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SENATE BILL 141

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

INTRODUCED BY

Don Kidd

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH; ENACTING THE PRESCRIPTION DRUG FAIR PRICING ACT; PROVIDING FOR EQUAL ACCESS TO PRESCRIPTION DRUG PRICES.

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

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

Section 2. DEFINITIONS.--As used in the Prescription Drug Fair Pricing Act:

A. "charitable health care provider" means a health care provider that is exempt from federal taxation under Section 501(c) (3) of the Internal Revenue Code of 1986;

B. "covered transaction" means any sale of a prescription drug to a purchaser doing business in this state in which a manufacturer, whether by direct sale to a purchaser

1 or through a contractual arrangement implemented by one or  
2 more wholesalers, negotiates, establishes, determines or  
3 otherwise controls the price, terms or conditions of the sale,  
4 including rebates, free merchandise, samples and similar trade  
5 concessions;

6 C. "manufacturer" or "seller" means a person,  
7 other than a wholesaler, that trades in prescription drugs for  
8 resale, either directly or through a wholesaler, to purchasers  
9 in this state;

10 D. "prescription drug" means a drug or device that  
11 may be dispensed only upon a prescription pursuant to  
12 provisions of the New Mexico Drug, Device and Cosmetic Act;

13 E. "purchaser" means a person doing business in  
14 this state that engages in selling or dispensing prescription  
15 drugs directly to consumers but does not include:

16 (1) the federal department of veterans'  
17 affairs, the federal department of defense, entities covered  
18 under Section 256b(a)(4) of the federal Public Health Service  
19 Act and any other federal, state or local government program  
20 that directly purchases or procures prescription drugs;

21 (2) hospitals that purchase prescription  
22 drugs for their inpatients' own use, but not for resale or  
23 outpatient use; and

24 (3) charitable health care providers, except  
25 those that offer, issue or administer a health insurance

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1 policy or an employee benefit plan; and

2 F. "wholesaler" means a person other than a  
3 manufacturer that sells prescription drugs to purchasers.

4 Section 3. PRESCRIPTION DRUG PRICE DISCRIMINATION  
5 PROHIBITED. --

6 A. A seller that offers prescription drugs in a  
7 covered transaction to a purchaser shall, during the same or  
8 substantially the same time period, offer the same or  
9 substantially the same terms and conditions for the drugs in a  
10 covered transaction to any other purchaser. This provision  
11 applies to:

12 (1) transactions in which a manufacturer  
13 sells to a purchaser through a contractual arrangement with  
14 one or more wholesalers;

15 (2) purchase prices for similar volume  
16 purchases; and

17 (3) rebates, free merchandise, samples and  
18 similar trade concessions.

19 B. The provisions in Subsection A of this section  
20 do not prohibit a seller from offering or providing a  
21 discount, provided the discount is made available to all  
22 purchasers on equal terms. This includes allowing discounts  
23 for:

24 (1) economies or efficiencies based on volume  
25 purchases;

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1 (2) opportunities available to purchasers on  
2 equal terms through market share movement agreements;

3 (3) prompt payment; and

4 (4) prompt delivery.

5 C. No seller shall provide discounts to any  
6 purchaser based on the class of trade to which the purchaser  
7 belongs.

8 D. The provisions of this section apply to any  
9 covered transaction for the purchase of prescription drugs  
10 delivered to a purchaser or purchaser's facility for sale to  
11 consumers in this state.

12 E. Nothing in this section is intended to require  
13 a single price for prescription drugs or to eliminate existing  
14 discount programs that conform with the provisions of this  
15 section.

16 Section 4. ENFORCEMENT. --

17 A. A seller that violates a provision of the  
18 Prescription Drug Fair Pricing Act shall pay a civil penalty  
19 of not less than one thousand dollars (\$1,000) and not more  
20 than fifty thousand dollars (\$50,000) for each violation. The  
21 attorney general shall bring an action in district court to  
22 enforce the provisions of the Prescription Drug Fair Pricing  
23 Act.

24 B. Any purchaser may bring a civil action against  
25 any seller to recover damages suffered as a result of a

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1 violation of a provision of the Prescription Drug Fair Pricing  
2 Act. Proof of price discrimination shall constitute prima  
3 facie evidence that damages have been sustained. When damages  
4 are proved, the court shall award the purchaser three times  
5 the actual damages caused by the seller's violation of the  
6 Prescription Drug Fair Pricing Act.