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# FISCAL IMPACT REPORT

SPONSOR: _	Feldman         DATE TYPED:         02/01/02	_ НВ	
SHORT TITLE:	Pharmaceutical Supplemental Rebate Act	SB	253
ANALYST:		Dunbar	

### **APPROPRIATION**

Appropriation Contained		-		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
		\$0.1 Se	ee Narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to <u>HB264, SB226, HB200, SB091, HJM41, SB238, SJM23, HB149, SB263, HJM021, SJM35, SJM22, and SB118</u>

#### SOURCES OF INFORMATION

Responses Received
Department of Health (DOH)
Human Services Department (HSD)
Attorney General (AG)
Health Policy Commission (HPC)

## **SUMMARY**

## Synopsis of Bill

Senate Bill 253 enacts the Pharmaceutical Supplemental Rebate Act. This Act requires a formulary or preferred drug list to provide medically appropriate drug therapies for patients. The bill also provides for negotiated discount prices or rebates from drug manufacturers or labelers. Rebates and/or discounts will be greater than those required under Federal law. Manufacturers who fail to negotiate such rebates will be placed on a prior authorization list. Savings from this program must be reported to the Legislative Health and Human Services annually. The Human Services Department must seek any necessary waivers of Federal law or rules to implement this Act.

# Senate Bill 253 -- Page 2

# Significant Issues

This Bill is similar to laws successfully implemented in Florida and Michigan. The AG reports that the pharmaceutical industry trade association, Pharma, has an apparent policy of mounting judicial challenges to all state programs designed to reduce the cost of prescription drugs. Pharma's challenges in Florida and Michigan have been unsuccessful. Significant issues include whether the Department of Human Services has the necessary administrative capacity and expertise to implement the program.

The AG is uneasy as to whether the terms of the current Medicaid Managed Care contracts would transfer any resultant savings to the benefit of the managed care companies and not to a reduction in Medicaid costs

#### FISCAL IMPLICATIONS

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

### **ADMINISTRATIVE IMPLICATIONS**

Medical Assistance Division (MAD) currently has one Pharmacist managing the Medicaid Drug Program, and another managing the Medicaid Drug Rebate Program. The division also employs a medical director.

HSD indicates that currently, the Medicaid program requires prior authorization for very few drugs, and the Medicaid pharmacist using relatively broad criteria does all authorizations. HSD believes that SB 253 would vastly increase the number of drugs requiring prior authorization.

Supplemental rebates and other drug discounts have not been negotiated in the past. If SB 253 is enacted into law, additional staff may be required.

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.

#### RELATIONSHIP

- HB264 & SB226– Prescription Drug Fair Pricing Act.
- HB200 & SB091– Provides prescription drug benefit to New Mexico seniors.
- HJM41 Requests a study of tax credits to offset prescription drug spending.
- SB238 Provides for negotiated drug discounts in the Medicaid program and establishes a discount card 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.

## Senate Bill 253 -- Page 3

- 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

## **OTHER SUBSTANTIVE ISSUES**

HPC reports that prescription drug spending in the United States has grown more than 10% per year since 1995, placing financial pressure on private and public programs. Such spending is likely to rise 15% - 18% through the year 2004<sup>5</sup>. Medicaid expenditures from 1997 to 2000 grew at an average annual rate of 18.1%<sup>6</sup>.

HSD anticipates confusion in the Medicaid drug program if the formulary restrictions, which would be established pursuant to SB 253 are not aggressively communicated, and if medical providers do not proactively seek them out.

The bill could require renegotiation of the state's current contract with Express Scripts to accommodate all state –managed drug programs.

BD/ar