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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>HHHC</u>	<b>LAST UPDATED</b> <u>02/15/2023</u>	<b>ORIGINAL DATE</b> <u>01/24/2023</u>
<b>SHORT TITLE</b> <u>Prescription Drug Affordability Board Act</u>	<b>BILL NUMBER</b> <u>CS/House Bill 51/HHHCS</u>	<b>ANALYST</b> <u>Chilton</u>

### APPROPRIATION\* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$750.0	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent version of this legislation.

### REVENUE\* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	At least \$104.0	At least \$104.0	Recurring	Prescription Drug Affordability Fund

Parentheses ( ) indicate revenue decreases.  
\*Amounts reflect most recent version of this legislation.

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
			\$260.0	\$260.0	Recurring	Prescription Drug Affordability Fund
<b>Total</b>						

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent version of this legislation.

Relates to House Bill 132, Senate Bill 51.

### Sources of Information

LFC Files

Responses Received From  
 Department of Health (DOH)  
 Human Services Department (HSD)  
 Office of the Superintendent of Insurance (OSI)

## SUMMARY

### Synopsis of HHC Substitute for House Bill 51

House Bill 51 would establish the Prescription Drug Affordability Board, attached to the Office of Superintendent of Insurance, with an initial appropriation of \$750 thousand and authority to assess pharmaceutical managers, prescription benefit managers, and wholesale drug distributors up to \$2,000 annually to help fund the program. Any amount remaining at the end of FY24 shall revert to the general fund.

The bill would create a five-member Prescription Drug Affordability Board (PDAB), members of which would be appointed by the governor, the president pro tem of the Senate, the speaker of the House, the Senate minority floor leader, and the House minority leader. The unpaid board members would have expertise in healthcare economics, clinical medicine, or the pharmaceutical market. They would serve staggered four-year terms.

HB51 provides that conflicts of interest will be avoided through adherence to the State Ethics Commission Act. Powers and duties of the board would include

- Developing strategies to lower prescription drug costs for stakeholders,
- Recommending regulatory approaches for lowering the cost of prescription drugs,
- Examining the possibility of coordinating with a group of prescription drug purchasers to select a wholesaler for joint purchasing or joining an existing purchasing cooperative,
- Entering into contracts with qualified parties and services to conduct the powers and the duties of the board,
- Examining the feasibility of contracting with a pharmacy benefits manager (PBMs) to lower the cost of prescription drugs,
- Performing education and outreach activities about cost-saving initiatives, and
- Conducting public hearings.

OSI would provide the board with relevant information, especially with regard to the 30 highest-total-cost drugs and rebates provided by PBMs. Revenue from any assessment would be deposited in the nonreverting prescription drug affordability board fund and used to support the board. Under HB51, the board would be required to report to the Legislature before November 30 of each year on drug price trends, actions it has taken, and its recommendations for legislation to lower drug costs.

The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

The appropriation of \$750 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund.

This bill creates a new fund and provides for continuing appropriations. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because earmarking reduces the ability of the Legislature to establish spending priorities.

In addition, it is unlikely the income to the fund would be sufficient to sustain the Prescription Drug Affordability Board. There are 52 pharmacy benefit managers licensed in New Mexico according to OSI and an uncertain number of other entities, such as pharmaceutical manufacturers, each of which would be assessed no more than \$2,000 per year. DOH indicates it manages pharmaceuticals for certain diseases with a public health impact and, therefore, would be subject to the assessment.

OSI indicates that “approximately \$260 thousand of the fund may be needed for OSI staffing costs to support the work of the board, which does not include the cost of contracting with experts, such a pharmacist, to provide technical expertise to the board.”

## **SIGNIFICANT ISSUES**

New Mexico and the other states. suffer from very high drug costs relative to the rest of the developed world. As noted by DOH:

A US Health and Human Services Department (HHS) funded study in 2018 found that U.S. drug prices are more than 2.5 times more expensive than in other high-income countries. Additionally, a small survey of 1,170 New Mexico residents found that 33 percent cut pills in half, skipped doses of medicine, or did not fill a prescription to due cost...

Currently six states—Maryland, Maine, New Hampshire, New York, Massachusetts, and Ohio—have implemented prescription drug affordability boards. In these states, the authorities of the boards vary. Some have authority to set payment limits and the ability to leverage public purchasing power. Others serve only to make recommendations to a legislature on actions that could lower drug cost. Medicaid-focused models work with manufacturers to obtain supplemental rebates on high-cost drugs...

Increasing prescription drug prices further increase existing health disparities. Actions to curb prescription drug prices for all New Mexicans are critical in reducing health disparities. A prescription affordability may help to positively impact existing public health disparities.

According to the National Conference of State Legislators (NCSL), in an April 2022 article, Washington had just become the seventh state to establish a drug affordability board. Data do not appear to be available about the effectiveness of these boards in decreasing drug costs. NCSL notes that decreasing drug costs for the public has broad bipartisan support. The federal Inflation Reduction Act of 2022 included a provision for negotiation of prices on a small number of high-cost medications, to begin in 2026.

## **RELATIONSHIP**

House Bill 51 is related to HB132, which addresses parity of access to community and mail-order pharmacies, and SB51, which would create cost-sharing provisions for prescriptions.

## **TECHNICAL ISSUES**

The definition of drug “manufacturer” in Section 2 of the bill does not specify whether it refers

to all drug manufacturers in New Mexico, in the United States, or in the world.

OSI states:

This legislation currently does not give OSI the authority to enforce failure by a PBM, drug manufacturer or drug wholesaler pay or timely pay an assessment. As a result, there may be difficulty in collecting the fees to fund the work of this board.

Additionally, the legislation does not require PBMs or manufacturers to report the data required to be collected by OSI. OSI does not currently have the authority to ask PBMs or drug manufacturers for this data. Drug manufacturers also, typically, are not subject to the laws of the Insurance Code. Any reporting mandate for drug manufacturers may need to be chaptered in another section of the law, which may limit OSI's ability to enforce reporting requirements. As written, the law does currently not spell out any penalties for failure to comply with data reporting requirements.

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