

**SUBSTITUTE FOR
SENATE BILL NO. 3**

A bill to provide for a cost and affordability review of certain prescription drug products; to create the prescription drug pricing board and prescription drug affordability stakeholder council and to prescribe their powers and duties; to provide for the powers and duties of certain state governmental officers and entities; to establish upper payment limits for certain prescription drug products and provide remedies; and to provide for the promulgation of rules.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "prescription drug cost
2 and affordability review act".

3 Sec. 3. As used in this act:

4 (a) "Biologic" means a drug that is produced or distributed in



1 accordance with a biologics license application approved by the
2 United States Food and Drug Administration.

3 (b) "Biosimilar" means a drug that is produced or distributed
4 in accordance with a biologics license application approved under
5 42 USC 262(k).

6 (c) "Board" means the prescription drug affordability board
7 created in section 5.

8 (d) "Brand-name drug" means a drug other than an authorized
9 generic that is produced or distributed in accordance with an
10 original new drug application approved under 21 USC 355.

11 (e) "Consumer Price Index" means the United States Consumer
12 Price Index for all urban consumers as defined and reported by the
13 United States Department of Labor, Bureau of Labor Statistics.

14 (f) "Council" means the prescription drug affordability
15 stakeholder council created in section 9.

16 (g) "Department" means the department of insurance and
17 financial services.

18 (h) "Director" means the director of the department.

19 (i) "Fund" means the prescription drug affordability fund
20 created in section 17.

21 (j) "Generic drug" means any of the following:

22 (i) A retail drug that is marketed or distributed in accordance
23 with an abbreviated new drug application approved under 21 USC 355.

24 (ii) An authorized generic drug as that term is defined in 42
25 CFR 447.502.

26 (iii) A drug that entered the market before 1962 that was not
27 originally marketed under a new drug application.

28 (k) "Health insurer" means any of the following:

29 (i) An insurer authorized under the insurance code of 1956,



1 1956 PA 218, MCL 500.100 to 500.8302, to deliver, issue for
2 delivery, or renew in this state a health insurance policy.

3 (ii) A health maintenance organization as that term is defined
4 in section 3501 of the insurance code of 1956, 1956 PA 218, MCL
5 500.3501.

6 (l) "Manufacturer" means an entity that meets any of the
7 following:

8 (i) Owns the patent to a prescription drug product or enters
9 into a lease with another manufacturer to market and distribute a
10 prescription drug product under the entity's own name.

11 (ii) Is the labeled entity of a generic drug at the point of
12 manufacture and the entity does 1 of the following:

13 (A) Sets or changes the wholesale acquisition cost of a brand-
14 name drug that it manufactures or has leased the right to market.

15 (B) Sets or changes the wholesale acquisition cost of a
16 generic drug that it manufactures.

17 (m) "Person" means an individual and includes a body politic
18 and corporate.

19 (n) "Prescription drug product" means a brand-name drug, a
20 generic drug, a biologic, or a biosimilar.

21 (o) "Prescription drug product purchaser" means an entity that
22 purchases and takes ownership of a prescription drug product for
23 resale or providing to patients.

24 (p) "Rule" means a rule promulgated pursuant to the
25 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
26 24.328.

27 (q) "Third-party payer" means a health insurer, a state
28 department or agency administering a plan of medical assistance
29 under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, a



1 person administering a self-funded plan, or a pharmacy benefit
2 manager.

3 (r) "340B covered entity" means covered entity as that term is
4 defined in 42 USC 256b that is authorized to participate in the
5 federal 340B Program under section 340B of the public health
6 service act, 42 USC 256b.

7 (s) "Wholesale acquisition cost" means that term as defined in
8 42 USC 1395w-3a(c) (6) (B).

9 Sec. 5. (1) The prescription drug affordability board is
10 created as an autonomous entity within the department.

11 (2) The board consists of 5 members, appointed by the governor
12 with the advice and consent of the senate. The members of the board
13 must include individuals who have expertise in health care
14 economics, health policy, health equity, clinical medicine, and
15 hospital pharmacy administration. The governor shall not appoint an
16 individual to the board if the individual is employed by, a
17 consultant to, or a board member of a manufacturer or a trade
18 association for a manufacturer or otherwise has a personal or
19 financial interest that has the potential to bias or has the
20 appearance of biasing the individual's decision in matters related
21 to the board or in conducting the board's activities. The governor
22 shall not appoint an individual to the board if the individual is a
23 lobbyist who is registered in this state. An individual who is
24 appointed to the board shall not register as a lobbyist in this
25 state for a period of 5 years after the individual's term on the
26 board expires.

27 (3) The governor shall appoint 2 of the first members to 1-
28 year terms and 3 of the first members to 2-year terms. After the
29 first appointments, the term of a member of the board is 4 years or



1 until a successor is appointed, whichever is later.

2 (4) If a vacancy occurs on the board, the governor shall
3 appoint an individual to fill the vacancy for the balance of the
4 term in the same manner as the original appointment.

5 (5) The governor may remove a member of the board for
6 incompetence, dereliction of duty, malfeasance, misfeasance, or
7 nonfeasance in office, or any other good cause.

8 (6) The governor shall call the first meeting of the board. At
9 the first meeting, the board shall elect from among its members a
10 chairperson and other officers as it considers necessary or
11 appropriate. After the first meeting, the board shall meet at least
12 quarterly, or more frequently at the call of the chairperson or if
13 requested by 3 or more members.

14 (7) A majority of the members of the board constitute a quorum
15 for transacting business. Except as otherwise provided in this
16 subsection, a majority of the members present and serving are
17 required for official action of the board. If 1 or more members of
18 the board recuse themselves, 2/3 of the members present and serving
19 are required for official action of the board.

20 (8) The board shall conduct its business in compliance with
21 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

22 (9) Except as otherwise provided in this subsection, a writing
23 that is prepared, owned, used, in the possession of, or retained by
24 the board in performing an official function is subject to the
25 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. A
26 writing containing a trade secret or proprietary information is
27 confidential and is not subject to disclosure under the freedom of
28 information act, 1976 PA 442, MCL 15.231 to 15.246.

29 (10) The salaries and other expenses incurred by members of



1 the board are subject to an annual appropriation as provided by
2 law.

3 (11) As used in this section, "health equity" means attaining
4 the highest level of health for all individuals, in which an
5 individual has a fair and just opportunity to attain the
6 individual's optimal health regardless of race, ethnicity,
7 disability, sexual orientation, gender identity, socioeconomic
8 status, geography, preferred language, or other factor that affects
9 access to health care and health outcomes.

10 Sec. 7. A member of the board is subject to 1968 PA 317, MCL
11 15.321 to 15.330, and 1973 PA 196, MCL 15.341 to 15.348.

12 Sec. 9. (1) The prescription drug affordability stakeholder
13 council is created within the department.

14 (2) Subject to subsection (3), the council consists of the
15 following 21 members:

16 (a) Seven members appointed by the governor as follows:

17 (i) One individual representing manufacturers of brand-name
18 drugs.

19 (ii) One individual representing manufacturers of generic
20 drugs.

21 (iii) One individual representing employers.

22 (iv) One individual representing pharmacy benefit managers.

23 (v) One individual representing pharmacists.

24 (vi) One individual representing a mutual insurance company.

25 The mutual insurance company under this subparagraph must not be an
26 entity that, directly or indirectly, through 1 or more
27 intermediaries, controls, is controlled by, or is under common
28 control with the managed care organization under subdivision

29 (c) (iv) .



(vii) One member of the public.

(b) Seven members appointed by the governor from a list of nominees submitted by the speaker of the house of representatives. The list of nominees must include individuals who represent the following:

(i) A statewide organization that advocates for senior citizens.

(ii) A statewide organization that advocates for health care.

(iii) A statewide organization that advocates for diversity within communities.

(iv) A labor union.

(v) Researchers who specialize in prescription drug products.

(vi) The public.

(c) Seven members appointed by the governor from a list of nominees submitted by the senate majority leader. The list of nominees must include individuals who represent each of the following:

(i) Physicians.

(ii) Nurses.

(iii) Hospitals.

(iv) Managed care organizations. The managed care organization under this subparagraph must not be an entity that, directly or indirectly, through 1 or more intermediaries, controls, is controlled by, or is under common control with the mutual insurance company under subdivision (a) (vi).

(v) The department of technology, management, and budget.

(vi) Clinical researchers.

(vii) The public.



1 (3) The governor shall ensure that the members appointed to
2 the council have knowledge in 1 or more of the following areas:

- 3 (a) The pharmaceutical business model.
4 (b) Supply chain business models.
5 (c) The practice of medicine or clinical training.
6 (d) Consumer or patient perspectives.
7 (e) Health care costs trends.
8 (f) Clinical and health services research.

9 (4) The governor shall appoint 7 of the first members to 1-
10 year terms, 7 of the first members to 2-year terms, and 7 of the
11 first members to 3-year terms. After the first appointments, the
12 term of a member of the council is 3 years or until a successor is
13 appointed, whichever is later.

14 (5) If a vacancy occurs on the council, the governor shall
15 appoint an individual to fill the vacancy for the balance of the
16 term in the same manner as the original appointment.

17 (6) The governor may remove a member of the council for
18 incompetence, dereliction of duty, malfeasance, misfeasance, or
19 nonfeasance in office, or any other good cause.

20 (7) At the first meeting of the council, the council shall
21 elect from among its members a chairperson and other officers as it
22 considers necessary or appropriate. After the first meeting, the
23 council shall meet at least quarterly, or more frequently at the
24 call of the chairperson or if requested by 7 or more members.

25 (8) A majority of the members of the council constitute a
26 quorum for transacting business. A majority of the members present
27 and serving are required for official action of the council.

28 (9) The council shall conduct its business in compliance with
29 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.



1 (10) Except as otherwise provided in this subsection, a
2 writing that is prepared, owned, used, in the possession of, or
3 retained by the council in performing an official function is
4 subject to the freedom of information act, 1976 PA 442, MCL 15.231
5 to 15.246. A writing containing a trade secret or proprietary
6 information is confidential and is not subject to disclosure under
7 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

8 (11) A member of the council is not entitled to compensation
9 for service on the council, but may be reimbursed for actual and
10 necessary expenses incurred in serving.

11 (12) The council shall assist the board in making decisions
12 required under this act.

13 Sec. 11. (1) Beginning 18 months after the effective date of
14 this act, subject to subsection (2), the board, in consultation
15 with the council, shall select 1 or more prescription drug products
16 based on any of the following criteria:

17 (a) The prescription drug product is a brand-name drug or a
18 biologic that, as adjusted annually for inflation in accordance
19 with the Consumer Price Index, has a wholesale acquisition cost of
20 \$60,000.00 or more per year or course of treatment or has a
21 wholesale acquisition cost increase of \$3,000.00 or more in any 12-
22 month period.

23 (b) The prescription drug product is a biosimilar that has a
24 wholesale acquisition cost that is not at least 15% lower than the
25 referenced brand biologic.

26 (c) The prescription drug product is a generic drug that, as
27 adjusted annually for inflation in accordance with the Consumer
28 Price Index, has a wholesale acquisition cost that meets both of
29 the following requirements:



1 (i) Is \$100.00 or more for any of the following:

2 (A) A 30-day supply that lasts a patient for a period of 30
3 consecutive days based on the recommended dosage approved for
4 labeling by the United States Food and Drug Administration.

5 (B) A supply that lasts a patient for fewer than 30 days based
6 on the recommended dosage approved for labeling by the United
7 States Food and Drug Administration.

8 (C) One unit of the drug if the labeling approved by the
9 United States Food and Drug Administration does not recommend a
10 finite dosage.

11 (ii) Increased by 200% or more during the immediately preceding
12 12-month period, as determined by the difference between the
13 resulting wholesale acquisition cost and the average wholesale
14 acquisition cost reported over the immediately preceding 12 months.

15 (d) The prescription drug product is a prescription drug
16 product that may create affordability challenges for health care
17 systems in this state and patients, including, but not limited to,
18 a prescription drug product needed to address a public health
19 emergency.

20 (2) In selecting 1 or more prescription drug products under
21 subsection (1), the board is not required to identify each
22 prescription drug product that meets the criteria described in
23 subsection (1).

24 (3) The board shall determine whether to conduct a cost and
25 affordability review for each prescription drug product that is
26 selected under subsection (1). In making a determination under this
27 subsection, the board shall consider input from the council and the
28 average patient cost share for each prescription drug product.

29 (4) If the board conducts a cost and affordability review of a



1 prescription drug product, the board may consider when conducting
2 the review any document or research related to the manufacturer's
3 selection of the introductory price or price increase of the
4 prescription drug product, including life cycle management, net
5 average price in this state, market competition, projected revenue,
6 and, subject to subsection (7), the estimated cost effectiveness of
7 the prescription drug product. In its review, the board shall
8 determine whether the use of a prescription drug product that is
9 fully consistent with the labeling approved by the United States
10 Food and Drug Administration or standard medical practice for the
11 prescription drug product has led to or will lead to affordability
12 challenges to hospitals and health care systems in this state or
13 high out-of-pocket costs for patients in this state. In making its
14 determination under this subsection, the board shall consider any
15 information that a manufacturer chooses to provide to the board and
16 all of the following factors, to the extent practicable:

17 (a) The wholesale acquisition cost for the prescription drug
18 product sold in this state.

19 (b) The average monetary price concession, discount, or rebate
20 that the manufacturer provides to health insurers and pharmacy
21 benefit managers in this state or is expected to provide to health
22 insurers and pharmacy benefit managers in this state, expressed as
23 a percent of the wholesale acquisition cost for the prescription
24 drug product under review.

25 (c) The price at which therapeutic alternatives for the
26 prescription drug product have been sold in this state.

27 (d) The average monetary concession, discount, or rebate that
28 another manufacturer provides or is expected to provide to health
29 insurers and pharmacy benefit managers in this state for



1 therapeutic alternatives.

2 (e) The cost to health insurers based on patient access
3 consistent with United States Food and Drug Administration labeled
4 indications or recognized standard medical practice.

5 (f) The impact on patient access resulting from the cost of
6 the prescription drug product relative to insurance benefit design.

7 (g) The current or expected dollar value of drug-specific
8 patient access programs that are supported by the manufacturer.

9 (h) The relative financial impact to health, medical, or
10 social service costs as can be quantified and compared to baseline
11 effects of existing therapeutic alternatives.

12 (i) The average patient co-pay or other cost-sharing for the
13 prescription drug product in this state.

14 (j) The impact on hospital access to the prescription drug
15 product, prescription drug product shortage concerns, and the
16 impact on the cost to hospitals purchasing the prescription drug
17 product.

18 (k) Any other factor established by the board by rule.

19 (5) If the board determines that spending on a prescription
20 drug product reviewed under this section has led to or will lead to
21 affordability challenges to hospitals and health care systems in
22 this state or high out-of-pocket costs for patients in this state,
23 the board may, subject to and except as otherwise provided in
24 subsection (6), establish by rule an upper payment limit for the
25 prescription drug product. In establishing an upper payment limit
26 under this subsection, the board shall consider all of the
27 following:

28 (a) Relevant administrative costs related to supplying or
29 stocking the prescription drug product.



1 (b) The impact of an upper payment limit for the prescription
2 drug product on 340B covered entities.

3 (6) An upper payment limit established under this section must
4 not include professional dispensing fees. An upper payment limit
5 must not be established for any prescription drug product that is
6 listed as "currently in shortage" in the drug shortage database
7 maintained by the United States Food and Drug Administration.

8 (7) If the board considers the estimated cost effectiveness of
9 a prescription drug product under this section, the board shall
10 comply with both of the following:

11 (a) The board shall not use a cost-per-quality adjusted life
12 year, or a similar measure, to identify a subpopulation for which a
13 prescription drug product would be less cost effective due to
14 severity of illness, age, or preexisting disability.

15 (b) If the board uses a cost-effectiveness analysis for a
16 prescription drug product that extends an individual's life, the
17 board must use a cost-effectiveness analysis that weighs the value
18 of all additional lifetime gained equally for any individual, no
19 matter the severity of illness, age, or preexisting disability.

20 (8) An upper payment limit established under this section
21 takes effect on the date prescribed by the board by rule but no
22 sooner than 6 months after the date the upper payment limit is
23 established.

24 Sec. 12. (1) Except as otherwise provided in subsection (2),
25 if the board establishes an upper payment limit under section 11
26 for a prescription drug product intended for use by individuals in
27 this state, beginning on the effective date of the upper payment
28 limit, a prescription drug product purchaser or third-party payer
29 shall not purchase, bill, or reimburse for the prescription drug



1 product in an amount that exceeds the upper payment limit,
2 regardless of whether the prescription drug product is dispensed or
3 distributed in person, by mail, or by other means.

4 (2) A prescription drug product purchaser or third-party payer
5 shall not reimburse any of the following prescription drug product
6 purchasers for a prescription drug product in an amount less than
7 an upper payment limit established under section 11 for the
8 prescription drug product:

9 (a) An independent pharmacy.

10 (b) A hospital pharmacy.

11 (c) A hospital.

12 (d) A behavioral health hospital.

13 (e) A 340B covered entity.

14 (3) The attorney general may investigate a violation of this
15 section and may commence a civil action against a person for
16 appropriate relief, including, but not limited to, injunctive
17 relief, for a violation of this section.

18 (4) This section does not prohibit any other sanction against
19 a prescription drug product purchaser or third-party payer as
20 provided by law.

21 Sec. 13. A person aggrieved by a decision of the board under
22 this act may request an appeal within 30 days. A hearing and appeal
23 is subject to the administrative procedures act of 1969, 1969 PA
24 306, MCL 24.201 to 24.328.

25 Sec. 17. (1) The prescription drug affordability fund is
26 created within the state treasury.

27 (2) The state treasurer shall deposit money and other assets
28 from any source into the fund. The state treasurer shall direct the
29 investment of money in the fund and credit interest and earnings



1 from fund investments to the fund.

2 (3) Money in the fund at the close of the fiscal year must
3 remain in the fund and must not lapse to the general fund.

4 (4) The department is the administrator of the fund for audits
5 of the fund.

6 (5) The department shall expend money from the fund, on
7 appropriation, only to fund the board and for costs expended by the
8 department to implement this act.

9 Sec. 19. On or before December 31 of each year, the board
10 shall submit a written report to the legislature that includes all
11 of the following information:

12 (a) Price trends for prescription drug products.

13 (b) The number of prescription drug products that were subject
14 to board review, including the results of the review and the number
15 and disposition of appeals of board decisions.

16 (c) Any recommendations that the board may have on further
17 legislation to make prescription drug products more affordable in
18 this state.

19 Sec. 20. The board shall conduct a 1-time study on all of the
20 following and report its findings to the legislature:

21 (a) The prices of generic drugs on a year-to-year basis.

22 (b) The degree to which the prices of generic drugs affect
23 yearly insurance premium charges.

24 (c) Annual changes in insurance cost-sharing for generic
25 drugs.

26 (d) The potential for and history of drug shortages.

27 (e) The degree to which the prices of generic drugs affect
28 yearly Medicaid spending in this state.

29 (f) The impact of an upper payment limit on 340B covered



1 entities.

2 (g) Any other issue that the board considers relevant.

3 Sec. 21. The board may promulgate rules to implement this act
4 and enter into contracts with third parties to assist the board in
5 carrying out its functions under this act.

6 Sec. 23. The implementation of this act is subject to
7 appropriation.