

1 SENATE BILL 471

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Elizabeth "Liz" Stefanics

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10 AN ACT

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

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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

25 (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."