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FISCAL IMPACT REPORT

SPONSOR HAFC **LAST UPDATED** 2/11/24
ORIGINAL DATE 1/22/24
BILL NUMBER CS/House Bill 33/HAFCS/aHAFC/aHFl#1
SHORT TITLE Prescription Drug Price Transparency Act
ANALYST Rodriguez/Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSI	No fiscal impact	$275.0	$275.0	$550.0	Recurring	General Fund
HSD	No fiscal impact	$33.0	$33.0	$66.0	Recurring	General Fund

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

Sources of Information

LFC Files

Agency Analysis Received From
Office of Superintendent of Insurance (OSI)
Health Care Authority (HCA)
UNM Health Sciences Center (UNMH)
Aging and Long-Term Services Department (ALTSD)
General Services Department (GSD)
Department of Health (DOH)
Attorney General's Office (NMAG)

SUMMARY

Synopsis of House Floor Amendment to HAFC Committee Substitute for House Bill 33

The House floor amendment to the House Appropriation and Finance Committee substitute for House Bill 33 fixes the definition of a biosimilar product to correctly indicate that the biosimilar product shall not display a clinically meaningful difference from the single biological product it was evaluated against. The amendment also deletes a duplicate definition of biosimilar products further down in the bill. Finally, the amendment changes the date for when OSI will submit and present reporting from September 30 to December 31.

Synopsis of HAFC Amendment to HAFC Committee Substitute for House Bill 33

The House Appropriation and Finance Committee amendment to the House and Finance

Committee Substitute for House Bill 33 strips out the appropriations.

Synopsis of HAFC Committee Substitute for House Bill 33

The House Appropriation and Finance Committee substitute for House Bill 33 creates the Prescription Drug Price Transparency Act to increase transparency in the prescription drug supply chain. The bill requires manufacturers, health insurers, and pharmacy benefits managers to annually report prescription drug prices and trends by May 1st and pharmacy services administrative organizations by June 30th to the Office of Superintendent of Insurance (OSI), and annually thereafter. This bill includes confidentiality provisions throughout the bill to protect data reported by the entities.

This bill also requires manufacturers to report to OSI when a new brand name drugs is introduced to market over Medicare part D specialty-tier threshold and when a generic drug or biosimilar product is introduced to market over Medicare part D specialty-tier and is not 15 percent lower than the brand name equivalent.

The bill also requires OSI to compile all data and publish an annual report to present to the Legislative Finance Committee, Legislative Health and Human Services Committee, made available on the agency's website, and presented in a public meeting by September 30, 2025, and annually thereafter.

The bill includes language that allows OSI to impose a penalty on any of the reporting entities if they fail to submit information accurately or on time.

The bill contains definitions for authorized health insurer, biosimilar products, brand name drugs, confidential information, generic drugs, manufacturer, Medicare part D specialty-tier cost threshold, and more.

The effective date of this bill is January 1, 2025.

FISCAL IMPLICATIONS

The House Appropriation and Finance Committee substitute for House Bill 33 as amended strips the appropriations from the bill. However, the House passed version of House Bill 2 (HB2) includes an appropriation of $100 thousand for OSI for prescription drug price transparency activities contingent on the enactment of HB 33 or similar legislation.

The House passed version for HB2 does not include an additional appropriation to the Health Care Authority for the responsibilities required in HB33.

SIGNIFICANT ISSUES

Many states have passed drug price transparency laws that require supply chain entities to provide information on pricing. Programs vary on reporting requirements, such as reporting on the increase of wholesale acquisition cost or a drug with a high launch price; reporting entities; level of data collected, such as individual drug or in aggregate.

In 2020, Oregon's Department of Consumer and Business Services published a report on the results of its 2018 Prescription Drug Price Transparency Program. Oregon's program has similar reporting requirements outlined in House Bill 33. The program requires manufacturers to report on drugs that cost over a certain amount, report drugs with net increases over 10 percent in the past calendar year, and to notify on planned price increases. Oregon's program also requires health insurance companies to provide information on the top 25 drugs for various categories, such as those that are most costly and most frequently prescribed. Oregon found that manufacturers submitted 70 percent fewer price increase reports to the state in 2022 compared to 2019. The report mentions that while exact reasons are unclear, it could be because manufacturers spread price increases across their portfolio to avoid triggering transparency requirements.

As noted by the Aging and Long-Term Services Department (ALTSD), aging and disabled New Mexicans are the largest consumers of prescription drugs, with 69 percent of adults aged 40 to 79 years using one or more prescription drugs in the past 30 days.[1] Among adults taking prescription drugs, 24 percent of adults and 23 percent of seniors say it is difficult to afford their prescription drugs.[2] ALTSD indicates that this bill could hold drug manufacturers more accountable and increase transparency, thereby helping consumers who use prescription drugs.

TECHNICAL ISSUES

OSI noted that the bill defines a manufacturer as an entity "licensed to manufacture or distribute prescription drugs pursuant to the Pharmacy Act." OSI notes that this language could lead to a complicated interplay between federal and state statutes and regulations. The agency also indicates that it may be more appropriate for the Board of Pharmacy to define manufacturers.

OTHER SUBSTANTIVE ISSUES

The Office of the Attorney General (NMAG) notes OSI may not have the statutory authority to regulate prescription drug manufacturers. Statute provides that OSI "shall regulate insurance companies and others engaged in risk assumption in such manner as provided by law." NMAG notes that the bill could be subject to legal challenge by the proposed regulated entities.

ADMINISTRATIVE IMPLICATIONS

The bill requires manufacturers to submit information, which will be verified, whenever possible, by OSI using independent third-party resources. The bill also requires OSI to compile an annual report with aggregate data and present the report to the Legislative Finance and Legislative Health and Human Services committees, post the report on the OSI website, and hold an annual public meeting to discuss the contents of the report. OSI noted that the agency would have difficulty hiring and training staff to complete the report.

Health Care Authority (formerly Human Services Department) indicates contracts with its pharmacy benefits manager and managed care organization would need to be revised to reflect the new data reporting requirements. The agency also indicates it already collects data from manufacturers of prescription drugs due to Laws 2003, Chapter 381. Statute requires

[1] NCHS Data Brief, Number 347, August 2019 (cdc.gov)
[2] KFF Health Tracking Poll – February 2019: Prescription Drugs | KFF

manufacturers of prescription drugs sold in New Mexico to annually file the following data to Health Care Authority: average prices, price that wholesalers and PBMs pay the manufacture to purchase the drug, and the price paid to the manufacture by any entity that sells the drug in the state without the services of a wholesaler.

ALTERNATIVES

Virginia's transparency program also requires reporting for the launch of biosimilar products that are not at least 15 percent lower than the cost of the reference biologic. House Bill 33 does not include this language, but the requirement could increase accountability for drug manufacturers.

JR/ne/ss/hg