SENATE BILL 373

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Bill Tallman

AN ACT

RELATING TO DRUGS; ENACTING THE DRUG PRICE TRANSPARENCY ACT; REQUIRING MANUFACTURERS TO GIVE NOTICE OF CERTAIN PRICE CHANGES; REQUIRING CERTAIN HOSPITALS TO REPORT MARGINS FOR CERTAIN DRUGS; REQUIRING THE HUMAN SERVICES DEPARTMENT TO PUBLISH REPORTS AND ANALYSES; PROTECTING PROPRIETARY INFORMATION.

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

SECTION 1. A new section of Chapter 26 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Drug Price Transparency Act."

SECTION 2. A new section of Chapter 26 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Drug Price

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Transparency Act:

A. "340B covered hospital" means an entity that participates in the federal 340B discounted drug purchasing program established pursuant to Section 340B of the federal Public Health Service Act;

B. "340B margin" means the difference between the net cost of a 340B covered brand-name or generic drug and the net payment received by the 340B covered hospital for that brand-name or generic drug;

C. "brand-name drug" means a prescription drug approved pursuant to current federal guidelines and marketed with a unique or proprietary name or registered trademark by the person that manufactures it;

D. "department" means the human services department;

E. "generic drug" means a prescription drug approved pursuant to current federal generic drug approval procedures;

F. "manufacturer" means an entity engaged in producing, preparing, propagating, compounding, processing, packaging, repackaging or labeling a brand-name or generic drug, but does not include an entity that is engaged in the preparation and dispensing of a brand-name or generic drug pursuant to a prescription;

G. "manufacturer-sponsored assistance program"

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means a program offered by a manufacturer or a manufacturer-contracted intermediary, through which brand-name or generic drugs are provided to patients at a discount or at no charge;

H. "net payment" means the amount paid for a brand-name or generic drug after all discounts and rebates have been applied;

I. "pharmacy benefits manager" means a third-party administrator under contract to a health insurance sponsor for management of prescription drug benefits, including claims processing and payment, pharmacy contracting and drug manufacturer price concession negotiation; and

J. "wholesale acquisition cost" means the manufacturer list or catalogue price for a brand-name or generic drug available to wholesalers or direct purchasers in the United States, before application of discounts, rebates or reductions in price for the most recent month for which information is available as reported in wholesale price guides or other publications of drug or biological pricing data."

SECTION 3. Section 27-2E-1 NMSA 1978 (being Laws 2003, Chapter 381, Section 1) is recompiled in Chapter 26 NMSA 1978 and is amended to read:

"[~~AVERAGE MANUFACTURER PRICE--FILING--REPORTING~~] NOTICE OF WHOLESALE ACQUISITION COST CHANGES REQUIRED--JUSTIFICATION REQUIRED.--

A. A [~~person who manufactures a prescription drug,~~

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~~including a generic prescription drug~~] manufacturer that [~~is sold in~~] does business in New Mexico shall [~~file with~~] notify the [~~human services~~] department in writing at least sixty days prior to the effective date of a planned price increase or drug launch if it:

(1) [~~the average manufacturer price for the drug~~] is increasing the wholesale acquisition cost of a brand-name drug by more than ten percent or by more than ten thousand dollars ($10,000) during any twelve-month period;

(2) [~~the price that each wholesaler or pharmacy benefit manager doing business in this state pays the manufacturer to purchase the drug; and~~] intends to introduce to market a brand-name drug that has a wholesale acquisition cost of thirty thousand dollars ($30,000) or more annually;

(3) [~~the price paid to the manufacturer by any entity in an arrangement or contract that sells or provides prescription drugs in New Mexico without the services of a wholesaler~~] is increasing the wholesale acquisition cost of a generic drug by more than twenty-five percent or by more than three hundred dollars ($300) during any twelve-month period; or

(4) intends to introduce to market a generic drug that has a wholesale acquisition cost of three thousand dollars ($3,000) or more annually.

[~~B. The information required under Subsection A of this section shall be filed annually or more frequently, as~~

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~~determined by the human services department. The information required under Subsection A of this section is confidential and shall not be disclosed pursuant to Section 3 of this act and shall not be subject to public inspection pursuant to the provisions of Section 14-2-1 NMSA 1978.~~

~~C. A person who engages in the wholesale distribution of prescription drugs in New Mexico shall file with the human services department information showing the actual price at which the wholesaler or distributor sells a particular drug to a pharmacy.~~

~~D. As used in this section, "average manufacturer price" means the average price paid to the manufacturer for the drug in New Mexico, including rebates, discounts and market incentives, after deducting customary prompt-pay discounts.~~]

B. Notices filed with the department pursuant to Subsection A of this section shall include justification for the proposed price or price increase, including all documents and research related to the manufacturer's selection of the launch price or price increase, life cycle management, market competition and context and estimated value- or cost-effectiveness of the product."

SECTION 4. A new section of Chapter 26 NMSA 1978 is enacted to read:

"[NEW MATERIAL] REPORTING OF PRICE CONCESSIONS REQUIRED.--By March 1 of each year, each manufacturer of brand-name or

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generic drugs sold in the state shall report to the department the value of price concessions provided to each pharmacy benefits manager for each drug sold to providers or residents in the state in the previous calendar year, expressed as a percentage of the wholesale acquisition cost."

SECTION 5. A new section of Chapter 26 NMSA 1978 is enacted to read:

"[NEW MATERIAL] REPORTING OF MARGINS BY 340B COVERED HOSPITALS REQUIRED.--By March 1 each year, each 340B covered hospital operating in the state shall report to the department the per-unit 340B margins for each 340B covered drug dispensed in the previous year multiplied by the number of units dispensed at that margin. Entities shall also report how that margin revenue was used."

SECTION 6. A new section of Chapter 26 NMSA 1978 is enacted to read:

"[NEW MATERIAL] REPORTING OF PATIENT ASSISTANCE PROGRAMS REQUIRED.--By March 1 each year, manufacturers of brand-name or generic drugs sold in the state shall provide the department with a description of each manufacturer-sponsored assistance program in effect during the previous year, including:

A. the terms of the programs;

B. the number of prescriptions provided to state residents under the program; and

C. the total market value of assistance provided to

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state residents."

SECTION 7. A new section of Chapter 26 NMSA 1978 is enacted to read:

"[NEW MATERIAL] CERTIFICATION REQUIRED--PENALTY.--Required reporting under the Drug Price Transparency Act shall be certified as accurate by the reporting entity under penalty of perjury. Failure of manufacturers and 340B covered hospitals to report required information may result in a civil penalty as determined by the secretary of human services, but may not exceed ten thousand dollars ($10,000) for each day after the notification deadline."

SECTION 8. A new section of Chapter 26 NMSA 1978 is enacted to read:

"[NEW MATERIAL] REPORT ANALYSIS--PUBLICATION OF NONPROPRIETARY DATA REQUIRED.--The department shall publicly post manufacturer price justification documents and 340B hospital documentation of how each hospital spends its aggregate 340B margin. Proprietary information shall be kept confidential. The department shall analyze data collected and publish a report on emerging trends in prescription prices and price increases annually and conduct a public hearing based on the report findings. At a minimum, that report shall include analyses of:

A. manufacturer prices and price increases;

B. hospital-specific 340B margins and how that

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revenue is spent or allocated on a hospital-specific basis; and

C. how pharmacy benefits manager discounts and net costs compare to retail prices paid by patients."

SECTION 9. Section 27-2E-2 NMSA 1978 (being Laws 2003, Chapter 381, Section 2) is recompiled in Chapter 26 NMSA 1978 and is amended to read:

"PROPRIETARY INFORMATION NOT SUBJECT TO PUBLIC INSPECTION--UNLAWFUL DISCLOSURE--PENALTIES.--

A. Proprietary information that is not published pursuant to Section 8 of the Drug Price Transparency Act shall not be subject to public inspection pursuant to the provisions of Section 14-2-1 NMSA 1978.

[~~A.~~] B. It is unlawful for an employee, former employee, contractor or former contractor of the [~~human services~~] department to reveal to another person, except to another employee or contractor of the department as required by the employee's or contractor's duties or responsibilities or by state or federal court order, proprietary information acquired pursuant to [~~Section 1 of this act or any other information about a prescription drug manufacturer acquired as a result of his employment or contract by the department and not available from public sources~~] the Drug Price Transparency Act and that is not published pursuant to Section 8 of that act.

[~~B.~~] C. An employee, former employee, contractor or former contractor of the [~~human services~~] department who

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reveals to another person information that [~~he~~] the person is prohibited from lawfully revealing is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction."

SECTION 10. Section 27-2E-3 NMSA 1978 (being Laws 2003, Chapter 381, Section 3) is recompiled in Chapter 26 NMSA 1978 and is amended to read:

"ENFORCEMENT.--The office of the attorney general may take action to investigate and enforce the [~~requirements~~] provisions of [~~Sections 1 and 2 of this act~~] the Drug Price Transparency Act."

SECTION 11. TEMPORARY PROVISION--PHARMACY SURVEY.--The human services department shall conduct a one-time statistically valid survey of pharmacies statewide regarding whether a pharmacy has agreed not to disclose when customer drug benefit cost-sharing exceeds the cost of a dispensed drug and the parties to that agreement. The human services department shall report the results of that survey to the office of superintendent of insurance and the legislative health and human services committee by July 1, 2020.

SECTION 12. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2020.

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