million (net of pharmacy rebates) in FY 18 on prescription drugs for state employees, retirees and their dependents.<sup>6</sup> Pursuant to the SEBAC 2011 Agreement, the state plan requires generic substitution. For illustrative purposes, based on the most recent plan data available, the average cost per generic prescription for the active employee group was 95% less (approximately \$700) than the average cost of a preferred brand prescription. It is uncertain what impact the bill will have on the availability or price of pharmaceuticals in the market and therefore the scope of the impact to the state and municipal health plans.

This section results in a cost to the Insurance Department (CID) of up to \$2,250 in FY 20 and \$3,000 in FY 21 for mailing expenses, and depends on the volume of agreements to delay generic drug manufacturing by manufacturers. The bill requires CID to send notice to all Connecticut health carriers and pharmacy benefit managers, instructing them to reduce the cost of the drug involved to individuals covered under their plans. FY 20 reflects a partial year, given the October 1, 2019, effective date.

**Section 4** is not anticipated to result in a fiscal impact to the state or municipalities by providing access for self-insured private employers to OSC pharmaceutical purchasing authority. Municipalities are permitted under current law to access state plan prescription pricing through OSC; there are no additional bulk purchasing savings associated with the bill that cannot already be achieved. In addition, consistent with current law regarding participating municipalities, private employers are responsible for the full cost of their claims and prescription costs.

**Section 5** does not result in a fiscal impact to the state or municipalities as it pertains to certain financial transactions between health carriers or pharmacy benefit managers (PBMs) and pharmacies or pharmacist.

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<sup>6</sup> Source: Office of the State Comptroller

**Section 6** does not result in a fiscal impact to the state agencies specified in the bill to be part of the task force established by the bill as the agencies have the expertise to do so.

***The Out Years***

The annualized ongoing fiscal impact identified above will continue into the future subject to (1) the potential impact to pharmaceutical prices resulting from the bill's provisions regarding agreements to delay generic drug manufacturing and (2) mailing expenses incurred by DOI.

**OLR Bill Analysis****sHB 7174*****AN ACT CONCERNING PRESCRIPTION DRUGS.*****SUMMARY**

This bill requires the comptroller, within available appropriations, to establish the Connecticut Prescription Drug Program (CPDP) to, among other things, make outpatient prescription drugs available to program participants at the lowest possible cost.

It also requires pharmaceutical manufacturers engaging in agreements to delay generic drug manufacturing (e.g., “pay-for-delay” agreements) to report such agreements to the Insurance Commissioner, who must notify other health carriers about the drug covered by the agreement. Under the bill, health carriers covering drugs subject to one of these notices must reduce the cost of the drug to covered individuals by 50%.

The bill also:

1. allows certain self-insured private employers to access the prescription drug benefit portion of the state employee and retiree health plan;
2. prohibits contracts between pharmacy benefit managers (PBMs) and pharmacies from allowing the PBM to recoup any portion of a settled claim, except under an audit; and
3. establishes a drug reimportation task force.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2019, except for the task force, which is effective upon passage.

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**§§ 1 & 2 — CONNECTICUT PRESCRIPTION DRUG PROGRAM (CPDP)**

The bill requires the comptroller to establish the CPDP, within available appropriations, to:

1. purchase outpatient prescription drugs, replenish supplies of such drugs, or reimburse participating pharmacies and pharmacists for outpatient prescription drugs in order to secure the lowest possible prices and greatest possible rebates for program participants;
2. make outpatient prescription drugs available to participants at the lowest possible cost;
3. maintain a list of the most cost-effective and therapeutically effective outpatient prescription drugs available to participants;
4. purchase and provide discounted outpatient prescription drugs to participants; and
5. coordinate a comprehensive pharmacy benefit for participants.

To do this, the bill authorizes the comptroller to, either by himself or in cooperation with other states or regional consortia, purchase outpatient prescription drugs on participating individuals' behalf.

***Comptroller Requirements***

As part of the program, the comptroller must:

1. establish eligibility criteria for Connecticut residents and participating pharmacies and pharmacists;
2. prescribe an application for individuals, pharmacists, and pharmacies to participate in the program;
3. issue to participating individuals a prescription drug identification card that contains claims processing information;
4. establish a list of preferred outpatient prescription drugs for the



program;

5. negotiate with pharmaceutical manufacturers and others to secure prescription drug discounts and rebates;
6. establish program prices;
7. adjudicate pharmacy claims and reimburse participating pharmacies and pharmacists at program prices;
8. develop a system to allocate and distribute program operations costs, as well as any rebates, to individual participants.

### ***CPDP Account***

Under the bill, the comptroller must also charge administrative fees to individual program participants, as well as participating pharmacists and pharmacies, to cover the program's operational costs. Money from the fees must be deposited in the Connecticut prescription drug program account, which the bill creates as a separate nonlapsing account in the General Fund. Money in the account must be used to facilitate the CPDP.

### ***Program Implementation and Administration***

The comptroller may contract with a PBM to run the program, as long as he requires the PBM to charge its lowest available rate for such services. The bill also authorizes him to adopt implementing regulations.

## **§ 3 — AGREEMENTS TO DELAY GENERIC DRUG MANUFACTURING**

Under the bill, each brand name drug manufacturer that conducts business in Connecticut and enters into an agreement with another manufacturer to delay the introduction of a generic replacement drug must, within 30 days, notify the insurance commissioner of the brand name drug's name in a form and manner he prescribes.

Within 30 days of receiving such a notice, the commissioner must:

1. notify and disclose to all health carriers and PBMs doing business in Connecticut that the brand name prescription drug is subject to such an agreement, and
2. instruct health carriers covering the brand name drug, and PBMs administering plans that include the drug, to immediately reduce the drug's cost by 50% of the manufacturer's wholesale list price.

A "manufacturer's wholesale list price" is a manufacturer's published wholesale price or, if there is no such published or list price, the wholesaler's invoice price, excluding discounts, to the retailer.

These provisions apply to the maximum extent permitted by law. The bill allows the commissioner to adopt implementing regulations.

#### **§ 4 — SELF-INSURED PRIVATE EMPLOYER ACCESS TO THE PRESCRIPTION DRUG BENEFIT PORTION OF THE STATE EMPLOYEE AND RETIREE HEALTH PLAN**

By law, certain nonstate public employers (e.g., municipalities, quasi-public agencies, and boards of education) can purchase prescription drugs through the state employee and retiree health plan administered by the comptroller. The bill allows a self-insured private employer, either individually or together with other self-insured private employers, to also purchase prescription drug coverage through the plan. It also incorporates self-insured private employers into existing law's plan administration provisions, thus:

1. requiring the commissioner to establish eligibility, enrollment, payment, and withdrawal procedures for self-insured private employers;
2. allowing the comptroller to offer self-insured private employers the option to purchase stop loss coverage at a negotiated rate; and
3. requiring self-insured private employers to pay the full cost of their own claims and prescription drugs.

As under existing law for nonstate public employers, the comptroller must either establish or incorporate self-insured private employers into a separate plan or receive approval from the Health Care Cost Containment Committee.

### **§ 5 — PBM PAYMENTS**

Beginning January 1, 2020, the bill prohibits a contract between a health carrier or PBM and a pharmacy or pharmacist from allowing the health carrier or PBM to recoup, directly or indirectly, any portion of a claim that was paid to the pharmacy or pharmacist. The bill excludes any payments made due to a pharmacy audit or authorized by another applicable law.

### **§ 6 — DRUG REIMPORTATION TASK FORCE**

The bill establishes a task force to study drug reimportation and requires it to report to the Insurance and Real Estate Committee with its findings by January 1, 2020, at which point it terminates. The study must include an examination of the feasibility of implementing a importation program to lower prescription drug and health insurance costs.

Under the bill, the task force consists of:

1. two members appointed by the House Speaker;
2. two appointed by the Senate President Pro Tempore;
3. one each appointed by the House and Senate majority leaders;
4. one each appointed by the House and Senate minority leaders;
5. the attorney general, comptroller, and the public health, social services, and insurance commissioners, or their designees;
6. the Office of Health Strategy executive director and the healthcare advocate, or their designees; and
7. two appointed by the governor.

The bill does not specify qualifications for appointees. It allows the legislative appointees to be legislators. Appointments must be made within 30 days of the bill's passage, and vacancies are filled by the appointing authority.

The House Speaker and the Senate President Pro Tempore must select the chairpersons from among the task force's members. The chairpersons must schedule the first meeting within 60 days of the bill's passage.

Under the bill, the Insurance and Real Estate Committee's staff serves as the task force's administrative staff.

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 12    Nay 8    (03/14/2019)