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## FISCAL IMPACT REPORT



SPONSOR: Heaton DATE TYPED: 02/08/02 HB 372

SHORT TITLE: New Mexico Prescription Drug Discount Act SB \_\_\_\_\_

ANALYST: Weber

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
300.0	See narrative			Non	General
5000.0	See narrative			Non	General

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Human Services Department

New Mexico Health Policy Commission with below references.

1. Table H105, Health Insurance Coverage Status and Type of Coverage by State for All People: 2000. U. S. Bureau of Census Current Population Survey, March 2000.  
Note: Although the CPS sample size is small, the total estimate for adults 65 years and over was 218,000, while the 2000 Census demographics shows 212,225. Percentages from the CPS were used in conjunction with the total senior population from the 2000 census to arrive at the number of Medicare covered and uninsured seniors in New Mexico. These numbers were summed to arrive at the potential number of seniors without prescription drug coverage.
2. State Agency on Aging answer to request for the number of elderly in New Mexico without prescription drug coverage.
3. *Quick Facts 2002*, New Mexico Health Policy Commission, January 2002.
4. *Health Care Coverage and Access in New Mexico*, New Mexico Health Policy Commission, March 2000.

### SUMMARY

Synopsis of Bill

HB-272 appropriates \$5,000,000.0 from the GENERAL FUND to the Prescription Drug Discount Fund and an additional \$300,000 from the GENERAL FUND to the Human Services Department.

Significant Issues

House Bill 372 (HB 372) would direct the Human Services Department (HSD) Medical Assistance Division (MAD) to create a prescription drug discount program for certain low-income persons under the Medicaid program. HB 372 would provide prescription drug discounts for New Mexico residents with incomes at or below 200% of the federal poverty level (FPL). HB 372 would direct MAD to use the same methodology for income eligibility as is utilized in the Medicaid program. No other Medicaid benefits would be made available. HB 372 would make appropriations for fiscal years 2002 and 2003 of \$5,000.0 to pay pharmacies for drugs and \$300.0 to administer the program and apply for a waiver. If necessary, the department would have to apply for a waiver no later than October 1, 2002. Any unexpended or unencumbered balances remaining at the end of FY 2003 would revert to the general fund.

Using the same methodologies for income eligibility as for medical assistance eligibility in the Medicaid program, HSD would have to:

- enroll and provide program identification cards to eligible applicants who would present the cards when purchasing drugs under the program;
- obtain manufacturers' rebates, as established in federal Omnibus Budget Reconciliation Act of 1990 (OBRA), from drug manufacturers for prescription drugs provided through the Medicaid program; and
- pay pharmacists an amount equal to the rebates to the Medicaid program by the prescription drug manufacturer based on prescription drugs provided under the program.

Pharmacies would fill prescriptions, charge members no more than Medicaid prices less amounts equal to the average rebate percentage, and notify HSD of the transaction, including the prices charged and other required information.

HB 372 would create the Prescription Drug Discount Fund in the State Treasury. All appropriations and money received by MAD for the program, including manufacturers' rebates, would be deposited into the fund and would be used by the department to carry out the purposes of HB 372. No more than one percent of the amount received annually could be used by MAD to administer the program.

MAD would be required to publish the following items in its monthly statistical report:

- the number of program members,
- the number of participating pharmacies,
- the total amount paid for prescription drugs under the program,
- the amount of manufacturers' rebate funds received, and
- the volume of the top fifty prescriptions filled by type of prescription drug and the average amount paid for each type.

HB 372 would declare an emergency.

The New Mexico Health Policy Commission reports, those people without health insurance and/or prescription drug benefit coverage pay the highest prices for prescription drugs. And although the total population without prescription drug benefits is unknown, looking at the uninsured rate and mixing this with the number of seniors without prescription drug coverage can estimate a minimum or “at least” figure. A forthcoming Health Policy Commission survey of New Mexico households will provide a better estimate of the total number of New Mexicans who have no prescription drug coverage, as well as the number of those who are unable to acquire necessary prescriptions by Federal Poverty Level guidelines. The overall lack of coverage is evidenced by the following statistics:

- The estimated number of seniors without drug coverage is between 68,000<sup>1</sup> and 110,000<sup>2</sup> people.
- The estimated number of adults under 65 who are uninsured is approximately 486,000.<sup>1,3</sup>
- At least 554,000 to 595,000 adults and seniors in New Mexico lack prescription drug coverage and are subject to paying the highest prices for prescription drugs when buying from a retail setting.
- This estimate does not account for Federal poverty level, however based on data from the New Mexico Health Policy Commission’s 1998 household survey<sup>4</sup> and projected to the 2000 Census population of New Mexico, an estimated 245,000 adults are at 200% of poverty or below (1998 Federal Poverty Level Guidelines) and had little or no insurance coverage. This group of people would likely qualify to be part of the “New Mexico Prescription Drug Program” created by this bill.
- An estimated 6% of the population indicated they had problems getting prescription drugs in 1999. It is likely that where no problems existed, some sort of safety net met prescription drug needs. Whether this is free samples or assistance programs is unknown but the forthcoming prescription drug study and survey being conducted by the Health Policy Commission will provide this information in more detail.

This bill creates a prescription benefit that may help resolve or alleviate some of the following issues for an estimated 68,000<sup>1</sup> seniors who have no prescription drug coverage in the state as of March 2000. This includes 3,396 thousand uninsured and 64,729 Medicare beneficiaries without supplemental insurance (private, Medicaid, Military Retirement).

- Medicare C-Plus covers prescription drugs but 15,000 seniors in New Mexico were dropped last year.
- Medicare Parts A&B do not cover prescription drugs for persons over 65, nor does the current State Medicaid program cover most seniors in New Mexico. However, until Medicare changes its policies, other alternatives such as this need to be explored.
- In 1999, Medicare beneficiaries age 65 and older spent 19% of their income out-of-pocket on health care, an average of \$2,430; 17% of this amount (\$410) was for prescription drugs.
- Spending on prescription drugs was much higher among beneficiaries who reported being in poor or fair health (\$605), or severely limited in their activities of daily living (\$595) (AARP).
- Twenty-four other states (CA, CT, DE, FL, IL, IN, KS, ME, MD, MA, MI, MN, MO, NV, NH, NJ, NY, NC, PA, RI, SC, VT, WA, WY) currently have state pharmaceutical assistance programs to ensure that seniors receive coverage for or low cost prescription drugs. AARP believes Medicare should include a prescription drug benefit that is available to all beneficiaries. According to Braun [AARP Representative], it is ironic that "while older Americans typically need more medication than younger people, most employer plans include and rely on prescription drug coverage as an essential tool for medical management, but Medicare still does not" (AARP Congressional Testimony on February 20, 2000).

In addition to New Mexico seniors, this plan also covers prescription drug benefits for other New Mexico adults below 200% of poverty. This bill would greatly aid the high-risk population of young people from ages 18 to 29 who no longer qualify to be on their parents insurance and likely do not have jobs that provide insurance benefits.

Additionally, the Health Policy Commission of New Mexico reports, this bill extends the Medicaid purchase prices to a non-Medicaid population through a comprehensive benefit program. This plan is comprehensive in that it doesn't impose a discount at the retail pharmacy level, which is the case with most discount card programs. The bill returns negotiated rebates to participating pharmacies. So far, similar programs that extend Medicaid price reductions have been tried in two states, Vermont and Maine, by obtaining a Section 1115 demonstration waiver from the Secretary of HHS.

- As of November 26, 2001, the Maine program is operational in spite of the attempt of the Pharmaceutical Research & Manufacturers Associations (PhRMA) lawsuit to block these waivers and related programs. The U. S. Supreme Court is considering a review of PhRMA's challenge to the Maine program. The Maine program is very similar to the legislation being proposed in HB372, and PhRMA has brought a suit against Maine to enjoin the waiver, saying it is similar to the D.C.Circuit Court of Appeals' invalidation of Vermont's 115 waiver.
- Vermont's waiver, similar to Maine's waiver and similar to HB372, has not been implemented because the U. S. Court of Appeals for the D. C. Circuit, in June, 2001, ruled that the Secretary of HHS has no authority under section 1115 to grant a waiver that would allow non-Medicaid beneficiaries to take part in the discount program.
- There may be Federal matching funds for certain parts of the program when a waiver is approved. This bill appropriates \$300,000 to apply for the waiver which should include finding any matching dollars that may contribute to the program.

The eligibility, drug pricing, and computer systems infrastructures required for program implementation would be complex. Drafting of the waiver language would require description of the procedures and infrastructure. It would be difficult to meet the October 1, 2002, waiver deadline.

## **FISCAL IMPLICATIONS**

The appropriation of \$5000.0 to the newly created Prescription Drug Discount Fund contained in this bill is a NON-RECURRING expense to the GENERAL FUND. Any unexpended or unencumbered balance remaining at the end of FISCAL YEAR 2002 or 2003 not shall revert to the GENERAL FUND. The \$300,000 appropriation from the GENERAL FUND to the Human Services Department is a NON-RECURRING expense. Any unexpended or unencumbered balance remaining at the end of FISCAL YEAR 2003 shall revert to the GENERAL FUND.

The \$300.0 appropriation that would be used to develop a waiver would qualify for federal Title XIX matching funds at the 50% administrative match rate. The \$5,000.0 appropriation would be a one-time appropriation to make initial payments to pharmacies. MAD would recoup this money through the manufacturers' rebate, and it would not be matched by Title XIX.

Continuing Appropriations

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

**ADMINISTRATIVE IMPLICATIONS**

MAD would require an undetermined number of additional FTE to administer the program. It is unclear whether the one percent administrative fee would pay direct the expenses associated with the program.

**TECHNICAL ISSUES**

Section 4 (C) of HB 372 would require the department to “pay to pharmacists amounts equal to the rebates provided to the department’s Medicaid program by the prescription drug manufacturer based on prescription drugs provided under the program.” To comport with definition language in the bill and for clarification, this should be amended to “pay to pharmacists amounts equal to the average rebates percentage of the Medicaid price provided to the department’s Medicaid program by the prescription drug manufacturer based on prescription drugs provided under the program.”

**POSSIBLE QUESTIONS**

Should there be a provision to return the original \$5,000,000.0 appropriation to the General Fund ?

**MW/njw**