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**SENATE BILL 253**

**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 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;**

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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

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1 to Subsection C of Section 4 of the Pharmaceutical  
2 Supplemental Rebate Act.

3 Section 4. NEGOTIATED DRUG DISCOUNTS AND REBATES. --

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

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

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

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

18 C. The secretary shall prompt a review of whether  
19 to place a manufacturer's or labeler's products on the prior  
20 authorization list for the medicaid program and take similar  
21 actions involving prior authorization or formularies for any  
22 other state-funded or -operated prescription drug program if:

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

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

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

7 E. The names of manufacturers and labelers that do  
8 not enter into rebate agreements are public information, and  
9 the department shall release this information to the public  
10 and actively distribute it to physicians, pharmacists and  
11 other health care professionals.

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

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

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

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

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

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