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

SPONSOR Lopez, L **ORIGINAL DATE** 02/04/08 **LAST UPDATED** 02/04/08 **HB**

SHORT TITLE Prescription Drug Reimbursement Act **SB** 425

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
	$1,067.0	*$3,200.0	$744.4	$5,211.4	Recurring	General Fund
Total			$1,815.5	$1,815.5	Recurring	Medicaid Federal Matching Funds

*Per one dollar increase

SOURCES OF INFORMATION
LFC Files

Responses Received From
Human Services Department (HSD)
Regulation & Licensing Department (RLD)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

Senate Bill 425 enacts the Prescription Drug Reimbursement Act. The act requires HSD to review and adjust the dispensing fee in even-numbered years, beginning April 1, 2010, for a pharmacy or pharmacist who participates in the Medicaid program using statewide data on pharmacy operational costs.

Two temporary provisions for the Department include:

- completing a review of the federal mandated average-manufacturer-price-based upper limits on Medicaid payments for multiple source drugs within one week of the effective date of the act; and,
- adopting an appropriate increase to ensure that a reasonable dispensing fee is paid to Medicaid pharmacies within three weeks of the effective date of the act.

SB425 declares it an emergency that this act takes effect immediately.

FISCAL IMPLICATIONS

The bill requires a cost adjustment to pharmacies every even numbered year but carries no appropriation to support that effort.

RLD/Board of Pharmacy note that the dispensing fee will probably rise since it has remained at $3.65 for approximately twenty years.

HSD reports that the above budget impact reflects increasing the dispensing fee by $1.00. If the increase were greater, the costs would be proportionately greater. Annually, the total number of pharmacy claims on which a dispensing fee is paid is approximately 3.2 million claims. For every dollar the dispensing fee is increased, Medicaid expenditures will increase by approximately $3,200.0.

HSD reports that the bill requires emergency rules within three weeks of the effective date for an increase in the dispensing fee. This time frame does not allow the necessary time to obtain CMS approval.

HSD further reports that to change a dispensing fee without CMS approval will render the entire pharmacy payment unmatched with federal funds. CMS specifically rejected allowing states to change dispensing fees without a state plan amendment and CMS approval in their comments published in the Federal Register on July 17, 2007, in finalizing 42 CFR Part 447 "Medicaid Program; Prescription Drugs; Final Rule."

HSD further notes a state plan amendment which involves changing Medicare reimbursement requires at least a year to obtain federal CMS approval. The state plan amendment could not be filed until documentation substantiating the need for a fee increase is completed which could be six months. This would mean the first 18 months of the fee increase would not receive federally matched funds.

Mandating future unfunded Medicaid fee adjustments in statute may make it difficult for future legislative sessions to fund based on the financial outlook for the state. HSD states that each legislative session should determine to what level the Medicaid program should be funded, rather than having such a requirement in statute.

SIGNIFICANT ISSUES

The bill will require that HSD complete a review of the federal mandated average-manufacturer-price-based upper limits on Medicaid payments for multiple source drugs within one week of the effective date of this act.

The bill further requires that HSD promulgate emergency rules within three weeks after the effective date of the Act, adopting an appropriate increase to ensure that a reasonable dispensing fee is paid to Medicaid pharmacies. Reasonable dispensing fee is defined as a dispensing fee that is consistent with the local economy, is efficient, and is designed to approximate a pharmacy's actual dispensing costs plus a reasonable profit.

RLD/Board of Pharmacy believes that New Mexico has one of the lowest Medicaid prescription drug dispensing fees in the country. The level of a pharmacist's involvement has increased substantially since the federal mandate, OBRA 90, required a pharmacist to perform a drug

utilization review and to subsequently counsel the patient in order to optimize the outcome of the drug therapy. Each state was required to adopt statutes/rules implementing the requirements of OBRA 90 in order to receive federal Medicaid money. The NM Board of Pharmacy implemented those requirements in 1991.

HPC notes that each State has broad discretion in determining the Medicaid payment rate for prescription drugs, and what to pay pharmacists in dispensing fees. Generally, payment rates must be sufficient to enlist enough providers to ensure covered services are available to the extent that comparable care and services are available to the general population within a geographic area. Providers participating in Medicaid must accept Medicaid payment rates as payment in full. An increase in utilization, as well as an increase in the Medicaid population has helped to increase the mean reimbursement per prescription.

PERFORMANCE IMPLICATIONS

The bill is in conflict with NMSA 1978, §27-2-16(B) which already establishes a Medicaid dispensing fee.

CMS comments published in the Federal Register on July 17, 2007, in finalizing 42 CFR Part 447 "Medicaid Program; Prescription Drugs; Final Rule", specifically says that states "may look at dispensing fees paid to pharmacies by other payers or the amount of dispensing fees paid in neighboring states."

HSD reports that CMS comments published in the Federal Register on July 17, 2007, in finalizing 42 CFR Part 447 "Medicaid Program; Prescription Drugs; Final Rule", specifically rejects suggestions that the reimbursement for ingredient cost be tied to the reimbursement level of a dispensing fee.

ADMINISTRATIVE IMPLICATIONS

HSD reports the Department will need to conduct a study to determine dispensing fees with an outside contractor with the expertise to conduct the study. The bill does not allow time or appropriate money for such a contract to be put in place.

The bill provides that HSD may create incentives designed to encourage utilization of lower-cost multiple source prescription drugs.

OTHER SUBSTANTIVE ISSUES

HPC provided the following background:

In 2007, the accounting firm, Grant Thornton, conducted an independent comparative analysis of United States prescription dispensing costs. The study found that the national average COD was $10.51 per prescription and $12.81 per pharmacy. However, the Medicaid COD per pharmacy is $0.71 higher than the overall COD per pharmacy, suggesting that lower-cost, higher-volume pharmacies fill a disproportionately greater percentage of Medicaid prescriptions. The study suggests that this may be affected by lower-cost rural pharmacies' filling more Medicaid prescriptions than urban stores on a per-pharmacy basis.

According to the Coalition for Community Pharmacy Action, a new study confirms the information regarding the cost of dispensing medications and the dispensing fee paid by Medicaid. The national average cost of dispensing medications is $10.50 per prescription, not including the cost of the medicine, according to *The Cost of Dispensing*, a national study released recently by the Coalition for Community Pharmacy Action. The study also indicates that the average dispensing fee paid by government programs such as Medicaid is approximately $4.50.

Key study findings include the following:

- Costs of dispensing vary significantly from state to state, ranging from an average of $8.50 per prescription in Rhode Island to $13.08 in California. Pharmacies in the Mountain and Pacific regions have the highest average costs of dispensing.
- Pharmacies dispense varying numbers of prescriptions and face different costs. When equal weight is given to all pharmacies, regardless of volume, the national average increases to $12.10 per prescription.
- Many pharmacies servicing Medicaid beneficiaries have higher than average costs of dispensing.
- Rural pharmacies fill 55% more Medicaid prescriptions per store than urban pharmacies.
- Total prescription volume is a key variable related to a pharmacy's cost of dispensing.
- When asked to estimate the average work time for all activities required to dispense a prescription for each type of payer, survey respondents reported that, on average, prescriptions paid for by Medicare Part D are the most time consuming, followed by Medicaid, other third-party payers, and prescriptions paid directly by consumers.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

RLD/Board of Pharmacy notes that some pharmacies may not be able to continue operations with diminishing revenues.

HSD notes that funding pharmacy reimbursement changes will be at the direction of the legislature as it is for other Medicaid providers.

AHO/mt:bb