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SENATE BILL 144

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

INTRODUCED BY

Dede Feldman

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

**RELATING TO PRESCRIPTION DRUGS; REQUIRING PRESCRIPTION DRUG
BULK PURCHASING AGREEMENTS; CREATING THE PRESCRIPTION DRUG
BULK PURCHASING ADVISORY COMMITTEE; PROVIDING FOR AN ANNUAL
EVALUATION; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;
MAKING AN APPROPRIATION.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1
through 5 of this act may be cited as the "Prescription Drug
Bulk Purchasing Act".**

**Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the
Prescription Drug Bulk Purchasing Act:**

**A. "average wholesale price" means the average of
the prices charged for a specific prescription drug that is
assigned by drug manufacturers and is listed in a nationally**

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1 recognized drug pricing file;

2 B. "department" means the department of health;

3 C. "discounted price" means a price that is less
4 than or equal to the average wholesale price minus a
5 percentage negotiated by or through the prescription drug bulk
6 purchasing agreement;

7 D. "labeler" means a person that receives
8 prescription drugs from a manufacturer or wholesaler and
9 repackages those drugs for later retail sale and that has a
10 labeler code from the federal food and drug administration;

11 E. "official compendium" means the official United
12 States pharmacopoeia, the official homeopathic pharmacopoeia
13 of the United States, the official national formulary or a
14 respective supplement to those publications;

15 F. "pharmacy" means a place of business, licensed
16 by the state, where prescription drugs are compounded or
17 dispensed pursuant to the Pharmacy Act;

18 G. "prescription drug" means a substance that is
19 recognized in an official compendium and is provided for an
20 individual patient by means of an order pursuant to the
21 Pharmacy Act; and

22 H. "rebate agreement" means an agreement that
23 requires the prescription drug manufacturer or labeler to make
24 payment to the state or other person according to the schedule
25 and provisions established by the prescription drug bulk

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1 purchasing agreement.

2 Section 3. [NEW MATERIAL] PRESCRIPTION DRUG BULK
3 PURCHASING AGREEMENT-- DISCOUNTED PRICES-- REBATE AGREEMENTS--
4 OUTREACH AND EDUCATION.--The department shall:

5 A. enter into one or more prescription drug bulk
6 purchasing agreements pursuant to Section 13-1-98.1 NMSA 1978
7 to obtain prescription drugs at the most favorable and
8 competitive discounted prices available;

9 B. enter into one or more prescription drug bulk
10 purchasing agreements pursuant to Section 13-1-98.1 NMSA 1978
11 with municipalities, counties, other states or their agencies,
12 tribal or pueblo governments or organizations, regional
13 prescription drug service networks, private nonprofit or for-
14 profit corporations or other public or private entities to
15 make prescription drugs available to pharmacies and consumers
16 at the most favorable and competitive discounted prices
17 available;

18 C. enter into one or more prescription drug bulk
19 purchasing agreements pursuant to Section 13-1-98.1 NMSA 1978
20 to consolidate the state's buying power in the prescription
21 drug market to use economies of scale to obtain the most
22 favorable and competitive discounted prices for prescription
23 drugs bought or paid for by the state;

24 D. negotiate the most favorable and competitive
25 discounted prices and rebate agreements available for

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1 prescription drugs; and

2 E. provide outreach and education programs to
3 advise pharmacies and consumers of the availability of
4 prescription drugs through the prescription drug bulk
5 purchasing agreement.

6 Section 4. [NEW MATERIAL] ADVISORY COMMITTEE. -- There is
7 established a "prescription drug bulk purchasing advisory
8 committee" to provide oversight, consultation and direction
9 with respect to the prescription drug bulk purchasing
10 agreements. The secretary of health shall appoint thirteen
11 members to the prescription drug bulk purchasing advisory
12 committee. The members of the committee shall be appointed so
13 that the following organizations and interests are
14 represented: the department; the human services department;
15 the children, youth and families department; the state agency
16 on aging; the New Mexico health policy commission; the
17 purchasing division of the general services department;
18 consumers; consumer advocates; hospitals; nursing homes;
19 managed care organizations; and pharmacies and pharmacists.
20 The committee shall elect a chair and vice chair annually.
21 The committee shall meet at least quarterly and may meet more
22 often if a majority of the committee members agree. The
23 members of the committee shall serve without compensation.

24 Section 5. [NEW MATERIAL] EVALUATION. -- The department
25 shall prepare an annual evaluation of the prescription drug

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1 bulk purchasing agreements to include the prescription drug
2 formulary, the agreements' efficacy, the quantity of
3 prescription drugs provided through the agreements and
4 associated costs, demand for prescription drugs not covered by
5 the agreements, the schedule of discounted prices and rebate
6 agreements, recommendations and conclusion. The annual
7 evaluation shall be presented by written report to the
8 prescription drug bulk purchasing advisory committee and to
9 the legislature on October 1 of each year beginning October 1,
10 2002.

11 Section 6. Section 13-1-98.1 NMSA 1978 (being Laws 1998,
12 Chapter 69, Section 1) is amended to read:

13 "13-1-98.1. HOSPITAL AND HEALTH CARE EXEMPTION. -- [The
14 ~~provisions of the Procurement Code shall not apply to~~
15 ~~procurement of items of tangible personal property or services~~
16 ~~by a state agency or a local public body through]~~

17 A. A state agency or local public body shall have
18 the authority to enter into an agreement with [any other]
19 another state agency, local public body, [or] external
20 procurement unit or [any] other person [corporation,
21 ~~organization or association]~~ that provides that the parties to
22 the agreement shall join together [for the purpose of making]
23 to make some or all purchases necessary for the operation of
24 public hospitals or public and private hospitals, if the state
25 purchasing agent or a central purchasing office makes a

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1 determination that the arrangement will or is likely to reduce
2 health care costs [or].

3 B. A state agency or local public body has the
4 authority to enter into an agreement with [any other] another
5 state agency, local public body, [or] external procurement
6 unit or [any] other person [corporation, organization or
7 association for the purpose of creating] to create a network
8 of health care providers or suppliers or jointly operating a
9 common health care service, if the state purchasing agent or a
10 central purchasing office makes a determination that the
11 arrangement will or is likely to reduce health care costs or
12 improve the quality of [care] or [improve] access to health
13 care services or supplies.

14 C. The provisions of the Procurement Code shall
15 not apply to procurement of items of tangible personal
16 property or services described in Subsection A or B of this
17 section by or through a state agency or a local public body."

18 Section 7. APPROPRIATION.--Two hundred thousand dollars
19 (\$200,000) is appropriated from the general fund to the
20 department of health for expenditure in fiscal year 2002 to
21 implement the provisions of the Prescription Drug Bulk
22 Purchasing Act. Any unexpended or unencumbered balance
23 remaining at the end of fiscal year 2002 shall revert to the
24 general fund.