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FISCAL IMPACT REPORT

SPONSOR: Coll DATE TYPED: 2/4/02 HB 400
 SHORT TITLE: Lowest Prescription Drug Price Available SB _____
 ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
		(\$0.1)	See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 440

SOURCES OF INFORMATION

Responses Received From

Human Services Department (HSD)

SUMMARY

Synopsis of Bill

House Bill 400 amends 27-2-16B NMSA 1978 which eliminates the reference to a specific dispensing fee of \$3.65 for prescriptions reimbursed by Medicaid in instances in which drug product selection (i.e., generic drug substitution) is permitted by the Drug Product Selection Act through 26-3-3 NMSA 1978. The statutory requirement would be changed to a “reasonable dispensing fee.” HB 400 also would change the reimbursement standard from “wholesale cost” to “lowest price available.”

Significant Issues

HSD reports that the current statute was written when all drug claims were filed on paper, thereby giving pharmacists a way to notify the state when a generic drug was dispensed under the Drug Product Selection Act. National coding standards that are currently required for electronic billing of pharmacy claims make no provision for such a notification. Drug wholesaler pricing mechanisms and pharmacy ordering systems have changed since the statute was written. Today, wholesalers sell drugs to pharmacies under more complex pricing tiers. Prices and availability of specific products

change on a daily basis. Pharmacies typically order drugs through online systems that flag but do not necessarily require the purchase of the lowest-cost product.

HB 400 would have a significant impact on the pending lawsuit *Starko v. [Human Services Department] HSD*. The *Starko* plaintiffs, a certified class of New Mexico pharmacies, claim HSD is in violation of 27-2-16B by contracting away to Managed Care Organizations its duty under the statute to contract directly with pharmacies that believe they do not have to comply with 27-2-16B. The plaintiffs claim they are entitled to the actual wholesale price (AWP) of drugs and not, as HSD claims, what they actually paid for them or a reasonable estimate (e.g., AWP minus 12.5% and up to AWP minus 40%). The term “wholesale cost” is undefined and at issue. The plaintiffs also claim that managed care is included under 27-2-16B, so the MCOs must pay the \$3.65 dispensing fee instead of their negotiated dispensing fees, which average around \$2.00.

FISCAL IMPLICATIONS

The bill contains no appropriation.

HB 400 would allow MAD to establish a reasonable dispensing fee rather than having a fee mandated in law. This flexibility could lower dispensing fee costs.

ADMINISTRATIVE IMPLICATIONS

If HB 400 were enacted into law a reporting mechanisms would have to be developed to verify lowest prices available from wholesalers. A dispensing cost survey might be needed to determine a “reasonable dispensing fee.”

HB 400 would base reimbursement on lowest actual acquisition cost. This could require a difficult review process.

RELATIONSHIP

HB 440

OTHER SUBSTANTIVE ISSUES

HB400 also would remove the debatable term “wholesale cost” from current law and substitute “lowest price available.” This would make the statute consistent with the position of HSD, the MCOs, and the federal government.

HB400 would remove the statutorily mandatory \$3.65 minimum dispensing fee, allowing the MCOs and HSD's Medical Assistance Division (MAD) to negotiate dispensing fees with the pharmacies. The interpretation of “reasonable dispensing fee” may become an issue and could result in legal challenges

ALTERNATIVES

HSD suggests deleting Section 27-2-16B from current law because by regulation, MAD already has the authority to set state maximum prices and dispensing fees.

BD/njw:ar