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HOUSE BILL 481

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY  
Angelica Rubio

AN ACT

RELATING TO STATE PURCHASING; PROVIDING FOR PRICE TRANSPARENCY  
AND ACCOUNTABILITY IN CERTAIN STATE AGENCIES' DIRECT  
PROCUREMENT OF ESSENTIAL GENERIC MEDICATIONS.

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

SECTION 1. A new section of the Public Assistance Act is  
enacted to read:

"~~[NEW MATERIAL]~~ DIRECT PURCHASING ENTITIES--ESSENTIAL  
GENERIC MEDICATIONS PRICE INCREASES--DEMAND FOR ACCOUNTING--  
ATTORNEY GENERAL.--

A. A direct purchasing entity shall issue a demand  
for accounting to the manufacturer of an essential generic  
medication and notify the attorney general when there is an  
increase in the price of an essential generic medication when:

- (1) three or fewer manufacturers are actively

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1 manufacturing and marketing the medication for sale in the  
2 United States; and

3 (2) the price increase, by itself or in  
4 combination with other price increases:

5 (a) would result in a suspect price  
6 increase or an unjust price increase in the wholesale  
7 acquisition cost of the medication; or

8 (b) would result in a suspect price  
9 increase or an unjust price increase relating to the price paid  
10 by the direct purchasing entity for the medication.

11 B. Within twenty days of receipt of notice pursuant  
12 to Subsection A of this section, the manufacturer of an  
13 essential generic medication shall submit a statement to the  
14 attorney general:

15 (1) itemizing the components of the cost of  
16 producing the medication and identifying the circumstances and  
17 timing of any increase in materials or manufacturing costs that  
18 caused any increase in the price of the medication within the  
19 preceding two-year period;

20 (2) identifying the circumstances and timing  
21 of any expenditures to expand access to the medication, along  
22 with an explanation of any improvement in public health  
23 associated with those expenditures; and

24 (3) providing any other information that the  
25 manufacturer believes to be pertinent to a determination of

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1 whether the manufacturer has complied with the provisions of  
2 this section.

3 C. The attorney general may require a manufacturer  
4 to produce any records or documents that may be relevant to a  
5 determination of whether the manufacturer has complied with the  
6 provisions of this section.

7 D. On petition of the attorney general, a district  
8 court may issue an order:

9 (1) compelling the manufacturer of an  
10 essential generic medication:

11 (a) to provide a statement required  
12 pursuant to Subsection B of this section; or

13 (b) to produce specific records or  
14 documents requested by the attorney general pursuant to  
15 Subsection C of this section that may be relevant to a  
16 determination of whether a violation of this section has  
17 occurred;

18 (2) restraining or enjoining a violation of a  
19 provision of this section;

20 (3) restoring to any consumer, including any  
21 third-party payer, any money acquired as a result of a price  
22 increase that violates a provision of this section;

23 (4) requiring a manufacturer that has engaged  
24 in unjustified price increases in the sale of an essential  
25 generic medication to make the medication available to

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1 participants in any state health plan or state health program  
2 for a period of up to one year at the price at which the  
3 medication was made available to participants in the state  
4 health plan or state health program immediately prior to the  
5 manufacturer's violation of a provision of this section; and

6 (5) imposing a civil penalty of up to ten  
7 thousand dollars (\$10,000) for each violation of this section.

8 E. A direct purchasing entity shall post in a  
9 conspicuous manner on the state's sunshine portal the list  
10 price, any price increase and any rebates available for a  
11 generic medication that the direct purchasing entity purchases.

12 F. As used in this section:

13 (1) "direct purchasing entity" means a state  
14 agency that purchases pharmaceuticals directly from a  
15 pharmaceuticals manufacturer, including the children, youth and  
16 families department, the corrections department, the department  
17 of health and the university of New Mexico hospitals;

18 (2) "essential generic medication" means any  
19 prescription medication:

20 (a) for which any exclusive marketing  
21 rights granted under federal law have expired;

22 (b) that appears on the model list of  
23 essential medicines most recently adopted by the world health  
24 organization; or

25 (c) that has been designated by the

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1 secretary as an essential medicine due to its efficacy in  
2 treating a life-threatening health condition or a chronic  
3 health condition that substantially impairs a person's ability  
4 to engage in activities of daily living; and

5 (d) that is made available for sale in  
6 the state;

7 (3) "suspect price increase" means price  
8 increase that does not accurately reflect the input costs of an  
9 essential generic medication. An increase in the price of a  
10 prescription medication is suspect when the rate of the price  
11 increase exceeds the rate of national economic inflation plus  
12 ten percent over a two-year period beginning in calendar year  
13 2018;

14 (4) "unjustified price increase" means a price  
15 increase for which the rate of increase bears little  
16 relationship to the cost of producing the medication or the  
17 cost of appropriate expansion of access to the medication to  
18 promote public health; and

19 (5) "wholesale acquisition cost" means the  
20 cost to purchase, produce or acquire a drug at wholesale."