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FISCAL IMPACT REPORT

SPONSOR Feldman **DATE TYPED** 2/18/05 **HB** _____

SHORT TITLE Pharmacy Benefits Manager Regulation Act **SB** 532

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	See Narrative			Recurring	Pharmacy Benefits Manager Fund
	See Narrative			Recurring	Insurance Department Suspense Fund

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	See Narrative		Recurring	Pharmacy Benefits Manger Fund
	See Narrative		Recurring	Insurance Department Suspense Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

Pharmacy Board
 Human Services Department (HSD)
 Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

SB 532 amends sections of the Insurance Code and creates the Pharmacy Benefit Manager Regulation Act which establishes new regulatory authority for the Insurance Division of the Public

Regulation Commission (PRC) over Pharmacy Benefits Managers (PBMs). Authority is given to the PRC to establish rules, participation fees, audit procedures, disclosures, confidentiality policies, enforcement authority and prohibited practices for PBMs that have New Mexico contracts. The purpose of the Act is to promote, preserve, and protect the public health, safety, and welfare through effective regulation and licensing of PBM companies.

Significant Issues

PBMs administer prescription drug benefits for managed care companies, large employers, and government agencies. HPC notes that under provision established in SB 532, PBM's will function under, and be monitored by, the Superintendent of Insurance.

In SB 532, under the new Pharmacy Benefits Manager Regulation Act:

Sections 1 and 2 cite the title of the Act and provide definitions.

Section 3 defines license requirements and events for a license to be revoked, suspended or denied for renewal.

Section 4 requires the Superintendent to promulgate rules with regard to business and financial issues.

Section 5 provides regulations regarding contract and performance expectations in providing pharmacist services to pharmacies, including time limits for contract execution and payments.

Section 6 provides disclosure procedures for rebates, utilization discounts, and other revenues received from pharmaceutical companies.

Section 7 states consumer contact as limited unless otherwise authorized.

Section 8 defines confidentiality policy including liability for damages resulting from disclosure.

Section 9 defines audit request and performance procedures.

Section 10 requires drug substitutions to be in accordance with the Drug Product Selection Act.

Section 11 defines enforcement procedures for non-compliance, and opportunities for due process.

Section 12 relates remedy for civil action for enforcement under the Act.

Section 13 creates the PBM Fund in the State Treasury from collected fees and penalties, to be used to administer the Act.

Section 14 clarifies fee distribution of 50% to HSD for a preferred drug list, and 50% to Fund.

Section 15 establishes an amended fee schedule.

Section 16 clarifies fees received do not override Subsection Z of Section 59A-6-1 NMSA 1978.

PERFORMANCE IMPLICATIONS

HSD notes SB 532 relates to the state's pharmaceutical buying power performance measures. PBMs reduce pharmaceutical costs through direct negotiations with retail pharmacies and with drug manufacturers for rebates and other discounts.

FISCAL IMPLICATIONS

HSD reports insurance companies are assessed 4% for premiums paid to their organizations. Once Medicare Part D Drug plans are created, they will not be included in those assessments because PBMs will administer Medicare Part D drug plans. HSD believes this may create a loss of revenue for the state, especially in the Medicaid program. SB 532 would assess a licensure fee to all PBMs through the Division of Insurance to make up for that loss and to help develop and maintain a required preferred drug list, as well as provide funding for oversight.

SB 532 creates the Pharmacy Benefits Manager Fund in the state treasury and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

Fees and penalties pursuant to the Pharmacy Benefits Manager Regulation Act will be deposited into the newly created Pharmacy Benefits Manager Fund in the State Treasury. Money in the Fund will be appropriated to the Insurance Division of the PRC to administer the Pharmacy Benefits Manager Regulation Act. Money in either fund shall not revert to the General Fund.

ADMINISTRATIVE IMPLICATIONS

HSC reports the need to collect and evaluate data on Medicare individuals to ensure coordination of care and disease management initiatives.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to The Prescription Drug Information Act of 2003, requiring PBMs doing business New Mexico disclose the price paid to drug manufacturers.

Duplicate of HB 622, Pharmacy Benefits Manager Regulation Act

TECHNICAL ISSUES

The Pharmacy Board has the following concerns:

Page 2 (C) The maintenance drug definition is not clear on whether or not "as needed" or "prn" medications are considered maintenance drugs.

P 8-9 (8) Information obtained by the superintendent. A provision should be included for disclosing such information to the Pharmacy Board.

Page 10 (10) Pharmacists are the actual persons substituting one drug for another. This is regulated by the Pharmacy Board. PBM's do not substitute drugs. They do sometimes require phar-

macists to do so during the point of sale online adjudication process, or they require a prior authorization in order for the pharmacist to dispense the drug prescribed.

OTHER SUBSTANTIVE ISSUES

Caremark opposes SB 532 and believes that transparency legislation requiring PBMs to disclose rebates, discounts, or other revenues may increase costs for consumers and payors and decreases competition. They believe once rebates become public, manufacturers and pharmacies know what their competitor's discounts are, and may have little incentive to compete on price and reimbursement. Caremark believes keeping pricing terms confidential is critical to ensuring competition continues among PBM's, manufacturers, and pharmacies, which may result in lower overall prescription drug benefit costs for health plan sponsors and consumers.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

PBMs will have no direct regulatory oversight which could compromise public health and safety.

AHO/lg