HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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) engages in the manufacture of prescription drugs; or

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

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

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

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

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

(2) "RX only."; and

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

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

A. The "prescription drug affordability board" is
created and is administratively attached to the office of superintendent of insurance.

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

(1) one member appointed by the governor;
(2) one member appointed by the president pro tempore of the senate;
(3) one member appointed by the minority floor leader of the senate;
(4) one member appointed by the speaker of the house of representatives; and
(5) one member appointed by the minority floor leader of the house of representatives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. examine the feasibility of contracting with a pharmacy benefits manager to lower the cost of prescription
drugs for stakeholders, including consumers, health care providers, businesses and government;

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

G. conduct public hearings.

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

A. total prescription drug rebates provided by pharmacy benefits managers to consumers broken out by:
   (1) health plan; and
   (2) therapeutic class of prescription drug;

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

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

SECTION 7. [NEW MATERIAL] ASSESSMENT.--

A. The board shall be funded by an annual assessment on:
   (1) manufacturers licensed pursuant to the Pharmacy Act;
   (2) wholesale drug distributors licensed pursuant to the Pharmacy Act; or
(3) pharmacy benefits managers licensed pursuant to the Pharmacy Benefits Manager Regulation Act.

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

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

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

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

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

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

D. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the chair of the board.
E. Money in the fund at the end of a fiscal year shall not revert to any other fund.

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

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

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

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

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

(1) price trends for prescription drug products; and

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

SECTION 10. APPROPRIATION.--Seven hundred fifty thousand dollars ($750,000) is appropriated from the general fund to the prescription drug affordability board for expenditure in fiscal year 2024 to establish the board and cover operational costs.
Any unexpended or unencumbered balance remaining at the end of fiscal year 2024 shall revert to the general fund. The board shall reimburse the general fund for the full amount of the appropriation with assessments collected pursuant to Section 7 of the Prescription Drug Affordability Board Act.

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