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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/09  
 SPONSOR SPAC LAST UPDATED 03/20/09 HB \_\_\_\_\_  
 SHORT TITLE Pharmacy Benefits Manager Regulation Act SB CS/295/aHBIC  
 ANALYST C. Sanchez

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
\$0.0	Indeterminate	Indeterminate	Recurring	PBM Fund

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

Attorney General’s Office (AGO)

Medical Board (MB)

### SUMMARY

#### Synopsis of HBIC Amendments

The HBIC amendment strikes section 7 that reads, “A resident pharmacy benefits manager who wishes to make a substitution for a prescription drug prescribed for a covered entity shall substitute a prescription drug in accordance with the Drug Product Selection Act.

The HBIC amendment also adds new language under section 10 that reads, “An insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, whenever form or rate-filing fees in excess of those imposed by state law are charged to insurers in New Mexico doing business in another state or whenever a condition precedent to the right to issue policies in another state is imposed by the laws of that state over and above the conditions imposed upon insurers by the laws of New Mexico; in those cases, the same form or rate-filing fees may be imposed upon an insurer from another state transacting or applying to transact business in New Mexico so long as the higher fees remain in force in the other state. If an insurer does not comply with the additional retaliatory or reciprocal requirement charges imposed under this subsection, the superintendent may refuse to grant or may withdraw approval of the tendered form or rate filing. All fees are earned when paid and are not refundable”.

Synopsis of Original Bill

Senate Bill 295 creates authority for the licensure and regulation of Pharmacy Benefit Managers (PBM) through the State Insurance Division/PRC. The act defines PBM's as a person, or a wholly or partially owned or controlled subsidiary of a person, the provides claims administration, benefit design and management, pharmacy network management, negotiation and administration of product discounts, rebates, and other benefits accruing to the PBMs or other prescription drug or device service to third parties. It excludes licensed health care facilities, pharmacies, insurance companies, HMOs or prescription drug plans. The Act sets up conditions for licensure and for suspension or revocation of a license.

The original bill's Section 4 required the insurance division to promulgate rules implementing the Act, but this section was deleted in the committee substitute.

Section 5, PBM Contracts, sets specifics for contracts between the PBM and pharmacies/pharmacists including time limits for the PBM to pay the pharmacy for services rendered. The contract must include sections for proper notice and procedure for the termination of the contract by the PBM.

Covered entities (Hospital, HMO etc) may request disclosure by the PBM of any rebate revenues and the nature, type, and amounts of all other revenues the PBM receives from pharmaceutical manufacturers or labelers with whom the PBM has a contract.

The bill also includes provisions for the confidentiality of protected health information and the unauthorized use by the PBM of that information. PBMs will not be allowed to switch maintenance medications without the authorization of the prescriber and within the limits of the Product Selection Act (NMSA 26-3).

**FISCAL IMPLICATIONS**

SB 295 creates a new program within the insurance division without a specific appropriation, but creates a PBM fund whose funds may be spent by the division to administer the new Act.

According to the Medical Board, this bill would provide more accountability from the Pharmacy Benefits Manager and greater transparency for employers and consumers, which might result in greater cost savings. Cost savings have been reported by states that have enacted similar laws.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

At this time it is indeterminate what the financial impact of this bill will be. Nevertheless, this bill will require general funding.

According to the February 2008 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$575 million less than the FY09 appropriations before the 2009 solvency reductions. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

## **SIGNIFICANT ISSUES**

SB 295 creates a regulatory mechanism for PBMs, currently unregulated by the NM Board of Pharmacy or any other state agency. The Act provides for PBM licensure procedures for a PBM to contract with a pharmacy or pharmacist to provide pharmacist services, PBM's disclosure of rebate and discount revenues, confidentiality of PBM confidential and proprietary information, audits of PBM records, enforcement of the Act by the insurance division, remedies for violations of the Act, creation of a PBM fund to be administered by insurance division, and distribution of PBM fees collected by insurance division.

SB 295 amends several Insurance Code provisions so as to include PBMs within the jurisdiction of the insurance division, and including the definition of a PBM, fees collected from PBMs, distribution of fees collected, and PBM licensure requirements.

## **OTHER SUBSTANTIVE ISSUES**

No state entity currently regulates Pharmacy Benefit Managers (PMBs). The Board of Pharmacy receives public complaints on a routine bases which involve the questionable use of prescription drug information, switching of drugs prescribed, withholding payment of claims from pharmacies, direct advertising, dropping of pharmacies from networks, and other areas directly related to the activities of PBMs. The Board of Pharmacy does not have any authority over PBMs. The Board does regulate the pharmacies and pharmacists that PBMs contract with.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Pharmacy Benefit Managers will not be licensed or regulated.

CS/svb:mc