

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 297

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO MEDICAL ASSISTANCE; CREATING A PRESCRIPTION DRUG  
DISCOUNT PROGRAM FOR CERTAIN LOW-INCOME PERSONS; MAKING  
APPROPRIATIONS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"New Mexico Prescription Drug Discount Act".

Section 2. DEFINITIONS.--As used in the New Mexico  
Prescription Drug Discount Act:

A. "average rebate percentage" means the aggregate  
average manufacturers' rebate, less one percent of the total  
received by the department from prescription drug  
manufacturers, based on rebates most recently available to the  
department, expressed as a percentage;

1           B. "department" means the human services  
2 department;

3           C. "manufacturers' rebate" means that amount of  
4 money required to be reimbursed to the state for prescription  
5 drug purchases under the state medicaid program by  
6 pharmaceutical drug manufacturers under the federal Omnibus  
7 Budget Reconciliation Act of 1990;

8           D. "medicaid price" means the price set by the  
9 department for a prescription drug provided under the medicaid  
10 program;

11           E. "member" means a person enrolled in the New  
12 Mexico prescription drug discount program;

13           F. "pharmacy" means a place of business licensed as  
14 a pharmacy pursuant to the Pharmacy Act; and

15           G. "program" means the New Mexico prescription drug  
16 discount program.

17           Section 3. PRESCRIPTION DRUG DISCOUNT PROGRAM CREATED. --

18           A. The medical assistance division of the  
19 department shall design and implement a prescription drug  
20 discount program under the state's medicaid program to provide  
21 only prescription drug discounts to members and no other  
22 medicaid benefits. Implementation of the program shall be  
23 pursuant to rules adopted by the department. The program shall  
24 be consistent with the provisions of Title 19 of the federal  
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1 Social Security Act.

2 B. To be eligible for the program, a person shall:

3 (1) be a resident of the state of New Mexico;

4 and

5 (2) have income of no more than three hundred  
6 percent of the federal poverty level, according to the levels  
7 of income defining poverty by family size published annually in  
8 the federal register by the United States department of health  
9 and human services.

10 C. The department shall establish by rule a  
11 definition of "income" for purposes of determining eligibility  
12 pursuant to Paragraph (2) of Subsection B of this section. The  
13 department shall utilize the same methodology for income  
14 eligibility methodology for the New Mexico prescription drug  
15 discount program as is utilized for medical assistance  
16 eligibility in the medicaid program.

17 D. If, in order to implement the program authorized  
18 in Subsections A and B of this section it is necessary to  
19 obtain a waiver pursuant to Section 1115 of the federal Social  
20 Security Act, the department shall apply for the waiver no  
21 later than October 1, 2001.

22 Section 4. PRESCRIPTION DRUG DISCOUNT PROGRAM - DEPARTMENT  
23 DUTIES. --In establishing the program, the department shall:

24 A. enroll and provide program identification cards

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1 to eligible applicants and require presentation of the card by  
2 a member when prescription drugs are purchased under the  
3 program;

4 B. obtain manufacturers' rebates, as established in  
5 the federal Omnibus Budget Reconciliation Act of 1990, from  
6 drug manufacturers for prescription drugs provided through the  
7 medicaid program; and

8 C. pay to pharmacists amounts equal to the rebates  
9 provided to the department's medicaid program by the  
10 prescription drug manufacturer based on prescription drugs  
11 provided under the program.

12 Section 5. PROGRAM TRANSACTIONS. --

13 A. Upon presentation of a program identification  
14 card and a prescription from a licensed practitioner, a  
15 pharmacy may fill the prescription and shall charge the member  
16 a price no more than the medicaid price less an amount equal to  
17 the average rebate percentage.

18 B. A pharmacy that has sold a prescription drug to  
19 a member under the program shall notify the department of the  
20 transaction, including the price charged the member for filling  
21 the prescription and all other information required by the  
22 department.

23 Section 6. FEDERAL ACT REQUIREMENTS. -- Information  
24 required by the department in the program eligibility process,  
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1 including that for the program identification card and that  
2 required of pharmacies participating in the program, shall be  
3 in accordance with the federal Health Insurance Portability and  
4 Accountability Act of 1996.

5 Section 7. PRESCRIPTION DRUG DISCOUNT FUND CREATED. -- The  
6 "prescription drug discount fund" is created in the state  
7 treasury. All appropriations and money received by the  
8 department for the program, including manufacturers' rebates,  
9 shall be deposited in the fund and shall be used by the  
10 department to carry out the purposes of the New Mexico  
11 Prescription Drug Discount Act. Money from investment of the  
12 fund shall be credited to the fund. Money in the fund shall  
13 not revert to any other fund at the end of a fiscal year. The  
14 fund shall be administered by the department, and money in the  
15 fund is appropriated to the department to reimburse pharmacies  
16 the average rebate percentage for prescription drugs provided  
17 under the program. No more than one percent of the amount  
18 received annually shall be used by the department to administer  
19 the program.

20 Section 8. REPORT. -- The department shall publish in its  
21 monthly statistical report the number of program members, the  
22 number of participating pharmacies, the total amount paid for  
23 prescription drugs under the program, the amount of  
24 manufacturers' rebate funds received and the volume of the top  
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1 fifty prescriptions filled by type of prescription drug and the  
2 average amount paid for each type.

3 Section 9. APPROPRIATION. --

4 A. Five million dollars (\$5,000,000) is  
5 appropriated from the general fund to the prescription drug  
6 discount fund to be expended by the human services department  
7 in fiscal years 2002 and 2003 as a one-time appropriation to  
8 make initial payments to pharmacies under the New Mexico  
9 Prescription Drug Discount Act.

10 B. Expenditure of this appropriation is contingent  
11 upon the department receiving a waiver from the federal health  
12 care financing administration of certain state plan provisions  
13 required pursuant to Title 19 of the federal Social Security  
14 Act in order to implement the provisions of the New Mexico  
15 Prescription Drug Discount Act.

16 Section 10. APPROPRIATION. --Three hundred thousand  
17 dollars (\$300,000) is appropriated from the general fund to the  
18 human services department for expenditure in fiscal years 2001  
19 and 2002 to apply to the federal health care financing  
20 administration for a waiver to implement the New Mexico  
21 Prescription Drug Discount Act. Any unexpended or unencumbered  
22 balance remaining at the end of fiscal year 2002 shall revert  
23 to the general fund.

24 Section 11. EMERGENCY. --It is necessary for the public  
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1 peace, health and safety that this act take effect immediately.

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