

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 51

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO PRESCRIPTION DRUGS; ENACTING THE PRESCRIPTION DRUG
AFFORDABILITY BOARD ACT; ESTABLISHING THE PRESCRIPTION DRUG
AFFORDABILITY BOARD; ESTABLISHING POWERS AND DUTIES OF THE
PRESCRIPTION DRUG AFFORDABILITY BOARD; CREATING THE
PRESCRIPTION DRUG AFFORDABILITY BOARD FUND; MAKING AN
APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Prescription Drug Affordability Board Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Prescription Drug Affordability Board Act:

A. "board" means the prescription drug
affordability board;

B. "fund" means the prescription drug affordability

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1 board fund;

2 C. "manufacturer" means an entity that:

3 (1) engages in the manufacture of prescription
4 drugs; or

5 (2) enters into a lease with another entity to
6 market or distribute a prescription drug under its own name;
7 and

8 (3) sets or changes the wholesale acquisition
9 cost of the prescription drug it manufactures or markets;

10 D. "pharmacy benefits manager" means an entity that
11 provides pharmacy benefits management services;

12 E. "prescription drug" means a drug that is
13 required by an applicable state or federal law or rule to be
14 dispensed pursuant to a prescription or is restricted to use by
15 licensed practitioners; or that is required by federal law to
16 be labeled with any of the following statements prior to being
17 dispensed or delivered:

18 (1) "Caution: federal law prohibits
19 dispensing without prescription."; or

20 (2) "RX only."; and

21 F. "wholesale acquisition cost" means the
22 manufacturer's list price for a prescription drug for
23 wholesalers in the United States, not including other
24 discounts, rebates or reductions in price.

25 SECTION 3. [NEW MATERIAL] PRESCRIPTION DRUG AFFORDABILITY

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1 BOARD CREATED.--

2 A. The "prescription drug affordability board" is
3 created and is administratively attached to the office of
4 superintendent of insurance.

5 B. The board consists of five members appointed as
6 follows:

7 (1) one member appointed by the governor;

8 (2) one member appointed by the president pro
9 tempore of the senate;

10 (3) one member appointed by the minority floor
11 leader of the senate;

12 (4) one member appointed by the speaker of the
13 house of representatives; and

14 (5) one member appointed by the minority floor
15 leader of the house of representatives.

16 C. The president pro tempore of the senate and the
17 speaker of the house of representatives shall each appoint an
18 alternate member to the board.

19 D. Members of the board are entitled to receive per
20 diem and mileage pursuant to the Per Diem and Mileage Act and
21 shall receive no other compensation, perquisite or allowance.

22 E. Members of the board shall have expertise in
23 health care economics, the pharmaceutical market or clinical
24 medicine.

25 F. A member of the board shall not be an employee

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1 of, a board member of or a consultant to a manufacturer or
2 pharmacy benefits manager or their respective trade
3 associations.

4 G. To the extent practicable and consistent with
5 federal and state law, the membership of the board shall
6 reflect the racial, ethnic and gender demographics of the
7 state.

8 H. All initial appointments shall be made within
9 six months of the effective date of the Prescription Drug
10 Affordability Board Act. Members of the board shall serve
11 four-year terms. The terms of the initial members of the board
12 shall expire as follows:

13 (1) the members of the board appointed by the
14 minority floor leader of the senate and the minority floor
15 leader of the house of representatives, December 31, 2025;

16 (2) the members of the board appointed by the
17 president pro tempore of the senate and the speaker of the
18 house of representatives, December 31, 2026; and

19 (3) the member of the board appointed by the
20 governor, December 31, 2027.

21 I. A member of the board may be removed from the
22 board by a vote of at least three members of the board if a
23 member of the board fails to disclose a conflict of interest or
24 for other good cause.

25 J. If there is a vacancy on the board, a new member

1 of the board shall be appointed by the authority that appointed
 2 the former member of the board to serve the remainder of the
 3 former member's term.

4 K. The members of the board shall elect a chair and
 5 a vice chair of the board.

6 L. The board shall hire staff with appropriate
 7 expertise.

8 M. The board shall approve an annual plan of
 9 operations and promulgate rules for its own operation.

10 SECTION 4. [NEW MATERIAL] CONFLICTS OF INTEREST.--The
 11 board shall adopt a model code of ethics pursuant to the State
 12 Ethics Commission Act.

13 SECTION 5. [NEW MATERIAL] POWERS AND DUTIES OF THE
 14 BOARD.--The board shall:

15 A. examine, develop and implement programs and
 16 strategies to lower the cost of prescription drugs for
 17 stakeholders, including consumers, health care providers,
 18 businesses and government;

19 B. recommend regulatory approaches to the office of
 20 superintendent of insurance and the legislature for lowering
 21 the cost of prescription drugs for stakeholders, including
 22 consumers, health care providers, businesses and government;

23 C. examine the feasibility of coordinating with a
 24 group of prescription drug purchasers to select a wholesaler
 25 for collective purchasing;

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1 D. study the possibility of New Mexico joining an
2 existing regional purchasing consortium;

3 E. examine the feasibility of contracting with a
4 pharmacy benefits manager to lower the cost of prescription
5 drugs for stakeholders, including consumers, health care
6 providers, businesses, government, insurance carriers and
7 pharmacists;

8 F. consult and collaborate with stockholders,
9 including consumers, insurance carriers and pharmacists;

10 G. perform education and outreach activities about
11 cost-saving initiatives for stakeholders, including consumers,
12 health care providers, businesses and government; and

13 H. conduct public hearings.

14 SECTION 6. [NEW MATERIAL] REPORTING TO THE BOARD.--The
15 office of superintendent of insurance shall report all relevant
16 data to the board, including:

17 A. total prescription drug rebates provided by
18 pharmacy benefits managers to consumers broken out by:

19 (1) health plan; and

20 (2) therapeutic class of prescription drug;

21 B. the thirty highest-spend prescription drugs
22 covered by each insurer; and

23 C. manufacturer-reported total financial assistance
24 to consumers for each of the thirty highest-spend prescription
25 drugs covered by each insurer.

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1 **SECTION 7. [NEW MATERIAL] ASSESSMENT.--**

2 A. The board shall be funded by an annual
3 assessment on the licenses of:

4 (1) manufacturers licensed pursuant to the
5 Pharmacy Act;

6 (2) wholesale drug distributors licensed
7 pursuant to the Pharmacy Act;

8 (3) repackers licensed pursuant to the
9 Pharmacy Act;

10 (4) third-party logistics managers licensed
11 pursuant to the Pharmacy Act; or

12 (5) pharmacy benefits managers licensed
13 pursuant to the Pharmacy Benefits Manager Regulation Act.

14 B. The annual assessment per license shall be a
15 flat fee not to exceed two thousand dollars (\$2,000).

16 C. The board shall deposit all money collected from
17 annual assessments into the fund.

18 **SECTION 8. [NEW MATERIAL] PRESCRIPTION DRUG AFFORDABILITY**
19 **BOARD FUND CREATED.--**

20 A. The "prescription drug affordability board fund"
21 is created in the state treasury.

22 B. The fund consists of assessments paid to the
23 board pursuant to Section 7 of the Prescription Drug
24 Affordability Board Act, appropriations, income from investment
25 of the fund and donations to the fund. This subsection shall

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1 not be construed to prohibit the fund from receiving money from
2 any other source.

3 C. Money in the fund is appropriated to the board
4 to provide funding for the operations of the board and for the
5 purposes authorized pursuant to the Prescription Drug
6 Affordability Board Act, including any costs expended by a
7 state agency to implement that act.

8 D. Expenditures from the fund shall be made on
9 warrant of the secretary of finance and administration pursuant
10 to vouchers signed by the chair of the board.

11 E. Money in the fund at the end of a fiscal year
12 shall not revert to any other fund.

13 F. The state treasurer shall hold the fund
14 separately, and the state treasurer shall account for the fund.

15 G. The fund shall be invested and reinvested in the
16 same manner as other state funds.

17 SECTION 9. [NEW MATERIAL] LEGISLATIVE REPORTS.--On or
18 before November 30 of each year, beginning in 2024, the board
19 shall submit to the legislative health and human services
20 committee and the legislative finance committee a report that
21 includes:

22 A. state and national market trends and cost-
23 savings initiatives for prescription drug products;

24 B. a record of stakeholder collaboration and public
25 outreach efforts;

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1 C. a summary of business conducted, including
2 programs implemented and the impact on prescription drug
3 prices; and

4 D. recommendations for legislation necessary to
5 lower the cost of prescription drugs for stakeholders.

6 SECTION 10. APPROPRIATION.--Seven hundred fifty thousand
7 dollars (\$750,000) is appropriated from the general fund to the
8 prescription drug affordability board for expenditure in fiscal
9 year 2024 to establish the board and cover operational costs.
10 Any unexpended or unencumbered balance remaining at the end of
11 fiscal year 2024 shall revert to the general fund. The board
12 shall reimburse the general fund for the full amount of the
13 appropriation with assessments collected pursuant to Section 7
14 of the Prescription Drug Affordability Board Act.

15 SECTION 11. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2023.