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HOUSE BILL 51

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

Pamelya Herndon and Bill Tallman

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PRESCRIPTION DRUGS; ENACTING THE PRESCRIPTION DRUG AFFORDABILITY BOARD ACT; ESTABLISHING THE PRESCRIPTION DRUG AFFORDABILITY BOARD; CREATING THE PRESCRIPTION DRUG AFFORDABILITY BOARD FUND; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Prescription Drug Affordability Board Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Prescription Drug Affordability Board Act:

A. "board" means the prescription drug affordability board;

B. "fund" means the prescription drug affordability board fund;

C. "manufacturer" means an entity that:

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1 (1) engages in the manufacture of prescription  
2 drugs; or

3 (2) enters into a lease with another entity to  
4 market or distribute a prescription drug under its own name;  
5 and

6 (3) sets or changes the wholesale acquisition  
7 cost of the prescription drug it manufactures or markets;

8 D. "pharmacy benefits manager" means an entity that  
9 provides pharmacy benefits management services;

10 E. "prescription drug" means a drug that is  
11 required by an applicable state or federal law or rule to be  
12 dispensed pursuant to a prescription or is restricted to use by  
13 licensed practitioners; or that is required by federal law to  
14 be labeled with any of the following statements prior to being  
15 dispensed or delivered:

16 (1) "Caution: federal law prohibits  
17 dispensing without prescription."; or

18 (2) "RX only."; and

19 F. "wholesale acquisition cost" means the  
20 manufacturer's list price for a prescription drug for  
21 wholesalers in the United States, not including other  
22 discounts, rebates or reductions in price.

23 SECTION 3. [NEW MATERIAL] PRESCRIPTION DRUG AFFORDABILITY  
24 BOARD CREATED.--

25 A. The "prescription drug affordability board" is

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1 created and is administratively attached to the office of  
2 superintendent of insurance.

3 B. The board consists of five members appointed as  
4 follows:

5 (1) one member appointed by the governor;

6 (2) one member appointed by the president pro  
7 tempore of the senate;

8 (3) one member appointed by the minority floor  
9 leader of the senate;

10 (4) one member appointed by the speaker of the  
11 house of representatives; and

12 (5) one member appointed by the minority floor  
13 leader of the house of representatives.

14 C. The president pro tempore of the senate and the  
15 speaker of the house of representatives shall each appoint an  
16 alternate member to the board.

17 D. Members of the board are entitled to receive per  
18 diem and mileage pursuant to the Per Diem and Mileage Act and  
19 shall receive no other compensation, perquisite or allowance.

20 E. Members of the board shall have expertise in  
21 health care economics, the pharmaceutical market or clinical  
22 medicine.

23 F. A member of the board shall not be an employee  
24 of, a board member of or a consultant to a manufacturer or  
25 pharmacy benefits manager or their respective trade

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1 associations.

2 G. To the extent practicable and consistent with  
3 federal and state law, the membership of the board shall  
4 reflect the racial, ethnic and gender demographics of the  
5 state.

6 H. All initial appointments shall be made within  
7 six months of the effective date of the Prescription Drug  
8 Affordability Board Act. Members of the board shall serve  
9 four-year terms. The terms of the initial members of the board  
10 shall expire as follows:

11 (1) the members of the board appointed by the  
12 minority floor leader of the senate and the minority floor  
13 leader of the house of representatives, December 31, 2025;

14 (2) the members of the board appointed by the  
15 president pro tempore of the senate and the speaker of the  
16 house of representatives, December 31, 2026; and

17 (3) the member of the board appointed by the  
18 governor, December 31, 2027.

19 I. A member of the board may be removed from the  
20 board by a vote of at least three members of the board if a  
21 member of the board fails to disclose a conflict of interest or  
22 for other good cause.

23 J. If there is a vacancy on the board, a new member  
24 of the board shall be appointed by the authority that appointed  
25 the former member of the board to serve the remainder of the

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1 former member's term.

2 K. The members of the board shall elect a chair and  
3 a vice chair of the board.

4 L. The board shall approve an annual plan of  
5 operations.

6 SECTION 4. [NEW MATERIAL] CONFLICTS OF INTEREST.--The  
7 board shall adopt a model code of ethics pursuant to the State  
8 Ethics Commission Act.

9 SECTION 5. [NEW MATERIAL] POWERS AND DUTIES OF THE  
10 BOARD.--The board shall:

11 A. develop strategies to lower the cost of  
12 prescription drugs for stakeholders, including consumers,  
13 health care providers, businesses and government;

14 B. recommend regulatory approaches to the office of  
15 superintendent of insurance and the legislature for lowering  
16 the cost of prescription drugs for stakeholders, including  
17 consumers, health care providers, businesses and government;

18 C. promulgate rules necessary for the  
19 implementation of the Prescription Drug Affordability Board  
20 Act;

21 D. enter into contracts with qualified parties for  
22 services necessary to conduct the powers and duties of the  
23 board;

24 E. examine the feasibility of contracting with a  
25 pharmacy benefits manager to lower the cost of prescription

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1 drugs for stakeholders, including consumers, health care  
2 providers, businesses and government;

3 F. perform education and outreach activities about  
4 cost-saving initiatives for stakeholders, including consumers,  
5 health care providers, businesses and government; and

6 G. conduct public hearings.

7 SECTION 6. [NEW MATERIAL] REPORTING TO THE BOARD.--The  
8 office of superintendent of insurance shall report all relevant  
9 data to the board, including:

10 A. total prescription drug rebates provided by  
11 pharmacy benefits managers to consumers broken out by:

12 (1) health plan; and

13 (2) therapeutic class of prescription drug;

14 B. the thirty highest-spend prescription drugs  
15 covered by each insurer; and

16 C. manufacturer-reported total financial assistance  
17 to consumers for each of the thirty highest-spend prescription  
18 drugs covered by each insurer.

19 SECTION 7. [NEW MATERIAL] ASSESSMENT.--

20 A. The board shall be funded by an annual  
21 assessment on:

22 (1) manufacturers licensed pursuant to the  
23 Pharmacy Act;

24 (2) wholesale drug distributors licensed  
25 pursuant to the Pharmacy Act; or

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1                   (3) pharmacy benefits managers licensed  
2 pursuant to the Pharmacy Benefits Manager Regulation Act.

3                   B. The annual assessment per licensed manufacturer,  
4 wholesale drug distributor or pharmacy benefits manager shall  
5 not exceed two thousand dollars (\$2,000).

6                   C. The board shall deposit all money collected from  
7 annual assessments into the fund.

8                   **SECTION 8. [NEW MATERIAL] PRESCRIPTION DRUG AFFORDABILITY**  
9 **BOARD FUND CREATED.--**

10                   A. The "prescription drug affordability board fund"  
11 is created in the state treasury.

12                   B. The fund consists of assessments paid to the  
13 board pursuant to Section 7 of the Prescription Drug  
14 Affordability Board Act, appropriations, income from investment  
15 of the fund and donations to the fund. This subsection shall  
16 not be construed to prohibit the fund from receiving money from  
17 any other source.

18                   C. Money in the fund is appropriated to the board  
19 to provide funding for the operations of the board and for the  
20 purposes authorized pursuant to the Prescription Drug  
21 Affordability Board Act, including any costs expended by a  
22 state agency to implement that act.

23                   D. Expenditures from the fund shall be made on  
24 warrant of the secretary of finance and administration pursuant  
25 to vouchers signed by the chair of the board.

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1           E. Money in the fund at the end of a fiscal year  
2 shall not revert to any other fund.

3           F. The state treasurer shall hold the fund  
4 separately, and the state treasurer shall account for the fund.

5           G. The fund shall be invested and reinvested in the  
6 same manner as other state funds.

7           **SECTION 9. [NEW MATERIAL] LEGISLATIVE REPORTS.--**

8           A. On or before June 30, 2024, the board shall  
9 conduct a study of the state and national prescription drug  
10 market and recommend strategies for lowering the cost of  
11 prescription drugs.

12           B. On or before November 30 of each year, beginning  
13 in 2024, the board shall submit to the legislative finance  
14 committee and the legislative health and human services  
15 committee a report that includes:

16                   (1) price trends for prescription drug  
17 products; and

18                   (2) recommendations for legislation necessary  
19 to lower the cost of prescription drugs for stakeholders,  
20 including consumers, health care providers, businesses and  
21 government.

22           **SECTION 10. APPROPRIATION.--**Seven hundred fifty thousand  
23 dollars (\$750,000) is appropriated from the general fund to the  
24 prescription drug affordability board for expenditure in fiscal  
25 year 2024 to establish the board and cover operational costs.

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1 Any unexpended or unencumbered balance remaining at the end of  
2 fiscal year 2024 shall revert to the general fund. The board  
3 shall reimburse the general fund for the full amount of the  
4 appropriation with assessments collected pursuant to Section 7  
5 of the Prescription Drug Affordability Board Act.

6 SECTION 11. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2023.

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