FISCAL IMPACT REPORT

SPONSOR Thomson/Trujillo/Lujan **LAST UPDATED** **ORIGINAL DATE** 01/27/2023

SHORT TITLE Drug Product Selection Act Changes **BILL NUMBER** House Bill 177

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
Total						

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

Relates to House Bill 93, Senate Bill 92, and Senate Bill 106.

Sources of Information

LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Office of the Superintendent of Insurance (OSI)
Medical Board (MB)

No Response Received
Department of Health (DOH)

SUMMARY

Synopsis of House Bill 177

House Bill 177 amends Section 26-3-3 NMSA 1978, which is entitled "Drug Product Selection Permitted – Conditions – Exception for Prohibition—Labelling," with the effect that pharmacists would have wider authority to substitute therapeutically equivalent drugs for drugs that have been prescribed by a medical care provider than is currently granted.

Under Section 26-2-2 NMSA 1978, pharmacists can currently substitute drugs if the prescribed and dispensed drugs are listed as therapeutically equivalent on the federal Food and Drugs Administration's (FDA) list of therapeutic equivalents and if the dispensed drug is lower in cost (the bill would add "to the patient" here) than the prescribed drug. HB177 would allow pharmacists to substitute a drug in the same therapeutic class that the pharmacist felt would have

a substantially similar effect even if the drug is not a therapeutically equivalent drug, as long as the following requirements were met:

- The drug is not one of the following: a biological product, a compounded preparation, a controlled substance, a drug where a small difference in dosage may make a large difference in therapeutic or toxic effect ("narrow therapeutic window"), a psychotropic drug, or subject to risk evaluation or mitigation;
- The substitution is intended to comply with a patient's insurance's drug formulary or will lower the cost to an uninsured patient;
- The pharmacist fully informs the patient, and the patient agrees to the substitution;
- The dosage of the substituted medication conforms to an amount comparable to the dosage of the prescribed medication;
- The substitution is documented in the prescription record;
- The medical care provider has not prohibited such substitution by indicating "no substitution" on the prescription;
- The prescriber is notified of the substitution within five business days (the bill eliminates discussion of means of notification).

The board would no longer be required to maintain a list of FDA-approved interchangeable products.

The definition section, subsection 1J, adds definitions of narrow therapeutic window, as indicated above, and "therapeutic class," as meaning a "group of similar drug products that have the same or similar mechanisms of action and are used to treat a specific condition."

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 177. No fiscal implications of the bill are identified.

SIGNIFICANT ISSUES

The shortage of physicians and other health care providers in New Mexico has been extensively documented – 32 of New Mexico's 33 counties are entirely or in part designated as health professional shortage areas. The legislature has attempted to ameliorate this situation through a number of measures over the past several years, but it remains difficult for many patients in many parts of the state to see their health care provider or to speak with her/him about substituting one medication for another. Pharmacists have taken on expanded roles in attempting to fill some of the gaps in health provider availability.

Pharmacists in many places are also pulled in many directions – checking prescriptions for accuracy, counting out tablets, advising patients on medications in person or on the phone, giving immunizations, supervising pharmacy assistants and interns, among other tasks. It is uncertain that a pharmacist would have the time to check into a patient's medical history and current medications to be certain that an intended drug substitution would be beneficial or detrimental to a patient's health as well as to that patient's budget.

RELATIONSHIP

Relates to House Bill 93, Pharmacy Act and Board of Pharmacy Changes; to Senate Bill 92, Pharmacist Scope of Practice; and to Senate Bill 106, Pharmacists and PAs as Health Care Providers.

TECHNICAL ISSUES

The definition of "therapeutic class" in Section 1J of the bill includes but does not define or delimit the terms "similar drug products" or "similar mechanisms of action."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to RLD, the "Board of Pharmacy has noted that patients may experience delays or interruptions in treatment when the prescribed drug is not covered by their insurance and the pharmacist would otherwise be able to perform therapeutic substitution. The Board also noted that patients may experience financial hardship in paying for more expensive medication when a cost-saving alternative is available."

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