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SENATE BILL 1

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO HEALTH; ENACTING THE WHOLESALE PRESCRIPTION DRUG
IMPORTATION ACT; PROVIDING POWERS AND DUTIES; CREATING A
PROGRAM; CREATING A COMMITTEE; REQUIRING FEDERAL CERTIFICATION;
CREATING A FUND; MAKING AN APPROPRIATION; DECLARING AN
EMERGENCY.

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 "Wholesale Prescription Drug Importation Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Wholesale Prescription Drug Importation Act:

A. "Canadian supplier" means a manufacturer,
wholesale distributor or pharmacy that is appropriately
licensed or permitted under Canadian federal or provincial laws
and rules to manufacture, distribute or dispense prescription

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1 drugs;

2 B. "committee" means the prescription drug
3 importation advisory committee;

4 C. "department" means the department of health;

5 D. "eligible prescription drug" means a drug
6 eligible for importation that:

7 (1) meets the United States federal food and
8 drug administration's standards related to safety,
9 effectiveness, misbranding and adulteration;

10 (2) does not violate federal patent laws;

11 (3) is expected to generate cost savings; and

12 (4) is not a controlled substance;

13 E. "program" means the wholesale prescription drug
14 importation program; and

15 F. "state drug wholesaler" means a licensed drug
16 wholesale distributor that contracts with the state to import
17 eligible prescription drugs from a Canadian supplier.

18 SECTION 3. [NEW MATERIAL] ADVISORY COMMITTEE CREATED--
19 MEMBERSHIP--DUTIES.--

20 A. The "prescription drug importation advisory
21 committee" is created as an interagency advisory committee of
22 the department. The committee consists of:

23 (1) the secretary of health, who shall serve
24 as the chair of the committee;

25 (2) the executive director of the board of

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1 pharmacy;

2 (3) the superintendent of insurance;

3 (4) the secretary of human services; and

4 (5) the secretary of general services.

5 B. Members may appoint designees.

6 C. The committee shall advise the department in
7 developing and implementing the program. The committee shall
8 consult with interested stakeholders and appropriate federal
9 officials as necessary in shaping its advice to the department.

10 SECTION 4. [NEW MATERIAL] WHOLESALE PRESCRIPTION DRUG
11 IMPORTATION PROGRAM CREATED.--The department, in consultation
12 with the committee, shall design a "wholesale prescription drug
13 importation program" that complies with the applicable
14 requirements of 21 U.S.C. Section 384, including the
15 requirements regarding safety and cost savings. The department
16 shall explore all potential mechanisms, to the extent allowable
17 under law, for the importation of eligible prescription drugs.
18 The program design shall:

19 A. contract with a licensed drug wholesaler to seek
20 federal certification and approval to import safe, eligible
21 prescription drugs from Canadian suppliers and provide
22 significant prescription drug cost savings to New Mexico
23 consumers;

24 B. allow the importation of eligible prescription
25 drugs sold by Canadian suppliers;

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1 C. ensure that only eligible prescription drugs
2 meeting the United States food and drug administration's
3 safety, effectiveness and other standards are imported by or on
4 behalf of the state;

5 D. import only those eligible prescription drugs
6 expected to generate substantial savings for New Mexico
7 consumers;

8 E. ensure that the program and the state drug
9 wholesaler comply with the tracking and tracing requirements of
10 21 U.S.C. Sections 360eee and 360eee-1 prior to the importation
11 of eligible prescription drugs into the state and that the
12 program and state drug wholesaler comply fully with federal
13 requirements after eligible prescription drugs are in the
14 possession of the state drug wholesaler;

15 F. prohibit the distribution, dispensing or sale of
16 eligible prescription drugs imported pursuant to the Wholesale
17 Prescription Drug Importation Act outside the exterior
18 boundaries of the state;

19 G. recommend a charge per prescription or another
20 method of support to ensure that the program is funded
21 adequately in a manner that does not jeopardize significant
22 consumer savings; and

23 H. include an audit function.

24 SECTION 5. [NEW MATERIAL] MONITORING FOR ANTI-COMPETITIVE
25 BEHAVIOR.--The department shall consult with the attorney

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1 general to identify the potential, and to monitor, for anti-
2 competitive behavior in industries that would be affected by
3 the program.

4 SECTION 6. [NEW MATERIAL] FEDERAL COMPLIANCE.--On or
5 before December 15, 2020, the department shall submit a formal
6 request to the secretary of the United States department of
7 health and human services for certification of the state's
8 program.

9 SECTION 7. [NEW MATERIAL] IMPLEMENTATION.--Upon
10 certification of approval by the secretary of the United States
11 department of health and human services, the department shall
12 begin implementing the program and begin operating the program
13 within six months of that approval. As part of the
14 implementation process, the department shall:

15 A. enter into contracts in accordance with the
16 Procurement Code with one or more New Mexico licensed drug
17 wholesalers and New Mexico licensed drug distributors and
18 contract with one or more approved Canadian suppliers;

19 B. consult with interested stakeholders, including
20 the committee, the legislature, health insurance plans,
21 employers, pharmacies, health care providers and consumers;

22 C. develop a registration process for health
23 insurance plans, pharmacies and prescription drug administering
24 health care providers who choose to participate in the program;

25 D. make a list of imported eligible prescription

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1 drugs and their prices and make that list available to all
2 participating entities and the general public;

3 E. create an outreach and marketing plan to
4 generate program awareness;

5 F. create and staff a helpline to answer questions
6 and address the needs of consumers, employers, health insurance
7 plans, pharmacies, health care providers and other affected
8 sectors;

9 G. require annual and special audits of the
10 program; and

11 H. carry out other duties in accordance with the
12 Wholesale Prescription Drug Importation Act that the department
13 determines to be necessary for successful implementation of the
14 program.

15 SECTION 8. [NEW MATERIAL] ANNUAL REPORTING.--Annually,
16 after implementation, the department shall report to the
17 governor and the legislature regarding the operation of the
18 program during the previous year, including:

19 A. which eligible prescription drugs and Canadian
20 suppliers are included in the program;

21 B. the number of participating pharmacies, health
22 care providers and health insurance plans;

23 C. the number of prescriptions dispensed through
24 the program;

25 D. the estimated savings to consumers, health

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1 plans, employers and the state during the previous year and to
2 date;

3 E. information regarding implementation of the
4 audit plan and the correction plans for audit findings; and

5 F. any other information requested by the governor
6 or the legislature or that the secretary of health deems
7 relevant.

8 SECTION 9. [NEW MATERIAL] WHOLESALE PRESCRIPTION DRUG
9 IMPORTATION FUND.--The "wholesale prescription drug importation
10 fund" is created as a nonreverting fund in the state treasury.
11 The fund consists of money received by the state through the
12 implementation of the program pursuant to the Wholesale
13 Prescription Drug Importation Act and appropriations, gifts,
14 grants, donations to the fund and income from investment of the
15 fund. The state investment officer shall invest the fund in
16 the same manner as the land grant permanent funds are invested.
17 The department shall administer the fund, and money in the fund
18 is appropriated to the department to carry out the purposes of
19 that act. Expenditures shall be by warrant of the secretary of
20 finance and administration pursuant to vouchers signed by the
21 secretary of health or the secretary's authorized
22 representative.

23 SECTION 10. [NEW MATERIAL] COUNTRIES OTHER THAN CANADA
24 ALLOWED BY FEDERAL LAW.--The provisions of the Wholesale
25 Prescription Drug Importation Act may be extended to any other

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1 country allowed by federal law to import prescription drugs
2 into the United States, at the discretion of the department.

3 SECTION 11. APPROPRIATION.--Three hundred fifty thousand
4 dollars (\$350,000) is appropriated from the general fund to the
5 wholesale prescription drug importation fund for expenditure in
6 fiscal year 2021 and subsequent fiscal years to administer the
7 provisions of the Wholesale Prescription Drug Importation Act.
8 Any unexpended or unencumbered balance remaining at the end of
9 a fiscal year shall not revert to the general fund.

10 SECTION 12. EMERGENCY.--It is necessary for the public
11 peace, health and safety that this act take effect immediately.