

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 877

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

AN ACT

RELATING TO PRESCRIPTION DRUGS; PROVIDING A PRESCRIPTION DRUG
PROGRAM TO ASSIST PERSONS WITHOUT PRESCRIPTION DRUG COVERAGE;
CREATING A FUND; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Prescription Program Act".

Section 2. DEFINITIONS.--As used in the Prescription
Program Act:

- A. "department" means the department of health;
- B. "insurer" means a person, firm, association,
corporation or risk-bearing entity duly authorized in the
state pursuant to the New Mexico Insurance Code to transact
the business of insurance;
- C. "participant" means a person who is determined

1 by the department to be eligible to participate in the
2 program;

3 D. "prescription benefits manager" means a person,
4 other than a pharmacy or pharmacist, who acts as an
5 administrator in connection with pharmacy benefits; and

6 E. "program" means a plan that provides coverage
7 and benefits to a variety of prescription medications for
8 certain residents of the state pursuant to the Prescription
9 Program Act.

10 Section 3. PRESCRIPTION DRUG PROGRAM - CONTRACTS - - REQUEST
11 FOR PROPOSAL. - -

12 A. The department shall establish a voluntary,
13 statewide program to provide access to a variety of
14 prescription medications at the lowest possible rate for
15 certain residents of the state.

16 B. The department shall contract with at least two
17 insurers or prescription benefits managers for the program.
18 The department may contract with only one insurer if only one
19 insurer responds to the request for proposal.

20 C. The contracted insurer or prescription benefits
21 manager may allow participants to purchase their prescription
22 medication by mail or through a pharmacy network.

23 D. The department's request for proposal,
24 negotiations and contracts with insurers or prescription
25 benefits managers offering prescription drug coverage shall

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1 include safeguards to ensure that participants have
2 appropriate access to medically necessary medications even if
3 pharmaceutical management programs are implemented. Any
4 contractors, subcontractors, administrators or affiliates used
5 by the department or by the insurers or prescription benefits
6 managers shall abide by and implement practices that comply
7 with the safeguards to ensure participant access to medically
8 necessary medications as outlined in this section. The
9 insurers or prescription benefits managers shall provide in a
10 timely manner the following information to health care
11 providers authorized to issue prescriptions and to
12 participants:

- 13 (1) the process and criteria used to
14 establish medication access restrictions;
- 15 (2) the process and criteria for obtaining
16 access to restricted medications;
- 17 (3) the internal and independent external
18 appeals process; and
- 19 (4) the process and criteria by which certain
20 medically necessary medications can be obtained without an
21 additional charge incurred by the participant.

22 E. The department may adjust the requirements and
23 terms of the program to ensure compliance with a new or
24 existing federal prescription drug program. The department
25 shall report to the legislative finance committee recommended

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1 adjustment, expansion or elimination of the program if a
2 federal prescription drug plan is enacted.

3 F. In awarding a contract to an insurer or
4 prescription benefits manager, the department shall determine
5 whether the insurer or prescription benefits manager has any
6 material organizational conflicts of interest. If a conflict
7 exists, the department shall require the insurer or
8 prescription benefits manager to:

9 (1) implement reasonable procedural
10 safeguards to ensure that the insurer's or prescription
11 benefits manager's contractual responsibilities are carried
12 out in a manner that does not unfairly benefit the insurer or
13 prescription benefits manager, the insurer's or prescription
14 benefits manager's parent or affiliates; and

15 (2) fully disclose conflicts of interest to
16 program participants, the state, risk-bearing entities or
17 other interested persons.

18 Section 4. ELIGIBILITY.--

19 A. A resident is an eligible participant in the
20 program if he is:

21 (1) at least sixty years of age at the time
22 of application for the program;

23 (2) ineligible for medicaid or other
24 prescription drug coverage;

25 (3) domiciled in the state on the date of the

1 application or final determination of eligibility and has
2 demonstrated an intent to remain in the state; and

3 (4) qualified for a subsidy grant.

4 B. The department shall undertake outreach efforts
5 to build public awareness of the program and maximize
6 enrollment for eligible residents.

7 Section 5. PROGRAM PREMIUMS--SUBSIDY.--

8 A. The department shall pay a subsidy out of the
9 prescription program fund for certain participants to assist
10 them with the cost of the program premium. The payment shall
11 be made directly to the insurer with whom the department has
12 entered into a contract.

13 B. The department shall set the annual premium
14 subsidy amount based on a survey of the premiums for plans
15 available in the state, the projected number of enrollees and
16 the annual appropriation for the program.

17 C. The department may elect to use a sliding scale
18 for establishing premium subsidies in order to use the
19 available appropriation to meet the needs of low-income
20 persons and those with catastrophic medical expenditures.

21 D. The department shall pay to an insurer or
22 prescription benefits manager, the premium subsidy amount with
23 respect to each participant enrolled in the program that meets
24 criteria established by the department for the current year.

25 E. The department may implement a premium

1 incentive or penalty to encourage enrollment of state
2 subsidized and nonsubsidized eligible individuals.

3 Section 6. ADMINISTRATION. --

4 A. The department is responsible for the
5 administration of the program.

6 B. A resident of the state who wishes to become a
7 program participant shall submit an application to the
8 department. The department shall examine the application and
9 shall either grant or deny it within thirty days of receipt.
10 If the application is granted, the department shall notify the
11 participant, assess the program premium established by the
12 department and advise the participant if he qualifies for a
13 subsidy.

14 Section 7. DISCLOSURES TO PARTICIPANTS. --The insurer or
15 prescription benefits manager shall comply with the New Mexico
16 Insurance Code and the federal Health Insurance Portability
17 and Accountability Act of 1996 with respect to disclosures to
18 participants.

19 Section 8. RETROSPECTIVE DRUG UTILIZATION REVIEW -
20 COMMITTEE. --The insurer or prescription benefits manager shall
21 provide on an ongoing basis a retrospective drug utilization
22 review program, which shall be applicable to covered
23 prescribed drugs. The retrospective drug utilization review
24 program shall be conducted by a committee, which shall include
25 physicians, pharmacists and other appropriate health care

1 providers who have recognized knowledge and expertise in
2 appropriate clinical areas.

3 Section 9. PRESCRIPTION PROGRAM FUND. --

4 A. The "prescription program fund" is created.

5 B. The prescription program fund shall be credited
6 with money received from private sources specifically
7 designated for the fund and money received through federal
8 grants or support. The fund is subject to appropriation by
9 the legislature.

10 C. Money deposited in the prescription program
11 fund and all interest earned on money in the fund shall remain
12 in the fund to administer the program. No more than ninety-
13 five percent of the money in the fund appropriated per fiscal
14 year may be expended. No more than ten percent of the program
15 expenditures shall be used for administrative expenses or
16 other indirect costs. Any unexpended or unencumbered balance
17 remaining in the fund at the end of a fiscal year shall not
18 revert to the general fund.