LFC Requester:	

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

SECTION I: GENERAL INFORMATION
{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** ____

Correction ____ **Substitute** ____

Date Prepared: 1/18/23

Bill No: HB 33

Sponsor: Rep. Pamelya Herndon

Short Title: Prescription Drug Price Transparency Act

Agency Name and Code Number: 305 – New Mexico Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	**FY25**		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	**FY25**	**FY26**		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

House Bill ("HB") 33 would create the Prescription Drug Transparency Act (The "Act"). The Act would require drug manufacturers to annually notify (starting May 1, 2025) the Superintendent of Insurance of 1) prescription drugs that have a wholesale acquisition cost of $400 or more for a 30 day supply or for a course of treatment that is less than 30 days; 2) brand name drugs that have increased in wholesale acquisition cost by 10% from the previous calendar year; 3) prescription drug products that have increased in wholesale acquisition costs by 16% over the course of the previous two calendar years; and 4) generic drugs that have increased in wholesale acquisition costs by thirty percent from the previous calendar year. For each drug price increase that is reported to the Superintendent of Insurance, the drug manufacturer must also provide information related to the reasoning of the price increase. The Act would also require a drug manufacturer to provide the Superintendent of Insurance 60 days notice if they intend to introduce a new prescription drug to the United States that has a wholesale acquisition cost of $400 or more for a thirty day supply or for a course of treatment that is less than 30 days.

The Act would also require pharmacy services administrative organizations and authorized health insurers to annually (starting May 1, 2025) provide the Superintendent of Insurance with information related to the most frequently prescribed and costly prescription drug products.

The Act would also require pharmacy benefits managers to annually (starting May 1, 2025) provide the Superintendent of Insurance with information related to the rebates and fees collected from the drug manufacturers.

The Act would require the Superintendent of Insurance to annually (starting September 30, 2025) submit a report to the Legislative Finance Committee and the Legislative Health and Human Services Committee that details the 1) market trends for prescription drugs, 2) impact of prescription drug prices, 3) populations most affected by high drug costs and 4) any recommendations from the Superintendent of Insurance on how to make drug costs more affordable.

The Act would establish penalties for manufacturers, pharmacy services administrative organizations, authorized health insurers or pharmacy benefits managers that fail to abide by the notification requirements of the Act.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The Office of the Superintendent of Insurance was established by constitutional amendment. Article XI, Section 20 of the New Mexico Constitution provides that the Office of the Superintendent "shall regulate insurance companies and others engaged in risk assumption in such manner as provided by law." HB 33 purports to give the Office of the Superintendent regulatory authority over entities that are not insurance companies and are not engaged in risk assumption. Specifically, HB 33 proposes that the Office regulate prescription drug manufacturers. Because a constitutional amendment would be required to expand the jurisdiction of the Office of the Superintendent, and that Office currently does not have constitutional authority to regulate drug manufacturers, HB 33 may be subject to legal challenge by newly regulated entities.

HB 33 would require the Superintendent to generate an annual report that includes:

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

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

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

(4) any recommendations the superintendent has on further action or legislation needed to make prescription drug products more affordable and reduce overall patient cost in the state.
To be meaningful, such an analysis would require access to socio economic data that is not reported to the Superintendent, and beyond the Superintendent's authority to collect. Section 59A-4-3 authorizes the Superintendent to request data from a "person subject to supervision under the Insurance Code with respect to any transaction or matter within the scope of such supervision." Sources of information and data pertinent to "aggregate market trends for prescription drug products across the state and country" and "geographic and demographic populations in the state most affected by high prescription drug product costs" are likely not within the jurisdiction of the Superintendent. Because HB 33 does not, and likely cannot, empower the Superintendent to collect data from such sources, it is unclear whether the Superintendent can practically create the requested report. The $100K appropriation may also fall significantly below the funding required to perform the necessary data collection, compilation, analysis and assessment contemplated by HB 33.

PERFORMANCE IMPLICATIONS

As noted in significant issues.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

The appropriation in Section 9 of the Act does not state if the $100,000 is per year ($100k in 2025 and $100k in 2026) or $100,000 in total to be distributed between FY 2025 and FY 2026.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A