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HOUSE BILL 372

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

John A. Heaton

AN ACT

**RELATING TO MEDICAL ASSISTANCE; CREATING A PRESCRIPTION DRUG
DISCOUNT PROGRAM FOR CERTAIN LOW-INCOME PERSONS; MAKING
APPROPRIATIONS; DECLARING AN EMERGENCY.**

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

**Section 1. SHORT TITLE.--This act may be cited as the
"New Mexico Prescription Drug Discount Act".**

**Section 2. DEFINITIONS.--As used in the New Mexico
Prescription Drug Discount Act:**

**A. "average rebate percentage" means the aggregate
average manufacturers' rebate, less one percent of the total
received by the department from prescription drug
manufacturers, based on rebates most recently available to the
department, expressed as a percentage;**

B. "department" means the human services

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1 department;

2 C. "manufacturers' rebate" means that amount of
3 money required to be reimbursed to the state for prescription
4 drug purchases under the state medicaid program by
5 pharmaceutical drug manufacturers under the federal Omnibus
6 Budget Reconciliation Act of 1990;

7 D. "medicaid price" means the price set by the
8 department for a prescription drug provided under the medicaid
9 program;

10 E. "member" means a person enrolled in the New
11 Mexico prescription drug discount program;

12 F. "pharmacy" means a place of business licensed
13 as a pharmacy pursuant to the Pharmacy Act; and

14 G. "program" means the New Mexico prescription
15 drug discount program.

16 Section 3. PRESCRIPTION DRUG DISCOUNT PROGRAM CREATED. --

17 A. The medical assistance division of the
18 department shall design and implement a prescription drug
19 discount program under the state's medicaid program to provide
20 only prescription drug discounts to members and no other
21 medicaid benefits. Implementation of the program shall be
22 pursuant to rules adopted by the department. The program
23 shall be consistent with the provisions of Title 19 of the
24 federal Social Security Act.

25 B. To be eligible for the program, a person shall:

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1 (1) be a resident of the state of New Mexico;
2 and

3 (2) have income of no more than two hundred
4 percent of the federal poverty level, according to the levels
5 of income defining poverty by family size published annually
6 in the federal register by the United States department of
7 health and human services.

8 C. The department shall establish by rule a
9 definition of "income" for purposes of determining eligibility
10 pursuant to Paragraph (2) of Subsection B of this section.
11 The department shall utilize the same methodology for income
12 eligibility methodology for the New Mexico prescription drug
13 discount program as is utilized for medical assistance
14 eligibility in the medicaid program.

15 D. If, in order to implement the program
16 authorized in Subsections A and B of this section it is
17 necessary to obtain a waiver pursuant to Section 1115 of the
18 federal Social Security Act, the department shall apply for
19 the waiver no later than October 1, 2002.

20 Section 4. PRESCRIPTION DRUG DISCOUNT PROGRAM -
21 DEPARTMENT DUTIES. -- In establishing the program, the
22 department shall:

23 A. enroll and provide program identification cards
24 to eligible applicants and require presentation of the card by
25 a member when prescription drugs are purchased under the

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1 program;

2 B. obtain manufacturers' rebates, as established
3 in the federal Omnibus Budget Reconciliation Act of 1990, from
4 drug manufacturers for prescription drugs provided through the
5 medicaid program; and

6 C. pay to pharmacists amounts equal to the rebates
7 provided to the department's medicaid program by the
8 prescription drug manufacturer based on prescription drugs
9 provided under the program.

10 Section 5. PROGRAM TRANSACTIONS. --

11 A. Upon presentation of a program identification
12 card and a prescription from a licensed practitioner, a
13 pharmacy may fill the prescription and shall charge the member
14 a price no more than the medicaid price less an amount equal
15 to the average rebate percentage.

16 B. A pharmacy that has sold a prescription drug to
17 a member under the program shall notify the department of the
18 transaction, including the price charged the member for
19 filling the prescription and all other information required by
20 the department.

21 Section 6. FEDERAL ACT REQUIREMENTS. -- Information
22 required by the department in the program eligibility process,
23 including that for the program identification card and that
24 required of pharmacies participating in the program, shall be
25 in accordance with the federal Health Insurance Portability

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1 and Accountability Act of 1996.

2 Section 7. PRESCRIPTION DRUG DISCOUNT FUND CREATED.--The
3 "prescription drug discount fund" is created in the state
4 treasury. All appropriations and money received by the
5 department for the program, including manufacturers' rebates,
6 shall be deposited in the fund and shall be used by the
7 department to carry out the purposes of the New Mexico
8 Prescription Drug Discount Act. Money from investment of the
9 fund shall be credited to the fund. Money in the fund shall
10 not revert to any other fund at the end of a fiscal year. The
11 fund shall be administered by the department, and money in the
12 fund is appropriated to the department to reimburse pharmacies
13 the average rebate percentage for prescription drugs provided
14 under the program. Disbursements from the fund shall be made
15 upon warrants drawn by the secretary of finance and
16 administration pursuant to vouchers signed by the secretary of
17 human services. No more than one percent of the amount
18 received annually shall be used by the department to
19 administer the program.

20 Section 8. REPORT.--The department shall publish in its
21 monthly statistical report the number of program members, the
22 number of participating pharmacies, the total amount paid for
23 prescription drugs under the program, the amount of
24 manufacturers' rebate funds received and the volume of the top
25 fifty prescriptions filled by type of prescription drug and

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1 the average amount paid for each type.

2 Section 9. APPROPRIATION. --

3 A. Five million dollars (\$5,000,000) is
4 appropriated from the general fund to the prescription drug
5 discount fund to be expended by the human services department
6 in fiscal years 2002 and 2003 as a one-time appropriation to
7 make initial payments to pharmacies under the New Mexico
8 Prescription Drug Discount Act. Any unexpended or
9 unencumbered balance remaining at the end of a fiscal year
10 shall not revert to the general fund.

11 B. Expenditure of this appropriation is contingent
12 upon the department receiving a waiver from the federal health
13 care financing administration of certain state plan provisions
14 required pursuant to Title 19 of the federal Social Security
15 Act in order to implement the provisions of the New Mexico
16 Prescription Drug Discount Act.

17 Section 10. APPROPRIATION. -- Three hundred thousand
18 dollars (\$300,000) is appropriated from the general fund to
19 the human services department for expenditure in fiscal years
20 2002 and 2003 to apply to the federal health care financing
21 administration for a waiver to implement the New Mexico
22 Prescription Drug Discount Act. Any unexpended or
23 unencumbered balance remaining at the end of fiscal year 2003
24 shall revert to the general fund.

25 Section 11. EMERGENCY. -- It is necessary for the public

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peace, health and safety that this act take effect
immediately.

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