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

SPONSOR Picraux **ORIGINAL DATE** 1/24/09 **LAST UPDATED** **HB** 232

SHORT TITLE Prescription Privacy Act **SB**

ANALYST C. Sanchez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
Indeterminate	Indeterminate	Indeterminate	Recurring	School Fund

(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	$15.0	$15.0	$15.0	$45.0	Recurring	Pharmacy Board

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Medical Board (MB)

SUMMARY

Synopsis of Bill

House Bill 232 establishes fines for any person who knowingly discloses regulated information derived from prescription drug records when used for marketing or other activity designed to influence the prescribing or purchasing of a drug.

The pharmacy board would be responsible for promulgating rules and then enforcing those rules to include fines for violations. A fine of $50,000 per violation is authorized under the Act. Collected fines would be deposited in the current school fund.

FISCAL IMPLICATIONS

Estimated additional operating budget impact is based on current costs of investigations estimated to range from $1000 to $5000 per complaint. HB 232 tasks the pharmacy board with the investigation and prosecution of suspected violations of the Act. No funding is appropriated for these operational functions.

The cost of promulgating regulations, identifying persons required to license, provide for licensure, investigating and prosecuting violations would be to the pharmacy board fund. However, no fines or costs would be returned to the pharmacy board fund.

SIGNIFICANT ISSUES

The pharmacy board's authority to investigate and fine is defined in the pharmacy act; drug, device and cosmetic act; controlled substances act, and the uniform licensing act. To implement SB 232 the pharmacy act must be amended to define "authorized recipient" and establish new licensing requirements for these individuals in order for the Board to investigate and fine them.

The Board's fining authority in the uniform licensing act is limited to $1000 per violation.

Section 2B definition of marketing would prohibit pharmacists from suggesting lower cost forms of a prescribed drug to the patient.

Federal HIPPA laws allow PBMs/Health insurance providers to use private prescription information in certain situations.

Health information ascertained by insurance providers is frequently used to contact persons on specific medications or practitioners that prescribe those medications. Typically, this contact has the potential to benefit the consumer financially, therapeutically or both.

ADMINISTRATIVE IMPLICATIONS

The Bill requires the Board of Pharmacy to promulgate rules as necessary to implement the law.

TECHNICAL ISSUES

The definitions for "prescriber" should be changed to "practitioner" which is defined in NMSA 26-1-2 "practitioner" means a certified advanced practice chiropractic physician, physician, doctor of oriental medicine, dentist, veterinarian, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife, physician assistant, prescribing psychologist or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act.

"Prescribed Product" is not a term used in the NM Drug Device and Cosmetic Act. "Dangerous drug" (NMSA 26-1-2F) would be the correct term for any prescription drug.

OTHER SUBSTANTIVE ISSUES

According to RLD, section 2 B (6) (7) appears to prohibit printed or broadcast materials for

prescription drugs. These forms of advertisement currently exist in most published magazines, newspapers, and television transmissions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The possibility currently exists for patient or physician information to be released to a marketing company. Other than provisions of the AMA Code of Ethics, Section 8.061, Guideline 1(H), and Section 8.06, there are no current protections from release of private information to marketing companies.

CS/mt