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FISCAL IMPACT REPORT

ORIGINAL DATE 2/01/17
LAST UPDATED 3/06/17

SPONSOR HBIC **HB** 122/HBICS/aHF1#1/aSJC
SHORT TITLE Ban Certain Pharmacy Fees **SB** _____
ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	Office of the Superintendant of Insurance appropriation

(Parenthesis () Indicate Expenditure Decreases)

The original bill duplicates Senate Bill 77.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Office of the Superintendent of Insurance (OSI)

Human Services Department (HSD)

Public Regulation Commission (PRC; to identical Senate Bill 77)

SUMMARY

Synopsis of Senate Judiciary Committee Amendment

The amendment eliminates some unnecessary words. It also eliminates “adjudication of a pharmacy claim” from the list of fees that pharmacy benefit managers would be prohibited from assessing to pharmacies and pharmacists.

Synopsis of House Floor Amendment #1

The amendment adds a start date: contracts entered into on or after June 16, 2017 would be affected by provisions of the bill; contracts entered into or renewed before that date would not.

Synopsis of House Business and Industry Committee Substitute

House Bill 122/HBICS specifies that pharmacy benefit managers (PBMs) could not charge a fee to pharmacies for the following parts of the adjudication of claims made by a pharmacy to a PBM:

- 1) Adjudication of the claim
- 2) Receipt and processing of the claim
- 3) Development or management of a claim processing network, and
- 4) Participation in a claim processing network.

In NMSA 1978 59A-61-2", "pharmacy benefit manager" is defined as

“a person or a wholly or partially owned or controlled subsidiary of a person that provides claims administration, benefit design and management, pharmacy network management, negotiation and administration of product discounts, rebates and other benefits accruing to the pharmacy benefits manager or other prescription drug or device services to third parties, but "pharmacy benefits manager" does not include licensed health care facilities, pharmacies, licensed health care professionals, health insurers, unions, health maintenance organizations, Medicare advantage plans or prescription drug plans when providing formulary services to their own patients, employees, members or beneficiaries.”

FISCAL IMPLICATIONS

The Human Services Department comments that there would be no fiscal impact on that agency, except that the lack of clarity in the bill might result in the Medicaid managed care organizations having to pick up transmission charges currently paid by pharmacies; if that were the case, there would be significant expenses born by HSD.

SIGNIFICANT ISSUES

RLD points out that the Office of the Superintendent of Insurance, not RLD, regulates pharmacy benefit managers, as codified in NMSA 1978 Section 59A-61-3.

HSD notes that further clarity is needed in specifying which fees would be prohibited. Two types of fees are noted that might or might not be covered by the bill's prohibitions:

- 1) Fees imposed by the pharmacies' contracted "switch vendor," typically 5 to 7 cents per transaction according to HSD. The switch vendor extracts pharmacy claims from the pharmacy's software and transmits those claims to the payer, most often the pharmacy benefit manager.
- 2) Fees related to the transmission of electronic prescriptions from a prescriber's software to a pharmacy by a statewide "hub". The hub's charges are sometimes to the pharmacy, sometimes to the PBM.

The previous version of the bill specified that transmission of a pharmacy benefit claim could not be charged for; that is omitted in the committee substitute.

PERFORMANCE IMPLICATIONS

None identified.

DUPLICATION between the original House Bill 122 and Senate Bill 77.

ADMINISTRATIVE IMPLICATIONS

HSD comments that the “bill may require HSD to adopt and promulgate rules that prohibit pharmacy benefit managers from charging fees for pharmacy claims from medical assistance programs and to direct the managed care organizations (MCOs) to prohibit their pharmacy benefit managers from charging these fees as well. This may require revisions of contracts for the MCOs. The precise extent of the administrative implications cannot be estimated because of the lack of clarity in the bill with regard to the specific fees being banned.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Pharmacies would continue to be assessed some charges by pharmacy benefit managers.

LAC/jle/sb/jle