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FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/19

SPONSOR SJC LAST UPDATED 3/9/19 HB _____

SHORT TITLE Pharmacy Benefit Manager Act Changes SB CS/CS/415/SCORC/SJCS

ANALYST Felmley

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY19 | FY20 | FY21 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|----------------------|------|----------------------|------------------------------|------------------|
| Total | | See fiscal impact | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 92, HB 138/aHHHC

SOURCES OF INFORMATION

LFC Files

Responses Received for SB 415/SCORCS from
 Office of Superintendent of Insurance (OSI)
 Retiree Health Care Authority (NMRHCA)
 Albuquerque Public Schools (APS)
 Human Services Department (HSD)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee Substitute for the Senate Corporations and Transportation Committee Substitute for Senate Bill 415 amends and enacts sections of the Pharmacy Benefits Manager Regulation Act (Section 59A-61-3 NMSA 1978) to clarify numerous responsibilities of pharmacy benefits managers (PBMs) related to license renewal with, and revocation by, the Office of Superintendent of Insurance (OSI), contracts with network pharmacies, timely pharmacy reimbursements, and cooperation with OSI investigations. The bill includes language requiring a PBM to notify all network pharmacies of any reimbursement appeal outcomes, and, when an appeal for one pharmacy has been granted, to apply the same outcome to other pharmacies. The bill prohibits PBMs from engaging in certain practices, including false advertising and requiring or preferring one generic drug over another therapeutically equivalent generic. PBMs may not use contracts to stop pharmacies from informing patients when the cash cost of a drug is lower than their insurance co-payment, selling less expensive drugs, or mailing or delivering drugs to patients as an ancillary service.

The substitute recognizes the role of pharmacy service administrative organizations (PSAOs), which represent some pharmacies in negotiating contracts with PBMs; the bill requires PSAOs to register with OSI.

Lastly, the bill authorizes OSI to promulgate rules to enforce the PBM Act and to conduct audits of PBMs to ensure compliance. PBMs would also be required to submit their price lists, and the sources from which they were derived, to OSI on request. It also subjects PBMs to the Trade Practices and Fraud provisions of Chapter 59A, Article 16, NMSA 1978.

FISCAL IMPLICATIONS

RHCA and APS note that provisions in the bill may limit their ability to contain costs through established practices of their shared PBM, Express Scripts (ESI). For example, both currently limit generic drugs to those included in their plan formularies. Each agency anticipates the loss of these cost-saving strategies may result in higher drug costs.

LFC program evaluations of the Interagency Benefits Advisory Committee (IBAC), of which RHCA and APS are members, have found the IBAC's use of a single PBM by all agency plans has resulted in an estimated \$10 million in annual savings on prescription drugs for the agencies. Those savings are primarily the result of increased negotiating power due to combined membership: together, the IBAC agencies cover approximately 150 thousand public employees and retirees. However, savings are also related to a variety of cost-containment measures found in both plan design and pharmacy benefit management. It is possible that SB415 would foreclose some of these options and, therefore, result in higher prescription drug costs for the IBAC and the state; it is also possible the agencies and their PBM could shift plan design and business practices sufficiently to both comply with the bill and save money.

HSD reports the managed-care organizations (MCOs) that contract with the Medicaid program all have their own PBMs that would be subject to the provisions of the substitute. The agency notes that some opportunities for the MCOs to realize cost savings may be lost if PBMs cannot contract with affiliate pharmacies.

SIGNIFICANT ISSUES

OSI reports the cost of pharmaceuticals has risen significantly in recent years. This has contributed to the rising cost of healthcare in general and has had an impact on the individual consumer, because of rising out-of-pocket costs and increasing premiums. This bill would allow for transparency and predictability in the transactions between PBMs and pharmacies in New Mexico. Currently, there is no clear method to determine how a PBM establishes the amount of reimbursement it pays to pharmacies. By requiring the PBM to seek approval for any methodology other than maximum allowable cost or average wholesale price, OSI will be able to ensure compliance and verify derivative pricing sources. The bill also prohibits fees not specifically authorized by statute or set out in contract. While PBMs can continue to offer incentives to pharmacies, the bill would prohibit the practice of lowering reimbursements to a pharmacy because it did not sell enough of a particular drug or because a patient did not continue taking a prescribed medication.

The bill includes a number of clauses that address patient choice. OSI reports that disallowing contracts that prohibit pharmacies from mailing or delivering prescriptions, or that prohibit them from filling some prescriptions they are otherwise licensed to fill, may expand consumer options

and ensure better service for patients who are homebound or too ill to visit their local pharmacy. The bill would not allow PBMs to steer consumers only to pharmacies they own or with whom they are affiliated and would ban the use of “gag clauses” that prohibit pharmacies from informing consumers that they may be able to acquire a particular drug at a lower rate. OSI suggests these changes could contribute to greater financial predictability for pharmacies and reduce out-of-pocket costs to consumers.

Lastly, OSI points out that independent pharmacies rely on pharmacy service administrative organizations (PSAOs) to negotiate contracts, submit claims and to process reimbursement appeals with PBMs. Requiring the PSAOs to register with OSI allows for regulatory oversight of the entire pharmaceutical claims process.

PERFORMANCE IMPLICATIONS

The Pharmacy Benefits Manager Regulation Act became law in 2014, but OSI has not yet promulgated regulations to implement its full responsibilities under that act. OSI reports SB415 will allow the agency to promulgate regulations based on clear statutory guidance.

ADMINISTRATIVE IMPLICATIONS

OSI reports increased agency responsibilities resulting from the Substitute can be handled with existing staff for the current fiscal year.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB92, which amends the Pharmacy Benefits Manager Regulation Act; both bills seek to clarify the definition of a pharmacy benefit manager, both prohibit PBM-initiated gag rules, and both would expand protections for pharmacy grievances.

Relates to HB138/aHHHC, which amends several statutes, including the Pharmacy Benefits Manager Regulation Act, to require health insurers to allow local community pharmacies to fill prescriptions that patients would otherwise be required to fill through mail-order pharmacies.