

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/13

SPONSOR Ortiz y Pino LAST UPDATED _____ HB _____

SHORT TITLE Pharmacy Benefits Manager Regulation Act SB 360

ANALYST Geisler/Chavez

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|---------------------------|------|---------------------------------|-----------------------------|
| FY13 | FY14 | FY15 | | |
| | \$0.01 Not Significant | | Recurring | Insurance Operation Fund |

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY13 | FY14 | FY15 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|---------------------------|------|----------------------|------------------------------|--------------------------------|
| Total | | \$0.01 Not Significant | | | Recurring | Insurance Operation Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Public School Insurance Authority (PSIA)
 Retiree Health Care Authority (RHCA)
 General Services Department (GSD)
 Regulation and Licensing Department (RLD)
 Public Regulation Commission (PRC)
 Human Services Department (HSD)

SUMMARY

Synopsis of Bill

Senate Bill 360 (SB 360) would enact the Pharmacy Benefits Manager Regulation Act, which would amend the New Mexico insurance code to require licensure and regulation of pharmacy benefits managers (PBMs).

Sections 1-7 of SB 360 enact the “Pharmacy Benefits Manager Regulation Act.” Sections 2 and 3 prescribe the management of PBMs by the Superintendent of Insurance. Section 4 provides for a contract between a PBM and those pharmacies that provide services for the covered entity. Section 5 prohibits unauthorized contact between PBMs and consumers of the covered entity; and Section 6 allows the covered entity to audit the PBM’s books and records once per year as prescribed by Section 61-11-18.2 of the Pharmacy Act. Section 7 provides that a covered entity may bring a civil action to enforce provisions of the Act or seek civil damages. Finally, Section 8 amends the Insurance Code’s fee schedule to establish a list of fees to collect from a pharmacy benefits manager.

SB 360 contains no appropriation.

FISCAL IMPLICATIONS

The Insurance Division of the Public Regulatory Commission points out that, if enacted, SB 360 would impose additional duties and burdens on existing Insurance Division staff and resources, but would also establish fee schedules for additional licensing fees to be charged. No data exists to allow accurate estimates of staffing needs or revenue to be generated.

SIGNIFICANT ISSUES

The RLD notes that regulation would be helpful. The pharmacy board has received numerous complaints over the years from New Mexico pharmacies. One example of such complaints is that PBMs may demand reimbursement for prescriptions previously dispensed and paid for by third party insurance. As unregulated entities, pharmacies have no recourse in disputing these charge-backs. The PBMs can hold up payments indefinitely while a pharmacy disputes a claim. There currently is no appeal process outside of the PBM.

The Insurance Division of the PRC expresses reservations about their current capacity to carry out the legislation set down in SB 360. Specifically, that this type of license is not in the area of expertise housed within the Insurance Division, and therefore the need to develop rules and regulations for licensing as well as the supervision of this new professional service would impose an unknown and potentially significant burden on Division staff; that it potentially expands the role of the Insurance Division beyond that contemplated under the Insurance Code; and that the bill mandates the Insurance Division also to acquire familiarity with “applicable state or federal laws or rules...” relating to pharmacy administration, expertise not presently within the Insurance Division under the legislative mandate of the New Mexico Insurance Code.

HSD points out that the largest number of PBMs serving New Mexico residents are Medicare Part D prescription drug programs. When Medicare contracts with a PBM, it is unclear if New Mexico can apply additional requirements in order for the PBM to provide services within the state.

TECHNICAL ISSUES

The AGO points out that Section 1(A), p. 2, line 7 defines “covered entity” to include a “labor union.” Section 2(G), p. 4, line 4 and Section 3(D), p. 6, line 10 reference a “union.” If these three references are intended to all refer to “labor unions,” they should be consistent with each other.

Senate Bill 360 – Page 3

The PSIA points out that the language in Section 6 would require a slight modification of the PSIA contract with its PBM (Express Scripts) because current language requires the auditing firm to have at least \$2,000,000 in professional malpractice insurance. This requirement is not included in the bill's audit section.

The PSIA also notes that Section 3, D, lines 7 through 13 appears to be redundant to the language included in Definitions, page 4, lines 2 through line 7.

GG/svb