SENATE BILL 238

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

INTRODUCED BY

Dede Feldman

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE AND THE LEGISLATIVE HEALTH SUBCOMMITTEE

AN ACT

RELATING TO PRESCRIPTION DRUGS; PROVIDING FOR NEGOTIATED DRUG DISCOUNTS OR REBATES; ESTABLISHING A PRESCRIPTION DRUG DISCOUNT PROGRAM; ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--This act may be cited as the "Fair Market Drug Pricing Act".

Section 2. DEFINITIONS.--As used in the Fair Market Drug Pricing 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 program" 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 in this state that participates in the state medicaid program or voluntarily agrees to participate in the discount card program;

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

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

Section 3. NEGOTIATED DRUG DISCOUNTS AND REBATES.--

A. The secretary shall negotiate discount prices or rebates for prescription drugs from drug manufacturers and labelers that include:

(1) supplemental rebates for the medicaid program over and above those required under 42 U.S.C. 1396r-8;

(2) discount prices or rebates for the discount card program; or

(3) discount prices or rebates for any other state program that pays for or acquires prescription drugs.

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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 and take similar actions involving prior authorization or formularies for any other state-funded or -operated prescription drug program if:

(1) the secretary and a drug manufacturer or labeler fail to reach agreement on the terms of a supplemental medicaid rebate or a discount or rebate for the discount card program; 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. The secretary shall promulgate rules creating clear procedures for the implementation of this section.

E. The names of manufacturers and labelers that do not enter into rebate agreements are public information, and

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the department shall release this information to the public and actively distribute it to physicians, pharmacists and other health care professionals.

Section 4. DISCOUNT CARD.--

A. The department shall establish the discount card program as a state pharmaceutical assistance program under 42 U.S.C. 1396r-8(c)(1)(C)(i)(III), to provide discounts to participants for drugs covered by a rebate agreement. Using sums from negotiated rebates, the department shall contract with wholesalers or participating retail pharmacies to deliver discounted prices to discount card participants.

B. The drug discounts received by discount card participants shall be calculated by the secretary on a quarterly basis. That calculation shall provide discounts approximately equal to the amount of the negotiated drug rebate minus an amount to cover the reasonable administrative costs of the discount card program.

Section 5. ELIGIBILITY FOR PARTICIPATION.--

A. An individual is eligible to participate in the discount card program if he is a resident of the state and is eligible for participation in the medicare program or has a family income below three hundred percent of the federal poverty level.

B. An individual is ineligible to participate in the discount card program if he is eligible for assistance

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under the state's medicaid program or is covered by an insurance policy that provides benefits for prescription drugs equal to or greater than the benefits provided under the discount card program, as delineated by rules promulgated by the secretary.

C. The department shall establish simple procedures for enrolling discount card participants and shall undertake outreach efforts to build public awareness of the program and maximize enrollment by eligible residents.

Section 6. OPERATION.--

A. The secretary shall adopt rules requiring disclosure by participating retail pharmacies to discount card program participants of the amount of savings provided as a result of the discount card program. The rules shall protect information that is proprietary in nature.

B. A participating retail pharmacy shall verify to the department the amounts charged to discount card participants and shall provide the department with utilization data necessary to calculate rebates from manufacturers and labelers. The department shall protect the confidentiality of all information subject to confidentiality protection under state or federal law or rule. The department shall not impose transaction charges on wholesalers or participating retail pharmacies that submit claims or receive payments under the program.

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C. Wholesalers and participating retail pharmacies shall be paid in advance for discount card discounts or shall be reimbursed by the department on a weekly basis.

D. The department shall use a pharmacy management system that provides, at a minimum, the information available in the current medicaid pharmacy management system.

Section 7. ADMINISTRATION.--

A. If there is a discrepancy in the manufacturer's or labeler's favor between the amount claimed by a pharmacy and the amount rebated by the manufacturer or labeler, the department, at the department's expense, may hire a mutually agreed-upon independent auditor. If a discrepancy still exists following the audit, the manufacturer or labeler shall justify the reason for the discrepancy or make payment to the department for any additional amount due.

B. If there is a discrepancy against the interest of the manufacturer or labeler in the information provided by the department to the manufacturer or labeler regarding the manufacturer's or labeler's rebate, the manufacturer or labeler, at the manufacturer's or labeler's expense, may hire a mutually agreed-upon independent auditor to verify the accuracy of the data supplied to the department. If a discrepancy still exists following the audit, the department shall justify the reason for the discrepancy or provide a refund to the manufacturer or labeler.

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C. Following the procedures established in Subsection A or B of this section, either the department or the manufacturer or labeler may request a hearing. Supporting documentation shall accompany the request for a hearing.

Section 8. REPORTING.--The department shall report the enrollment and financial status of the discount card program and report savings from supplemental medicaid rebates for the preceding fiscal year to the legislative health and human services committee by November 1 of each year.

Section 9. COORDINATION WITH OTHER PROGRAMS.--When the secretary finds that it is beneficial to both the discount card program and another state program, including the medicaid program, to combine drug pricing negotiations to maximize drug rebates, the secretary shall do so.

Section 10. RULEMAKING.--The department shall adopt rules to implement the provisions of the Fair Market Drug Pricing Act.

Section 11. WAIVERS.--The department shall seek any waivers of federal law or rule necessary to implement the provisions of the Fair Market Drug Pricing Act.

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

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