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FISCAL IMPACT REPORT

SPONSOR <u>HJCS</u>	LAST UPDATED <u>3/18/2023</u> ORIGINAL DATE <u>3/13/2023</u>
SHORT TITLE <u>Federal 340B Drug PGM</u>	BILL NUMBER <u>CS/CS/House Bill 540/ec/HHHCS/HJC S</u>
	ANALYST <u>Toal</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (Dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	See fiscal impact					

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

- Human Services Department (HSD)
- Office of Superintendent of Insurance (OSI)
- Office of the Attorney General (NMAG)
- NM Public School Insurance Authority (NMPSIA)
- NM Retiree Health Care Authority (NMRHCA)
- General Services Department (GSD)
- University of New Mexico (UNM)

SUMMARY

Synopsis of HJC Substitute for HHC Substitute for House Bill 540

The House Judiciary Committee Substitute for House Bill 540 removes the provisions in the HHC substitute related to manufacturers and also removes the provisions regarding Pharmacy Benefit Manager (PBM) reporting to OSI. The HJC substitute retains the provisions that prohibit PBMs from discriminating against a 340B covered entity on the basis of its participation in the federal 340B program by:

- 1) Reimbursing a covered entity for a 340B drug at a rate lower than that paid for the same drug to pharmacies that are non-covered entities for 340B;
- 2) Assessing a fee, chargeback or other adjustment to the covered entity that is not assessed to non-covered entities;
- 3) Imposing a provision that prevents or interferes with a person’s choice to receive 340B drugs from a covered entity; or
- 4) Imposing terms or conditions that differ from terms or conditions imposed on a non-covered entity.

House Bill 540 would prohibit a Pharmacy Benefit Manager (PBM) from engaging in activities or imposing terms and conditions that would discriminate against an entity utilizing the federal 340B drug pricing program pursuant to the federal Public Health Act. HB540 would ensure the continued availability of discounted drug pricing for covered entities under the 340B drug pricing program.

Discriminatory reimbursement refers to the growing practice of PBMs offering covered entities and their in-house pharmacies lower reimbursement rates than non-340B providers or outright excluding them from their pharmacy network.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

Other than UNM, which reported the potential lost revenues in the chart below, no state agency reported an impact on their operations, with the sole exception of the OSI, which noted that it does not have the authority nor staff to adequately review the reporting required by the bill.

UNM notes, HB540 would not have any fiscal implications on a state directly, however, it would support entities covered by the federal 340 program that provide large shares of uncompensated care to New Mexicans.

UNM reported the potential lost revenue as follows:

FY23	FY24	FY25	3 Year Total Cost
\$15,000.0	\$26,400.0	\$39,600.0	\$81,000.0

SIGNIFICANT ISSUES

None of the state agencies reported significant issues with the bill. UNM reported significant fiscal and operational impacts if its access to 340B pricing is not restored.

UNM notes:

HB540 would improve the operating margins of hospitals that are considered covered entities under the 340B program, a program that was designed to provide financial assistance to those hospitals that have a disproportionate share of uncompensated care.

New Mexico has 156 individual covered entities with 647 clinical sites across the state. The 340B program is critical to the healthcare delivery infrastructure of our state and the revenue generated by the program significantly contributes to the availability of healthcare access, including access in rural communities.

UNM Hospitals provides tens of millions of dollars in uncompensated medical care to patients throughout the state, including services for cancer, pediatrics, surgery and maternity care. UNM Hospitals also offers financial assistance, including self-pay discount program and charity care programs, to help patients access the services they need. During the fiscal year ended June 30, 2022, UNM Hospitals provided more than \$82 million in charity care to patients.

UNM also notes:

States including Arizona, Colorado, Virginia, and Illinois have adopted legislation like House Bill 540. Due to inaction at the federal level, it seems that there are no viable alternatives to protect the 1992 federal legislation's original intent to provide financial assistance to those hospitals that have a disproportionate share of uncompensated care.

PERFORMANCE IMPLICATIONS

The failure of PBMs to not provide 340B pricing to 340B hospitals and their contracted pharmacies may result in a reduction in the hospitals' ability to serve uninsured and indigent patients.

RBT/ne/mg