F I S C A L I M P A C T R E P O R T

SPONSOR Feldman **ORIGINAL DATE** 1-27-09 **LAST UPDATED** 2-21-09 **HB**

SHORT TITLE Health Care Disclosure Gift Act **SB** 99aSFC

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	**FY10**		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB232

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (AGO)
Health Policy Commission (HPC)
Department of Health (DOH)
Aging and Long Term Services (ALTSO)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment removes the appropriation in the original Senate Bill 99.

Synopsis of Bill

Senate Bill 99 appropriates $25 thousand from the general fund to the Attorney General's Office for the purpose of implementing the provisions of the Health Care Gift Disclosure Act, which provides for drug manufacturers to report any gifts the manufacturer makes to any health care

provider (individual and institutional) to the New Mexico Attorney General's office on an annual basis. This bill does not ban gifts – only requires them to be reported. Manufacturers are to include in their report the value and purpose of the gift. In this bill, "gift" is broadly defined to include such items as compensation for lectures, monetary advances and travel expenses. There are exclusions for such gifts as free samples made available for patients, and compensation for participation in clinical trials. The bill requires the AGO to compile and maintain the reports from the manufacturers and make them available on a public, searchable database. It also provides the AGO with the authority to investigate and enforce the reporting requirements of the Act.

FISCAL IMPLICATIONS

The AGO may experience some additional operating expenditures.

SIGNIFICANT ISSUES

The Attorney General's Office explains that SB99 does not provide for penalties or process for the assessment of penalties, although it allows for the AGO to investigate and enforce the provisions. Nor does the bill include a section whereby an agency or state entity may enact such rules and provisions as would be necessary to implement and administer the Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB232, the Prescription Privacy Act, which makes it unlawful for health care or prescription providers or drug manufacturers or drug marketers to make individual prescription recipient information public. There is, according to the Attorney General's Office, some interaction between the bills, in that SB99 requires reporting of information that may relate to individual prescription recipients. This potential problem could be remedied by a rule or statutory provision whereby the reports would not contain individual recipient information, if that information would violate either HIPPA or the provisions of HB232.

TECHNICAL ISSUES

SB99 currently requires health care gift reporting for drug manufacturers only. However, manufacturers may easily avoid these requirements by going through a distributor or independent sales representative to make the sorts of reportable contributions the bill intends to address.

OTHER SUBSTANTIVE ISSUES

According to the Health Policy Commission, Massachusetts has joined a handful of other states in passing a law to regulate interactions between life sciences companies and healthcare practitioners. On August 10, 2008 Governor Deval Patrick signed into law Senate Bill No. 2863, "An Act to Promote Cost Containment, Transparency and Efficiency in the Delivery of Quality Health Care," (enacted as Chapter 305 of the Acts of 2008). Section 14 of the Act contains a new Chapter 111N, Pharmaceutical and Medical Device Conduct, that gives the Department of Public Health new oversight authority over interactions between pharmaceutical and medical device companies, and health-care practitioners by adopting a standard marketing code of conduct that the companies must follow; and providing for public access to certain payment arrangements between companies and healthcare practitioners.

Several states have enacted their own requirements regarding interactions between industry and healthcare practitioners and no two states have the same requirements. Pending federal legislation if passed, might pre-empt the state law reporting requirements. In the meantime, companies have to track and comply with each state's requirements, in addition to federal laws and industry guidance.

It also says that companies operating in multiple states must also be mindful of the disclosure statutes in other states, which may differ from the Code, the PhRMA Code, and the AdvaMed Code. These national companies should keep apprised of new developments in state and federal pharmaceutical and medical device legislation to maintain compliance and avoid penalties.

ALTERNATIVES

Include a rulemaking provision suggests the Attorney General's Office, and add a provision that would prohibit the reports from including individual recipient information, if that information would violate either HIPPA or the provisions of HB232. In addition, it should be considered whether the bill should include penalties for violations of the Act, and the allocation of any assessed penalties. It would also be helpful to have the AGO designated to enact such rules and provisions as would be necessary to implement and administer the Act, including the process for assessing violations and penalties.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not enacted, the practice of drug manufacturers providing large gifts to medical providers will continue to be unmonitored. This Act will permit medical care providers and beneficiaries to review information regarding the gifts made by the drug manufacturers.

EO/mt:mc