AN ACT

RELATING TO PRESCRIPTION DRUGS; PROVIDING FOR NEGOTIATED DRUG DISCOUNTS IN THE MEDICAID PROGRAM; ENACTING THE PHARMACEUTICAL SUPPLEMENTAL REBATE ACT.

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

Section 1. SHORT TITLE.--This act may be cited as the "Pharmaceutical Supplemental Rebate Act".

Section 2. DEFINITIONS.--As used in the Pharmaceutical Supplemental Rebate Act:

A. "department" means the human services department;

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

C. "manufacturer" means a manufacturer of prescription drugs as defined in 42 U.S.C. 1396r-8(k)(5), including a subsidiary or affiliate of a manufacturer;

D. "medicaid" means the joint federal-state health coverage program pursuant to Title 19 or Title 21 of the federal Social Security Act;

E. "participating retail pharmacy" means a retail pharmacy or other business licensed to dispense prescription drugs that participates in the state medicaid program;

F. "secretary" means the secretary of human services; and

G. "wholesaler" means a business licensed to distribute prescription drugs in the state.

Section 3. MEDICAID FORMULARY FOR PRESCRIPTION DRUGS.--

A. The department shall develop or implement a formulary or preferred drug list that will consider the clinical efficacy, safety and cost effectiveness of a product.

B. The department shall ensure that the administration or delivery of health care services and products under the medicaid program includes a formulary that will provide medically appropriate drug therapies for patients.

C. The department shall require a prior authorization before a drug not listed on the medicaid program formulary may be dispensed unless otherwise provided pursuant to Subsection C of Section 4 of the Pharmaceutical Supplemental Rebate Act.

Section 4. NEGOTIATED DRUG DISCOUNTS AND REBATES.--

A. The secretary shall negotiate discount prices or rebates for prescription drugs from drug manufacturers and labelers that include supplemental rebates for the medicaid program over and above those required under 42

U.S.C.

1396r-8.

B. In negotiating rebate terms, the secretary shall consider the rebate calculated under the medicaid rebate program pursuant to 42 U.S.C. 1396r-8, the price provided to eligible entities under 42 U.S.C. 256b and other available information on prescription drug prices, discounts and rebates.

C. The secretary shall prompt a review of whether to place a manufacturer's or labeler's products on the prior authorization list for the medicaid program if:

(1) the secretary and a drug manufacturer or labeler fail to reach agreement on the terms of a supplemental medicaid rebate or discount; and

(2) the discounts or rebates offered by the manufacturer or labeler are not as favorable to the state as the prices provided to eligible entities under 42 U.S.C. 256b.

D. Any prior authorization shall meet the requirements of 42 U.S.C. 1396r-8(d)(5) and be done in accordance with the Public Assistance Act or department rules.

E. The names of manufacturers and labelers that do not enter into rebate agreements are public information, and the department shall release this information to the

public and actively distribute it to physicians, pharmacists and other health care professionals.

Section 5. REPORTING.--The department shall report the savings from the pharmaceutical supplemental rebates for the preceding fiscal year to the legislative health and human services committee by November 1 of each year.

Section 6. COORDINATION WITH OTHER PROGRAMS.--When the secretary finds that it is beneficial to the medicaid program and another state program to combine drug pricing negotiations to maximize drug rebates, the secretary may do so.

Section 7. RULEMAKING.--The department shall adopt rules to implement the provisions of the Pharmaceutical Supplemental Rebate Act.

Section 8. WAIVERS.--The department shall seek any waivers of federal law or rule necessary to implement the provisions of the Pharmaceutical Supplemental Rebate Act.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2002.