

AN ACT

RELATING TO PRESCRIPTION DRUGS; REQUIRING REPORTING OF CERTAIN  
INFORMATION BY PRESCRIPTION DRUG MANUFACTURERS; PROVIDING  
LIMITATIONS AND EXCEPTIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES.

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

Section 1. AVERAGE MANUFACTURER PRICE--FILING--REPORTING.--

A. A person who manufactures a prescription drug, including a generic prescription drug, that is sold in New Mexico shall file with the human services department:

- (1) the average manufacturer price for the drug;
- (2) the price that each wholesaler or pharmacy benefit manager doing business in this state pays the manufacturer to purchase the drug; and
- (3) the price paid to the manufacturer by any entity in an arrangement or contract that sells or provides prescription drugs in New Mexico without the services of a wholesaler.

B. The information required under Subsection A of this section shall be filed annually or more frequently, as determined by the human services department. The information required under Subsection A of this section is confidential and shall not be disclosed pursuant to Section 3 of this act and shall not be subject to public inspection pursuant to the provisions of Section 14-2-1 NMSA 1978.

C. A person who engages in the wholesale distribution of prescription drugs in New Mexico shall file with the human services department information showing the actual price at which the wholesaler or distributor sells a particular drug to a

pharmacy.

D. As used in this section, "average manufacturer price" means the average price paid to the manufacturer for the drug in New Mexico, including rebates, discounts and market incentives, after deducting customary prompt-pay discounts.

Section 2. UNLAWFUL DISCLOSURE--PENALTIES.--

A. It is unlawful for an employee, former employee, contractor or former contractor of the human services department to reveal to another person, except to another employee or contractor of the department as required by the employee's or contractor's duties or responsibilities or by state or federal court order, information acquired pursuant to Section 1 of this act or any other information about a prescription drug manufacturer acquired as a result of his employment or contract by the department and not available from public sources.

B. An employee, former employee, contractor or former contractor of the human services department who reveals to another person information that he is prohibited from lawfully revealing is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction.

Section 3. ENFORCEMENT.--The office of the attorney general may take action to investigate and enforce the requirements of Sections 1 and 2 of this act.

Section 4. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 5. EFFECTIVE DATE.--The effective date of the provisions of Section 2 of this act is January 1, 2004.

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