

A Tax on Drug Price Increases Can Offset Costs

States could discourage manufacturers from large price hikes

This model legislation for the policy described in “A Tax on Drug Price Increases Can Offset Costs” serves as a guide for how states could levy a new tax to discourage large price increases on prescription drugs.

1) Definitions

a) In this section, average manufacturer price and covered outpatient drug have the meanings defined by 42 U.S.C. Section 1396r-8 and its subsequent amendments.

b) Baseline average manufacturer price shall mean the average manufacturer price for such dosage form and strength of the covered outpatient drug for the first full calendar quarter after the day on which the drug was first marketed.

c) Inflation-adjusted baseline average manufacturer price shall mean the baseline average manufacturer price increased by the percentage by which the consumer price index for all urban consumers (United States city average) for the month before the month in which the sale occurs exceeds such index for the month before the first month of the first full calendar quarter after the day on which the drug was first marketed. This would be regardless of whether the covered outpatient drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such quarter.

2) Any establishment that makes the first sale of a covered outpatient drug within the state is liable for a tax equal to 100 percent of the difference between the gross amount received for the first sale of the covered outpatient drug and the inflation-adjusted baseline average manufacturer price of the covered outpatient drug.

a) Any sale of a covered outpatient drug within the state shall be presumed to be the first sale of the covered outpatient drug unless the seller can prove that the tax is due from another establishment within the chain of title. This can be established, among other ways, by producing an invoice from the establishment owing the tax noting the establishment’s liability for the tax.

b) This tax shall be charged against and paid by the establishment making the first sale and shall not be added as a separate charge or line item or otherwise passed down on any invoice to the customer.

c) Any invoice associated with the first sale of a covered outpatient drug shall state the establishment making the sale’s liability for the tax and include the establishment’s name, address, and taxpayer identification number. This invoice shall also include identifying information, as defined by the Department of Health, for the covered outpatient drug or drugs associated with the first sale, the date of the sale, the purchaser, the number of units sold, and any other information required by the department. A copy of this invoice shall be made available to any subsequent seller or purchaser of the covered outpatient drugs detailed on the invoice as evidence that the subsequent seller or purchaser is not liable for the tax. The department may establish procedures for such invoices to be transmitted and stored electronically, including allowing sellers to maintain records of the invoice on behalf of purchasers.

d) Any establishment liable for any tax under this section shall pay the tax on a monthly basis to the Department of Health, following procedures it has established.

e) An establishment liable for paying the tax under this section shall use a standard form that shall be issued by the department that shall include identifying information, as defined by the department, for the covered outpatient drug on which the tax is being paid, the date of the sale, the purchaser, the baseline average manufacturer price for the covered outpatient drug, the inflation-adjusted baseline average manufacturer price, the gross unit sale price of the drug, the number of units sold, the tax paid, and any other information required by the department. The establishment shall transmit this form for each sale of the drug. The department shall have authority to establish the manner and format, including electronic submission, of this filing.

f) Any establishment liable for any tax under this section shall maintain auditable records of sales made and taxes paid for a period of at least three years unless the department establishes a different retention period under regulation.

g) Should any of the calculations used to determine the tax be later determined to be inaccurate, any establishment with an underpaid prior tax shall affirmatively rectify the underpayment with the department. The department shall establish procedures for the payment of such taxes, including interest, and the department shall have authority to issue civil monetary penalties for negligent or willful failure to pay the required taxes. The department shall further establish procedures for refunds or credits of overpaid taxes.

- 3) All reports, calculations, and taxes made under this section shall remain confidential. The department shall establish procedures to ensure the confidentiality of all submissions under this section.
- 4) The department shall have authority to issue regulations implementing the provisions of this section.