**LFC Requestor:** Rodriguez, Julisa

**2024 LEGISLATIVE SESSION**
**AGENCY BILL ANALYSIS**

## Section I: General

**Chamber:** House
**Number:** 0033
**Category:** Bill
**Type:** Introduced

**Date** (of **THIS** analysis)**:** 01/19/2024
**Sponsor(s):** Pamela Herndon
**Short Title:** Prescription Drug Price Transparency Act

**Reviewing Agency:** Agency 665 - Department of Health
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## Section II: Fiscal Impact

**APPROPRIATION (dollars in thousands)**

| Appropriation Contained | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|
| **FY 24** | **FY 25** | | |
| $0 | $0 | N/A | N/A |
| | | | |

House Bill 33 (HB0033) proposes to appropriate $100,000 from the General Fund to the Office of Superintendent of Insurance for FY25 and for FY26. Any unexpended or unencumbered balance remaining at the end of FY26 will revert to the General Fund. There are no appropriations in HB0033 for NMDOH.

**REVENUE (dollars in thousands)**

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|
| **FY 24** | **FY 25** | **FY 26** | | |
| $0 | $0 | $0 | N/A | N/A |
| | | | | |

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

| | FY 24 | FY 25 | FY 26 | 3 Year Total Cost | Recurring or Non-recurring | Fund Affected |
|---|---|---|---|---|---|---|
| **Total** | $0 | $0 | $0 | $0 | N/A | N/A |
| | | | | | | |

**Section III: Relationship to other legislation**

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: May indirectly relate to HB51 Prescription Drug Affordability Board Act

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

**Section IV: Narrative**

**1. BILL SUMMARY**

a) Synopsis
House Bill 33 (HB0033) proposes to enact a new section of the New Mexico Insurance Code entitled the Prescription Drug Price Transparency Act.

This Act would include:

- Definitions for "authorized health insurer", "brand name drug", "generic drug", "manufacturer", "pharmacy benefits manager", "pharmacy services administrative organization", "prescription drug product", "rebate", and "wholesale acquisition cost".
- Require that by May 1, 2025 and annually thereafter, each manufacturer submit data to the superintendent of insurance drug information that includes Name and National Drug Code (NDC) for each:
    - Prescription drug with a wholesale acquisition cost ≥$400 for a course of treatment or 30-day supply;
    - Brand name drug that increased in wholesale acquisition cost by ≥10% in the previous calendar year;
    - Prescription drug product that increased in wholesale acquisition cost by ≥16% over two calendar years;
    - Generic drug that has increased in wholesale acquisition cost by ≥30% in the previous calendar year;
- Require for each drug reported as above, that the manufacturer provide (verified by an independent third-party whenever possible):
    - The introductory wholesale acquisition cost of the prescription drug product when then drug was approved for marketing by the federal Food and Drug Administration (FDA);
    - The annual increase in the drug's wholesale acquisition cost over the previous five calendar years;
    - The direct costs associated with manufacturing, marketing, and distributing the drug;
    - The total revenue from the drug over the previous calendar year;
    - The net profit attributable to the drug over the previous calendar year;
    - The ten highest government-negotiated prices of the drug in the European Union countries and the United Kingdom;

    - Any agreement between the manufacturer and another entity that involves a delay in marketing a generic version of the drug;
    - The names and prices of any generic equivalents of the drug;
    - The total amount of manufacturer-supported financial assistance provided to consumers of the drug; and,
    - Other information requested by the superintendent of insurance.
- Require a manufacturer to notify the superintendent of insurance in writing if there is an intention to introduce a new prescription drug product in the US that has a wholesale acquisition cost of ≥$400 or more for a 30-day supply or for a course less than 30 days.
- Require that by May 1, 2025 and annually thereafter each pharmacy services administrative organization submit to the superintendent a list of:
    - The twenty-five most frequently dispensed prescription drugs;
    - The twenty-five most costly prescription drug products by total annual spending; and,
    - The twenty-five prescription drug products with the highest increase in total annual spending compared to the previous calendar year.
- Require that by May 1, 2025 and annually thereafter, each authorized health insurer submit to the superintendent:
    - A list of the twenty-five most frequently prescribed drugs;
    - A list of the twenty-five most costly prescription drug products by total annual plan spending;
    - A list of the twenty-five prescription drugs with the highest increase in total annual spending compared to the previous calendar year; and,
    - An evaluation of the effect that the cost of the drug product has on health care premiums.
- Require that by May 1, 2025 and annually thereafter, pharmacy benefits managers must provide to the superintendent for the previous calendar year attributable to patient utilization of prescription drug products covered by authorized health insurers:
    - The aggregate rebates and fees collected from manufacturers;
    - The aggregate dollar amount of rebates and fees collected from manufacturers that were:
        - Passed on to 1) the authorized health insurers and 2) consumers at the point of sale, or
        - Retained by the pharmacy benefits manager.
    - The report will not disclose the identity of a specific authorized health insurer or consumer, the price charged, or the amount of any rebate or fee provided for a specific prescription drug product or class of products.
- Require that except for the superintendent's reporting requirements, that the information provided above by manufacturers, pharmacy services administrative organizations, authorized health insurers, and pharmacy benefits manager is not subject to the Inspection of Public Records Act.
- Require that by September 30, 2025 and annually thereafter, the superintendent shall submit to the Legislative Finance Committee and the Legislative Health and Human Services Committee a report that includes:
    - Aggregate market trends for prescription drug products across the state and country;
    - The impact of prescription drug prices in the state, including the overall impact on health care premiums;

- The geographic and demographic populations in the state most affected by high prescription drug costs;
- Any recommendations on further action or legislation to make prescription drugs more affordable and reduce overall patient cost in the state.
- Aggregate the information collected above and publish a report on the data, hold an annual public meeting focused on the contents of the report, and make the report available on the superintendent's website.

- Provide a section on enforcement and penalties where a manufacturer, pharmacy services administrative organization, authorized health insurer, or pharmacy benefits manager may be subject to a penalty imposed by the superintendent under Section 59A-1-18 NMSA 1978 for failing to submit information/data, failing to submit information/data on time, or providing inaccurate or incomplete information/data. The superintendent may audit the data provided – with the costs of the audit paid for by the entity that submitted it.

Is this an amendment or substitution? ☐ Yes ☒ No

Is there an emergency clause? ☐ Yes ☒ No
The effective date is January 1, 2025.

b) Significant Issues

Prescription drugs improve quality of life and health outcomes for many New Mexicans. However, high prices reduce consumers' access to such medications.(Prescription Drugs: Spending, Use, and Prices (cbo.gov)) Prescription drug prices in the United States are more than 2.5 times higher than in any other industrialized nation in the world (Improving Prescription Drug Affordability Through Regulatory Action | Health Policy | JAMA Health Forum | JAMA Network) with U.S. outpatient prescription drug costs of $348.4 billion in 2020. Outpatient prescription drug spending has also increased faster than other areas of health care spending, and faster than inflation and economic growth. The high costs are mainly owing to the increased use of new, more expensive drugs and the steady price rise of brand-name prescription drugs. Patents and market exclusivities and agreements also remain barriers to competition in the generic and biosimilar market.(Ensuring Equitable Access to Affordable Prescription Medications (apha.org))

The high cost of prescription drugs also threatens healthcare budgets, and limits funding available for other areas in which public investment is needed.(The high cost of prescription drugs: causes and solutions - PMC (nih.gov)) As a result, prescription drug costs remain an important health policy area of public interest and concern.(Public Opinion on Prescription Drugs and Their Prices | KFF) Efforts to reduce prices would reduce strain on government and personal budgets, and potentially increase access to care and thereby improve health outcomes.

Drug price transparency laws enable state policymakers to understand opaque drug pricing and payment systems to formulate appropriate policy solutions to high prices, while also creating the data infrastructure to effectively realize those policy solutions.(Drug Price Transparency Laws Position States to Impact Drug Prices - NASHP) Transparency laws can help identify where profits are retained in the drug supply chain. Twenty-one states (e.g., OR, ME, VT, WA) have enacted annual transparency reports, and have seen some impact on costs (for example, Oregon saw a 73% decrease in price hikes with bill

enactment, and VT saw a 79% decline in Medicaid price hikes).( https://mostpolicyinitiative.org/wp-content/uploads/2023/02/Cost-Effects-of-Transparency-Laws-on-Drugs-.pdf) However, transparency programs may have less impact on high launch prices, but can establish accountability.(Drug Price Transparency Laws Position States to Impact Drug Prices - NASHP)

**2. PERFORMANCE IMPLICATIONS**

- Does this bill impact the current delivery of NMDOH services or operations?

☐ Yes ☒ No

- Is this proposal related to the NMDOH Strategic Plan? ☒ Yes ☐ No

☒ **Goal 1**: We expand equitable access to services for all New Mexicans
☐ **Goal 2**: We ensure safety in New Mexico healthcare environments
☒ **Goal 3**: We improve health status for all New Mexicans
☐ **Goal 4**: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

The intention of HB0033 would be to increase government (and partially, public) transparency into costs of prescription drugs, with the goal of reducing health system costs. Given the significant costs of prescription drugs, this may help to improve access to care, and thereby improve the health status of New Mexicans.

**3. FISCAL IMPLICATIONS**

- If there is an appropriation, is it included in the Executive Budget Request?

☐ Yes ☒ No ☐ N/A

- If there is an appropriation, is it included in the LFC Budget Request?

☐ Yes ☒ No ☐ N/A

- Does this bill have a fiscal impact on NMDOH? ☐ Yes ☒ No

It is possible that if the bill works as intended to control or reduce prescription drug costs, this could have a fiscal impact on NMDOH by reducing both facility operating costs as well as costs related to staff health insurance premiums.

**4. ADMINISTRATIVE IMPLICATIONS**

Will this bill have an administrative impact on NMDOH? ☐ Yes ☒ No

**5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP**

- HB0033 may relate to HB0051 (Prescription Drug Affordability Board Act) that would create a prescription drug affordability board that would, among its responsibilities, be to develop strategies to lower the cost of prescription drugs, recommend regulatory approaches to the office of superintendent of insurance to lower the cost of prescription drugs.

Transparency laws create a foundation for additional strategies to lower drug costs. Prescription drug affordability boards (PDABs), as proposed in HB0051, rely on having access to and expertise with drug pricing data.(Drug Price Transparency Laws Position States to Impact Drug Prices - NASHP)

**6. TECHNICAL ISSUES**

Are there technical issues with the bill? ☐ Yes ☒ No

7. **LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)**
   - Will administrative rules need to be updated or new rules written? ☐ Yes ☒ No
   - Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? ☐ Yes ☒ No
   - Does this bill conflict with federal grant requirements or associated regulations? ☐ Yes ☒ No
   - Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? ☐ Yes ☒ No

8. **DISPARITIES ISSUES**

About three in ten adults report not taking their medicines as prescribed (e.g., not filling a prescription, taking an over-the-counter drug instead, or cutting pills in half or skipping doses) at some point in the past year because of the cost. This increases to four in ten among adult ages 18-29 (40%), Hispanic adults (39%), those taking four or more prescription drugs (37%), and those living in households with an annual income of less than $40,000 annually (37%).(Public Opinion on Prescription Drugs and Their Prices | KFF)

In addition, adults 19–64 years of age are three times less likely to fill a prescription if they are underinsured. Patients with chronic conditions are also disproportionally affected. About 13% of U.S. residents do not have any form of health insurance to pay for prescription medications, and even those who have coverage are often unable to afford drug copayments and other cost-sharing mechanisms. Thus, the income and insurance status of individuals greatly affects their sense of security in terms of accessing regular health care and prescription medications.(Ensuring Equitable Access to Affordable Prescription Medications (apha.org))

Therefore, efforts to reduce prescription drug costs may reduce disparities, particularly among low-income and underinsured populations.

9. **HEALTH IMPACT(S)**

It is possible that if HB0033 works as intended to control or reduce prescription drug costs, this could have a health impact on New Mexicans by reducing cost as a barrier to healthcare.

10. **ALTERNATIVES**

None

Potential additional solutions that New Mexico may adopt or support that may assist with prescription drug costs include patent reform, penalties for pay-for-delay schemes, expediting approval processes for generics, non-profit generic manufacturing, discouraging approval of drugs with clinically insignificant benefits, transparency in lobbying spending, transparency in funds received by professional and patient organizations from drug manufacturers, developing an agency that sets value-based ceiling prices, authorize Medicare to directly negotiate prices, place caps on price increases, permit importation of prescription drugs for personal use, abolish reimbursement to providers as a percentage of the price of the drug – use fixed reimbursement, pass rebates for pharmacy-benefit managers on to patients, improve provider awareness of drug prices, and reduce conflicts of interest that prevent providers from advocating for lower drug prices.(The high cost of prescription drugs: causes and solutions - PMC (nih.gov)

**11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

If HB0033 is not enacted, then a new section of the New Mexico Insurance Code entitled the Prescription Drug Price Transparency Act would not be created, and therefore manufacturer, pharmacy services administrative organization, authorized health insurer, or pharmacy benefits manager practices would not be required to submit data annually to the superintendent of insurance related to prescription drug costs.

12. **AMENDMENTS**

None