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## FISCAL IMPACT REPORT



SPONSOR: Sandoval DATE TYPED: 02/08/02 HB 440

SHORT TITLE: Prescription Drug Minimum Dispensing Fee SB \_\_\_\_\_

ANALYST: Weber

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
		\$0.1	Indeterminate		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

New Mexico Board of Pharmacy  
 Human Services Department  
 New Mexico Health Policy Commission

### SUMMARY

#### Synopsis of Bill

House Bill 440 (HB 440) would amend the Drug Product Selection Act (27-2-16B NMSA 1978) to eliminate references to specific dispensing fees for prescriptions reimbursed by Medicaid where drug product selection is permitted by the act. The amendment would allow "a reasonable dispensing fee" without specifying a mandatory minimum fee.

No appropriation is included in this bill.

#### Significant Issues

HB 440 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 (MCOs) 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 that managed care is included under 27-2-16B, so MCOs must pay the \$3.65 dispensing fee instead of their negotiated dispensing fees, which average around \$2.00.

HB 440 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" could become an issue and result in legal challenges.

The Board of Pharmacy reports, that the cost of many medications run into the hundreds of dollars and yet the dispensing fee has remained at \$3.65 per prescription which may not be a fair mark up to the retail pharmacy. The Health Policy Commission adds that a lower dispensing fee could put greater financial burden on the retail pharmacy in what is already a low profit margin business. This is especially true for smaller non-chain based pharmacies that likely exist in New Mexico's smaller and less populated communities.

### **FISCAL IMPLICATIONS**

HB 440 could have the effect of raising or lowering the Medicaid prescription drug costs depending on the final dispensing fee.

### **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

HB-400 is similar.

### **POSSIBLE QUESTIONS**

It may be valuable to establish the exact dispensing fee to eliminate confusion and possible litigation over what is a reasonable fee.

**MW/njw**