



## **A Model Act to Allow Buy-in into State Purchasing Pools for Prescription Drugs**

- (1) This section establishes the State Prescription Drug Purchasing Pool. The [Comptroller] shall offer nonstate public employers, qualified private employers, and health insurance carriers the option to purchase prescription drugs for their employees, employees' dependents and retirees under the purchasing authority of the state, subject to the provisions of subparagraph (5) of this section.
  - (A) "Nonstate public employer" means a county, municipality, or other political subdivision of the state, including a board of education, quasi-public agency, state university system, or the [Teachers' Retirement Board].
  - (B) "Qualified private employer" means a self-insured private employer doing business in this state.
  - (C) "Health insurance carrier" means an entity subject to the insurance laws and regulations of this state or subject to the jurisdiction of the [Commissioner of Insurance] that offers health insurance, health benefits, or contracts for health care services, including prescription drug coverage, to large groups, small groups, or individuals on or outside the [Marketplace].

**Commentary to Section 1.** *Bracketed items can be customized according to the state. For example, identify the appropriate state official who is responsible for negotiating and administering the state employee health benefit plan (e.g., Treasurer, Comptroller, etc.). Section 1 is worded as "shall" and not "may" so a different Comptroller cannot terminate the program through their own discretion. This term can be changed to "may" if the state wants the official to have more discretion about whether and how to offer participation in the purchasing pool.*

- (2) (A) The Comptroller shall establish procedures to determine (i) the eligibility requirements for, (ii) the enrollment procedures for, (iii) the duration of, (iv) requirements regarding payment for, and (v) the procedures for withdrawal from and termination of, participation in the State Prescription Drug Purchasing Pool by nonstate public employers, qualified private employers, and health insurance carriers, under paragraph (1) of this section.
  - (B) The Comptroller is authorized to promulgate rules to implement the provisions of this section in accordance with [citation to state's Administrative Procedure Act].
- (3) The Comptroller may offer to nonstate public employers, qualified private employers, or health insurance carriers that choose to participate in the State Prescription Drug Purchasing Pool pursuant to Section (1) of this section the option to purchase stop loss coverage from an insurer at a rate negotiated by the Comptroller.

- (4) Two or more nonstate public employers or qualified private employers may join together for the purpose of purchasing prescription drugs for their employees, employees' dependents and retirees. Such arrangement shall not constitute a multiple employer welfare arrangement, as defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended from time to time.
- (5) (A) The [Comptroller] may offer nonstate public employers, qualified private employers, licensed insurance carriers the option to purchase prescription drugs through the plan set forth in the [State Employees' collective bargaining agreement] with the state only if the [title of official or third-party entity] determines in writing that allowing such nonstate public employers, qualified private employers, or licensed insurance carrier such option is consistent with the collective bargaining agreement.
- (B) Such writing shall not be required if the Comptroller establishes a separate prescription drug purchasing plan or plans for nonstate public employers, qualified private employers, and licensed insurance carriers.

***Commentary to Section 5.*** This subsection addresses potential conflicts with the state employee's collective bargaining agreement.

- (6) Nonstate public employers, qualified private employers, and health insurance carriers that participate in the State Prescription Drug Purchasing Pool pursuant to this section shall pay the full cost of their own claims and prescription drugs.

***Commentary to Section 6.*** This provision underscores that there is no risk-pooling. Typically the participating employers or other entities in the purchasing pool would sign their own agreements with the PBM, but under the same terms negotiated by the state for the whole purchasing pool.

- (7) The [Comptroller] may coordinate the State Prescription Drug Purchasing Pool with the state's [Prescription Drug Discount Card Program]. Such coordination may include purchasing prescription drugs for the [Prescription Drug Discount Card Program] through the State Prescription Drug Purchasing Pool and offering discounts, rebates, and prices secured through the State Prescription Drug Purchasing Pool to participants in the [Prescription Drug Discount Card Program].

***Commentary to Section 7.*** This paragraph authorizes, but does not require, the Comptroller to coordinate this public purchasing pool with the state's prescription drug discount card program for eligible individuals. Do not include if the state does not have a prescription drug discount card program.

*\*Last Updated: Jan. 10, 2020*