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FISCAL IMPACT REPORT

SPONSOR HCPAC **DATE TYPED** 2/12/04 **HB** 88/HCPACS

SHORT TITLE Mandate 304B Drug Pricing Program **SB** _____

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			(\$127.8)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 264

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing (RLD-NM Board of Pharmacy)
 Human Service Department (HSD)
 Department of Health (DOH)
 Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

The House Consumer and Public Affairs Committee Substitute for House Bill 88 adds a new section to the Public Assistance Act, Section 27-2-12.14 (“Federal Participation Required --- Exception”). This Section mandates all programs, clinics, hospitals and other health related centers and entities, including those identified by the human services department as eligible to participate in the federal drug pricing program under Section 340B of the federal Public Health Service Act, to participate in 340B federal prescription drug price discount program.

The bill provides for exceptions to the participation in the federal drug pricing program if an entity can demonstrate to DOH’s satisfaction that the prescription drug price discount it receives is less expensive to the state.

Significant Issues

The federal 340B Drug Pricing Program provides access to reduced price prescription drugs to more than 10,000 health care facilities certified by the U.S. Department of Health and Human Services (HHS) as "covered entities". Significant savings on pharmaceuticals may be seen by those entities participating in this program.

The federal language for the 340B pricing program allows federally designated community health centers or other federally qualified covered entities to purchase pharmaceuticals below the Medicaid rebate price. The average 340B discount is about 19 percent lower than the Medicaid net prices. States benefit from the 340 B program when Medicaid clients purchase pharmaceuticals through participating federally qualified community health centers.

FISCAL IMPLICATIONS

HSD reports a costs saving of \$127.8 to the General Fund.

HB88 is clearly beneficial if the formularies for current drug purchase and the 340B program are consistent. If not, providers will have to substitute drugs, eliminate the use of certain drugs, or request exceptions to the 340B formulary.

ADMINISTRATIVE IMPLICATIONS

The DOH would need to coordinate with the Human Services Department in order to identify all "covered entities", as federally defined, and establish a method of ongoing tracking to assure that the identified agencies participate with the 340B Prescription Drug Discount Program. In addition, the DOH would be required to establish a method of accepting proposals and determining exceptions to the requirements delineated in the bill.

Eligible providers would need to change purchasing practices to comply with HSD requirements

DUPLICATION

The Substitute corrects drafting flaws in the original HB 88 and now duplicates SB 264.

TECHNICAL ISSUES

When Medicaid recipients obtain pharmaceuticals under the 340B program, Medicaid is billed for outpatient drugs at the lower 340B acquisition price, plus a reasonable dispensing fee. DOH raises a concern pertaining to the requirement that all providers under Paragraph (3) of Subsection A of Section 27-2-12.13 NMSA 1978 could potentially be in conflict with the federal language if some of the providers are for-profit entities. In addition, DOH mentions that Medicaid individuals are served through a multitude of private pharmacies and HMOs for their prescription needs. This legislation requires them to obtain their pharmaceuticals through FQHCs. This is a potential restraint of trade issue.

OTHER SUBSTANTIVE ISSUES

Remarks by HPC include:

- ❑ An insufficient amount of resources are provided through the 340B program and other discount programs to fulfill the needs of New Mexicans, so expanding participation in the 340B program could satisfy some of the prescription drug-related needs that are not being met now (HJM 22 Study).
- ❑ Expanding participation in 340B program would likely increase the number of discounts given by manufacturers on prescription drugs that could lead to price increases since manufacturers might lose profit if they did not adjust prices accordingly.
- ❑ 340B program offers typical drugs for treating acute illnesses as well as medications for more serious conditions such as HIV/AIDS, diabetes, hemophilia, asthma, and other illnesses (HJM 22 Study).
- ❑ Drug supplies may be limited as a result of pricing constraints placed on manufacturers through the 340B program, and may become even more limited if participation in the program increases. As a result, consumers may obtain drugs by other means such as purchasing them from other towns, counties, or even other countries (HJM 22 Study).

AMENDMENTS

In Section 1, Paragraph A, line 24, insert the word “to participate” after “that are eligible.”

BD/dm:lg