LFC Requester:	

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

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{Analysis must be uploaded as a PDF}

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 January 17, 2023
Bill No: HB33

Sponsor: Pamelya Herdon
Short Title: Prescription Drug Price Transparency Act and Appropriation

Agency Name and Code Number: Office of Superintendent of Insurance 440
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	**FY25**		
	$100	Recurring	General Fund

(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		$450	$450	$1,350	Recurring with an estimated future impact of $550 per year.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None that OSI is aware of.
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB33 enacts the Prescription Drug Price Transparency Act in the Insurance Code to increase transparency across the prescription drug supply chain. Requires drug manufacturers, pharmacy services administrative organizations, authorized health insurers, and pharmacy benefits managers to annually report to the Superintendent of Insurance (SOI) specific data about drug prices and sales. It also requires the SOI to collect and publicly report information on prescription drug price trends. Appropriates $100,000 (GF, reverting) for FY2025 and 2026 to the SOI to carry out the act.

Section I – Creates a new section for the Prescription Drug Price Transparency Act.

Section II – Creates a new section for the Prescription Drug Price Transparency Act definitions.

Section III – Creates a new section pertaining to annual Prescription Drug Manufacturers' Reports.
Specifies that annually by May 1, 2025, and thereafter, each manufacturer must report to OSI:

- any prescription drug with a wholesale acquisition price of $400 or more for a 30-day supply;
- brand name drug that increased in wholesale acquisition cost by 10 percent or more in the previous year;
- prescription drug product that increased in wholesale acquisition cost by 16 percent or more over the previous two years; and
- generic drug that increased in wholesale acquisition cost by 30 percent of more in the previous year.

Specifies that each manufacturer must include in their drug pricing report, for verification by OSI, the following:

- introductory wholesale acquisition cost;
- annual increase over the previous five years;
- direct costs associated with manufacturing and distributing the product;
- total revenue from the project over the previous year;
- net profit attributable to the product over the year;
- patent expiration date;
- ten highest government-negotiated prices for the product in the EU and UK;
- any agreement to delay marketing a generic version of a product;
- names and prices of generic equivalents to the product;
- total manufacturer-supported financial assistance to consumers; and
- other information requested by SOI.

Requires manufacturers to notify SOI in writing at least 60 days prior of intent to introduce a new product with wholesale acquisition cost of $400 or more for a 30-day supply.

Specifies that the data in the Annual Prescription Drug Manufacturers' Reports shall be kept confidential.

Section IV – Creates a new section pertaining to annual Pharmacy Services Administrative Organizations' Reports. Specifies that by May 1, 2025, and annually thereafter, each pharmacy services administrative organization must report to the SOI the following:

- 25 most frequently dispensed products;
- 25 most costly products by total annual spending; and
- 25 products with the highest increase in total annual spending compared to the previous year.

Specifies that the data in the Annual Pharmacy Services Administrative Organizations' Reports shall be kept confidential.

Section V – Creates a new section pertaining to annual Authorized Health Insurers' Reports. Specifies that by May 1, 2025, and annually thereafter, each authorized health insurer must report to the SOI the following:

- 25 most frequently prescribed products;
- 25 most costly products by total annual plan spending;
- 25 products with highest increase in total annual spending compared to the previous year; and
- evaluation of the effect that the cost of prescription drugs products has on health care premiums.

Specifies that the data in the Annual Authorized Health Insurers' Reports shall be kept confidential.

Section VI – Creates a new section pertaining to annual Pharmacy Benefits Managers'

Reports. Specifies that by May 1, 2025, and annually thereafter, each Pharmacy Benefits Manager (PBM) Report must include the following information:

1. aggregate rebates and fees collected from manufacturers;
2. aggregated dollar amount of rebates and fees that were passed on to authorized health insurers and consumers at the point of sale, or retained by the manager; and
3. pharmacy benefit managers reports shall not disclose identities of insurers or consumers, the price charged for a specific product or class or products or the amount of any rebate or fee for specific products.

Specifies that the data in the Annual Pharmacy Benefits Managers' Reports shall be kept confidential.

Section VII – Creates a new section pertaining to annual Superintendent of Insurance Legislative Reports.

Specifies that by September 30, 2025, and annually thereafter, the SOI shall report to the LFC and the Legislative Health and Human Services Committee the following information:

1. aggregate market trends for products across the state and country;
2. impact of product prices in the state, including overall impact of product costs on health care premiums;
3. geographic and demographic populations most affected by high product costs; and
4. recommendations for further action or needed legislation.

Specifies that by September 30, 2025, and annually thereafter, the SOI shall aggregate all data reported by the manufacturers, pharmacy services administrative organizations, authorized health insurers and pharmacy benefits managers, create a report, publish it on the OSI website and present it at an annual public meeting. Specifies that proprietary or confidential information shall not be reported.

Section VIII - Creates a new section pertaining to enforcement and penalties. Specifies that manufacturers, pharmacy services administrative organizations, authorized health insurers and pharmacy benefits managers may be subject to penalty and enforcement action for failure to submit information or data, late submittal, or providing inaccurate or incomplete information. SOI may audit data submitted at the reporting entity's cost.

Section IX – Appropriates $100,000 (GF) to the Office of SOI for FY2025 and 2026 to carry out provisions of the act.

Section X – Sets January 1, 2025, effective date.

FISCAL IMPLICATIONS

OSI finds it challenging to recruit and train the staff in a timely manner to provide the data analysis required by this bill. OSI estimates that the amount needed to hire a contractor to collect and analyze the data is close to $550,000.

SIGNIFICANT ISSUES
The initial appropriations provided with this legislation may not meet OSI's staffing needs or support the contracting out the work required to meet the legislative intent.

PERFORMANCE IMPLICATIONS
OSI currently does not have the staff capacity to collect, compile and analyze the data required under the Prescription Drug Transparency Act, or enforce compliance.

ADMINISTRATIVE IMPLICATIONS
None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP
None that OSI is aware of.

TECHNICAL ISSUES

The definition of "authorized health insurer" is very broad. The boundaries of the term "subject to the insurance laws of this state" are unclear. While it excludes self-funded private employer plans, and thus avoids ERISA preemption issues, it also includes many types of entities that are not normally subject to the Insurance Code, including hospital or health care services corporation, as well as entities subject to the Health Care Purchasing Act, which presumably is encompassed by the "insurance laws of this state." In addition, there may be a concern that some of these entities may be suddenly subjected to other parts of the insurance code if they are listed here. There may need to be some sort of saving clause preventing that.

In addition, the definition of "manufacturer" is fairly vague. There are certain enumerated licenses regarding manufacturing and distribution in the Pharmacy Act, and there is presumably a complicated interplay between federal and state statutes and regulations. It would likely be more appropriate for the entity tasked with enforcing the Pharmacy Act, the Board of Pharmacy, to provide input as to the definition of "manufacturer," and to enforce this statute to the extent that it applies to manufacturers.

OTHER SUBSTANTIVE ISSUES
None.

ALTERNATIVES
None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL
OSI will not have the authority to collect and analyze prescription drug costs or take enforcement action against the entities subject to this legislation.

AMENDMENTS
None.