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FISCAL IMPACT REPORT



SPONSOR: Feldman DATE TYPED: 02/08/02 HB _____

SHORT TITLE: Fair Market Drug Pricing Act SB 238/aSPAC

ANALYST: Dunbar

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|---------------|----------------------|---------------|
| FY02 | FY03 | FY02 | FY03 | | |
| | | \$0.1 | See Narrative | | |

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB264, SB226, HB200, SB091, HJM41, SB253, SJM23, HB149, SB263, HJM021, SJM35, SJM22, and SB118

SOURCES OF INFORMATION

Responses Received

Human Services Department (HSD)
 Health Policy Commission (HPC)
 Attorney General (AG)

SUMMARY

Synopsis of SPAC Amendment

The amendment in Section 3 of the bill provides for the secretary of the department to negotiate discount prices or rebates for prescription drugs manufactures to include (1) supplemental rebates for the Medicaid program over and above those require under 42 U.S.C. 1396r-8 or (2) discount prices or rebates for the discount card program. The bill strikes language indicating that the secretary should negotiate discounts prices or rebates for prescription drugs for any other state programs. In the same section referencing “prior authorization lists” the secretary of the department is given the discretion to place or take actions involving prior authorization or formularies for other state programs.

In Section 9 of the bill the secretary of the department is given the discretion to combine drug-pricing negotiations to maximize drug rebates when the secretary finds that it is beneficial to both the discount card program and another state program including the Medicaid program.

Synopsis of Original Bill

Senate Bill 238 enacts the “Fair Market Drug Pricing Act.” This Act requires negotiated discount prices or rebates from drug manufacturers or labelers that are better than those required under federal law. The bill also establishes a discount prescription drug program for New Mexico residents who are eligible for participation in the federal Medicare program, or have a family income level below 300% of the federal poverty level. Eligibility is also extended to those individual who are eligible for assistance under the state Medicaid program, or are covered by private insurance programs that provide benefits for prescription drugs equal to or greater than the benefits provided under the discount program. Requires the Secretary of Human Services to negotiate the discount prescription prices with drug manufacturers and labelers and to consider whether to place manufacturers or labelers products on the Medicaid prior authorization list and all other state-funded prior authorization lists based upon the results of the discount negotiation. Requires the Human Services Department to establish the discount card program.

Significant Issues

This proposed program appears similar to the program implemented in Florida. The Florida program was unsuccessfully challenged in court by the pharmaceutical industry trade association Pharma. The AG reports that Pharma has an apparent policy of mounting judicial challenges to any and all state designed programs intended to lower the price of prescription drugs to consumers.

FISCAL IMPLICATIONS

The bill does not contain an appropriation. (See administrative implications below)

ADMINISTRATIVE IMPLICATIONS

HSD estimates the staffing for a dedicated prior approval unit of 3 to 5 technician full time equivalents (FTEs) and 1 to 2 pharmacist FTEs. Greater economies of scale might be achieved through contracting out to an existing prior approval system. Two possibilities are the Medicaid Utilization Review Unit at Blue Cross Blue Shield (BCBS) in Albuquerque and the prescription drug card system prior approval unit with Affiliated Computer System (ACS) in Atlanta. The ACS Prior Authorization (PA) unit is staffed by pharmacists and technicians and performs New Mexico Medicaid’s point-of-sale pharmacy claims processing from the same campus. The Albuquerque-based BCBS unit is staffed by nurses and a medical director and has a less direct link into the Medicaid claims processing system.

Employing a drug formulary would require the creation of a Pharmacy and Therapeutics (P&T) Committee as outlined in the Social Security Act, Section 1927. Additional staffing would be needed for clerical support.

Staffing resources will be required for the hearings and independent auditors may be necessary to monitor the program.

RELATIONSHIP

- HB264 & SB226– Prescription Drug Fair Pricing Act.

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- HB200 & SB091– Provides prescription drug benefit to New Mexico seniors.
- HJM41 – Requests a study of tax credits to offset prescription drug spending.
- SB253 – Provides for negotiated drug discounts in the Medicaid program.
- SJM23 – Requests State Agency on Aging to develop a “brown bag assessment” of individuals’ prescription drug bundles.
- HB149 – An appropriation to study a means to use of Native American prescription prerogatives to develop a bulk-purchasing program.
- SB263 – Requires reporting of certain manufacturer drug prices to the Human Services Department.
- HJM21 – Requests the U. S. Congress to enact legislation establishing a single uniform federal “best price” for prescription drugs.
- SJM35 – Requests the Medical Assistance Division to identify all avenues to maximize prescription drug discounts using the federal 340B program.
- SJM22 – Requests the State Agency on Aging to work with drug manufacturers to simplify the application for manufacturer drug assistance programs and to conduct a pilot study.
- SB118 - An appropriation to expand prescription drug outreach programs by the State Agency on Aging

TECHNICAL ISSUES

Amend Section 6B to “The Department shall not impose transaction charges, beyond those normally charged by other point-of-sale adjudication systems, on wholesalers or participating retail pharmacies that submit claims under the program.” The department proposes the above amendment because if a transaction charge is not imposed as indicated in Section 6B, the fees normally charged by claims processors to pharmacies (about \$0.12 for each claim transmitted, regardless of adjudication outcome), may have to be absorbed through the rebates, reducing the net cost savings by a corresponding amount.

OTHER SUBSTANTIVE ISSUES

HSD identifies the following as significant issues: the cost and logistics of outreach, auditing and hearing mechanisms, maintaining the formulary, and the prior authorization system. Moreover, HSD reports that SB 238 could cause buy-in and profitability concerns by pharmacies, opposition from medical providers, patients, advocacy groups, and drug companies. Further, HSD believes that SB 238 would change the relationship of pharmacies to the Medicaid program and would affect existing State contract with Express Scripts.

A forthcoming Health Policy Commission survey of New Mexico households will provide a better estimate of the total number of New Mexicans who have no prescription drug coverage, as well as the number of those who are unable to acquire necessary prescriptions. The overall lack of coverage according to HPC is evidenced by the following statistics:

- The estimated number of seniors without drug coverage is between 68,000¹ and 110,000² people.
- The estimated number of adults under 65 who are uninsured is approximately 486,000^{1,3}

ALTERNATIVES

HSD suggests that all State prescription drug benefits management could be placed under a single administrative umbrella (i.e., Medicaid and Risk Management, Retiree Health, teachers, etc.) if it turned out to be a more efficient way to operate the programs.

BD/prr:ar