

underscoring material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 33

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Pamelya Herndon and Cristina Parajón and
Elizabeth "Liz" Stefanics and Bill Tallman

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PRESCRIPTION DRUGS; ENACTING THE PRESCRIPTION DRUG
PRICE TRANSPARENCY ACT TO INCREASE TRANSPARENCY ACROSS THE
PRESCRIPTION DRUG SUPPLY CHAIN; REQUIRING PRESCRIPTION DRUG
MANUFACTURERS, PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS,
HEALTH INSURERS AND PHARMACY BENEFITS MANAGERS TO REPORT
PRESCRIPTION DRUG PRICE TRENDS TO THE SUPERINTENDENT OF
INSURANCE; REQUIRING THE SUPERINTENDENT OF INSURANCE TO COLLECT
AND PUBLICLY REPORT AGGREGATE INFORMATION ON PRESCRIPTION DRUG
PRICE TRENDS; PRESCRIBING CIVIL PENALTIES; MAKING AN
APPROPRIATION.

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

SECTION 1. A new section of the New Mexico Insurance Code
is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
.226755.2

underscoring material = new
~~[bracketed material] = delete~~

1 "Prescription Drug Price Transparency Act"."

2 SECTION 2. A new section of the New Mexico Insurance Code
3 is enacted to read:

4 "[NEW MATERIAL] DEFINITIONS.--As used in the Prescription
5 Drug Price Transparency Act:

6 A. "authorized health insurer" means an entity
7 subject to the insurance laws of this state, including a health
8 insurance company, health maintenance organization, hospital or
9 health care services corporation, provider service network,
10 nonprofit health care plan or any other entity that:

11 (1) contracts, offers to contract or enters
12 into agreements to pay for or reimburse any costs of health
13 care services; or

14 (2) provides, offers or administers health
15 benefits plans or managed health care plans in this state;

16 B. "brand name drug" means a prescription drug that
17 is marketed or distributed in accordance with:

18 (1) an original new drug application, except
19 for a generic drug; or

20 (2) a biologics license application approved
21 by the federal food and drug administration;

22 C. "generic drug" means a prescription drug that
23 is:

24 (1) marketed or distributed in accordance with
25 an abbreviated new drug application approved by the federal

.226755.2

1 food and drug administration;

2 (2) an authorized generic drug approved by the
3 federal food and drug administration; or

4 (3) a prescription drug that entered the
5 market before 1962 that was not originally marketed under a new
6 drug application;

7 D. "manufacturer" means an entity licensed to
8 manufacture or distribute prescription drugs pursuant to the
9 Pharmacy Act that:

10 (1) owns the patent to a prescription drug
11 product;

12 (2) enters into a lease with another
13 manufacturer to market and distribute a brand name drug under
14 the entity's own name; or

15 (3) sets or changes the wholesale acquisition
16 cost of a prescription drug product that the entity
17 manufactures or markets;

18 E. "pharmacy benefits manager" means an entity
19 licensed as a pharmacy benefits manager pursuant to the
20 Pharmacy Benefits Manager Regulation Act;

21 F. "pharmacy services administrative organization"
22 means an entity registered with the superintendent as a
23 pharmacy services administrative organization pursuant to the
24 Pharmacy Benefits Manager Regulation Act;

25 G. "prescription drug product" means any of the

1 following products:

2 (1) a biologic product produced or distributed
3 in accordance with a biologics license application approved by
4 the federal food and drug administration;

5 (2) a biosimilar product that, in reference to
6 a biological product that the federal food and drug
7 administration has licensed:

8 (a) is highly similar to the single
9 biological product against which the biosimilar product was
10 evaluated in the biosimilar product's marketing application to
11 the federal food and drug administration; and

12 (b) displays no clinically meaningful
13 differences between the biological product and the single
14 biological product against which the biosimilar product was
15 evaluated in the biosimilar product's marketing application to
16 the federal food and drug administration in terms of the
17 safety, purity and potency of the product;

18 (3) a brand name drug; or

19 (4) a generic drug;

20 H. "rebate" means a price concession paid by a
21 manufacturer to a pharmacy benefits manager or authorized
22 health insurer that is based on the:

23 (1) actual or estimated use of a prescription
24 drug; or

25 (2) effectiveness of a prescription drug

underscoring material = new
[bracketed material] = delete

1 pursuant to the terms of a value-based or performance-based
2 contract; and

3 I. "wholesale acquisition cost" means the
4 manufacturer's list price for a prescription drug sold to
5 wholesalers in the United States, not including discounts,
6 rebates or reductions in price."

7 SECTION 3. A new section of the New Mexico Insurance Code
8 is enacted to read:

9 "[NEW MATERIAL] PRESCRIPTION DRUG MANUFACTURER PRICE AND
10 PRICE INCREASE REPORTING REQUIREMENTS.--

11 A. By May 1, 2025, and annually thereafter, each
12 manufacturer shall submit data to the superintendent, in a form
13 and manner prescribed by the superintendent, that includes the
14 name and national drug code for each:

15 (1) prescription drug product that has a
16 wholesale acquisition cost of four hundred dollars (\$400) or
17 more for a thirty-day supply or for a course of treatment that
18 is less than thirty days;

19 (2) brand name drug that has increased in
20 wholesale acquisition cost by ten percent or more in the
21 previous calendar year;

22 (3) prescription drug product that has
23 increased in wholesale acquisition cost by sixteen percent or
24 more over the course of the previous two calendar years; and

25 (4) generic drug that has increased in

.226755.2

1 wholesale acquisition cost by thirty percent or more in the
2 previous calendar year.

3 B. For each prescription drug product that is
4 reported to the superintendent, the manufacturer shall provide
5 the following information that shall be verified, whenever
6 possible, by the superintendent through the use of independent
7 third-party resources:

8 (1) the introductory wholesale acquisition
9 cost of the prescription drug product when the prescription
10 drug product was approved for marketing by the federal food and
11 drug administration;

12 (2) the annual increase in the prescription
13 drug product's wholesale acquisition cost over the previous
14 five calendar years;

15 (3) the direct costs associated with
16 manufacturing, marketing and distributing the prescription drug
17 product;

18 (4) the total revenue from the prescription
19 drug product over the previous calendar year;

20 (5) the net profit attributable to the
21 prescription drug product over the previous calendar year;

22 (6) the patent expiration date for the
23 prescription drug product;

24 (7) the ten highest government-negotiated
25 prices of the prescription drug product in European Union

.226755.2

underscoring material = new
~~[bracketed material]~~ = delete

1 countries and the United Kingdom;

2 (8) any agreement between the manufacturer and
3 another entity that involves a delay in marketing a generic
4 version of the prescription drug product;

5 (9) the names and prices of any generic
6 equivalents of the prescription drug product;

7 (10) the total amount of manufacturer-
8 supported financial assistance provided to consumers of the
9 prescription drug product; and

10 (11) other information requested by the
11 superintendent.

12 C. A manufacturer shall notify the superintendent
13 if the manufacturer intends to introduce a new prescription
14 drug product in the United States that has a wholesale
15 acquisition cost of four hundred dollars (\$400) or more for a
16 thirty-day supply or for a course of treatment that is less
17 than thirty days. The notice shall be provided in writing at
18 least sixty calendar days prior to the prescription drug
19 product's introduction to the United States market.

20 D. Except for the superintendent's reporting
21 requirements in Section 7 of the Prescription Drug Price
22 Transparency Act, the superintendent shall keep confidential
23 all of the information provided pursuant to this section, and
24 the information shall not be subject to the requirements of the
25 Inspection of Public Records Act."

.226755.2

underscored material = new
[bracketed material] = delete

1 SECTION 4. A new section of the New Mexico Insurance Code
2 is enacted to read:

3 "[NEW MATERIAL] PHARMACY SERVICES ADMINISTRATIVE
4 ORGANIZATION REPORTING REQUIREMENTS.--

5 A. By May 1, 2025, and annually thereafter, each
6 pharmacy services administrative organization shall submit data
7 to the superintendent, in a form and manner prescribed by the
8 superintendent, that includes a list of:

9 (1) the twenty-five most frequently dispensed
10 prescription drug products;

11 (2) the twenty-five most costly prescription
12 drug products by total annual spending; and

13 (3) the twenty-five prescription drug products
14 with the highest increase in total annual spending compared to
15 the previous calendar year.

16 B. Except for the superintendent's reporting
17 requirements in Section 7 of the Prescription Drug Price
18 Transparency Act, the superintendent shall keep confidential
19 all of the information provided pursuant to this section, and
20 the information shall not be subject to the requirements of the
21 Inspection of Public Records Act."

22 SECTION 5. A new section of the New Mexico Insurance Code
23 is enacted to read:

24 "[NEW MATERIAL] AUTHORIZED HEALTH INSURER REPORTING
25 REQUIREMENTS.--

.226755.2

underscored material = new
[bracketed material] = delete

1 A. By May 1, 2025, and annually thereafter, each
2 authorized health insurer shall submit data to the
3 superintendent, in a form and manner prescribed by the
4 superintendent, that includes:

5 (1) a list of the twenty-five most frequently
6 prescribed prescription drug products;

7 (2) a list of the twenty-five most costly
8 prescription drug products by total annual plan spending;

9 (3) a list of the twenty-five prescription
10 drug products with the highest increase in total annual
11 spending compared to the previous calendar year; and

12 (4) an evaluation on the effect that the cost
13 of prescription drug products has on health care premiums.

14 B. Except for the superintendent's reporting
15 requirements in Section 7 of the Prescription Drug Price
16 Transparency Act, the superintendent shall keep confidential
17 all of the information provided pursuant to this section, and
18 the information shall not be subject to the requirements of the
19 Inspection of Public Records Act."

20 SECTION 6. A new section of the New Mexico Insurance Code
21 is enacted to read:

22 "[NEW MATERIAL] PHARMACY BENEFITS MANAGER REPORTING
23 REQUIREMENTS.--

24 A. By May 1, 2025, and annually thereafter, each
25 pharmacy benefits manager shall provide data to the

.226755.2

underscored material = new
~~[bracketed material] = delete~~

1 superintendent that includes the following information for the
2 previous calendar year that is attributable to patient
3 utilization of prescription drug products covered by authorized
4 health insurers:

5 (1) the aggregate rebates and fees collected
6 from manufacturers; and

7 (2) the aggregate dollar amount of rebates and
8 fees collected from manufacturers that were:

9 (a) passed on to: 1) authorized health
10 insurers; and 2) consumers at the point of sale of a
11 prescription drug product; or

12 (b) retained by the pharmacy benefits
13 manager.

14 B. A report submitted by a pharmacy benefits
15 manager shall not disclose the identity of a specific
16 authorized health insurer or consumer, the price charged for a
17 specific prescription drug product or class of prescription
18 drug products or the amount of any rebate or fee provided for a
19 specific prescription drug product or class of prescription
20 drug products.

21 C. Information provided to the superintendent
22 pursuant to this section shall be kept confidential and shall
23 not be subject to the requirements of the Inspection of Public
24 Records Act, except to the extent that the information is used
25 on an aggregate basis across all pharmacy benefits managers, in

.226755.2

underscored material = new
~~[bracketed material] = delete~~

1 accordance with the superintendent's reporting requirements in
2 Section 7 of the Prescription Drug Price Transparency Act."

3 SECTION 7. A new section of the New Mexico Insurance Code
4 is enacted to read:

5 "[NEW MATERIAL] SUPERINTENDENT OF INSURANCE LEGISLATIVE
6 REPORTS.--

7 A. By September 30, 2025, and annually thereafter,
8 the superintendent shall submit to the legislative finance
9 committee and the legislative health and human services
10 committee a report that includes:

11 (1) aggregate market trends for prescription
12 drug products across the state and country;

13 (2) the impact of prescription drug product
14 prices in the state, including the overall impact of
15 prescription drug product costs on health care premiums;

16 (3) the geographic and demographic populations
17 in the state most affected by high prescription drug product
18 costs; and

19 (4) any recommendations the superintendent has
20 on further action or legislation needed to make prescription
21 drug products more affordable and reduce overall patient cost
22 in the state.

23 B. By September 30, 2025, and annually thereafter,
24 the superintendent shall aggregate the information collected
25 from manufacturers, pharmacy services administrative

.226755.2

underscoring material = new
[bracketed material] = delete

1 organizations, authorized health insurers and pharmacy benefits
2 managers and publish a report on the aggregate data. The
3 superintendent shall hold an annual public meeting that is
4 focused on discussing the contents of the report.

5 C. The superintendent shall make the reports
6 required by this section available to the public on the
7 superintendent's website.

8 D. The aggregate data included in the reports shall
9 not disclose or tend to disclose proprietary or confidential
10 information on any specific or individual manufacturer,
11 pharmacy services administrative organization, authorized
12 health insurer, pharmacy benefits manager or consumer."

13 SECTION 8. A new section of the New Mexico Insurance Code
14 is enacted to read:

15 "[NEW MATERIAL] ENFORCEMENT AND PENALTIES.--

16 A. A manufacturer, pharmacy services administrative
17 organization, authorized health insurer or pharmacy benefits
18 manager may be subject to a penalty imposed by the
19 superintendent in accordance with Section 59A-1-18 NMSA 1978
20 for:

- 21 (1) failing to submit information or data;
22 (2) failing to submit information or data on
23 time; or
24 (3) providing inaccurate or incomplete
25 information or data.

.226755.2

