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## FISCAL IMPACT REPORT

**SPONSOR** Feldman **ORIGINAL DATE** 02/01/11 **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_  
**SHORT TITLE** Pharmacy Benefits Manager Regulation Act **SB** 16/SPACS  
**ANALYST** Hanika-Ortiz

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$50.0	\$25.0	Recurring	Insurance Department Suspense Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of Bill

The Senate Public Affairs Committee substitute for Senate Bill 16 enacts the pharmacy benefits manager regulation act (act) and creates authority for the licensure and regulation of Pharmacy Benefit Managers (PBMs) through the Public Regulation Commission/Insurance Division (PRC/ID).

The act sets up conditions for licensure and for suspension or revocation of a license within several new sections of the New Mexico Insurance Code.

Section 2: The act defines PBMs as a "...person...provides claims administration, benefit design and management, pharmacy network management, negotiation and administration of product discounts, rebates, and other benefits accruing to the PBMs or other prescription drug or device service to third parties".

Section 3: The act does not apply to a person that is a licensed health care facility, pharmacy, licensed health care professional, health insurer, union, HMO, Medicare advantage plan or prescription drug plan when that person is providing formulary services to its own patients, employees, members or beneficiaries.

Section 4: A PBM cannot require a pharmacy to participate in one contract in order to participate in another; sets specifics for contracts that include time limits for the PBM to pay the pharmacy

for services rendered.

Section 5: Prohibits the PBM from contacting a covered individual without permission.

Section 6: PBMs are subject to the Pharmacy Act to the same extent as a pharmacy or pharmacist; provides for no more than one independent audit of PBMs records to verify performance per twelve-month period.

Section 7: Allows for a civil action to enforce the provisions of the act.

Section 8: Imposes a PBM application and filing fee schedule.

### **FISCAL IMPLICATIONS**

The assumptions include an estimate of 50 registrations the first year and continuation fees thereafter.

The bills fee schedule for PBMs is similar to existing fee schedules imposed upon insurers and HMOs. Current fees pursuant to the existing New Mexico Insurance Code are credited to the Insurance Department Suspense Fund (Fund). Existing statute provides that any balance in the Fund greater than one-half of that fiscal year's appropriation shall revert to the general fund.

PBMs argue that further regulation may increase operating costs and reduce their ability to pass on cost-savings to consumers.

### **SIGNIFICANT ISSUES**

The bill seeks to regulate entities not currently regulated in New Mexico, the Pharmacy Benefits Managers (mail order Pharmacies). This may allow the PRC/ID to be in a position to help consumers when they bring complaints about their dealings with these entities. Recent lawsuits by pharmacists and consumer organizations claim that PBMs are pocketing huge profits by serving as no more than middlemen for drug manufacturers, and that they are pocketing rebate profits instead of passing savings on to their clients.

PBMs, while not pharmacies, often employ pharmacists that typically practice without a pharmacist license issued by the consumer's state. They also have access to confidential physician, patient, and pharmacist information.

Some critics of the bill argue that various services performed by PBMs (e.g., internet activities, mail service pharmacy licensure, drug utilization review, claims management) are already regulated under existing federal and state laws.

### **PERFORMANCE IMPLICATIONS**

The Board of Pharmacy regulates pharmacies and pharmacists, but does not currently regulate PBMs. The total number of entities will not be known until registration is required.

### **ADMINISTRATIVE IMPLICATIONS**

PRC maintains that no additional employees are anticipated as needed to handle this project.

**TECHNICAL ISSUES**

It is unclear how PRC anticipates regulating PBM's which do business primarily through the internet.

It is unclear to what extent state statute provides for disclosure to patients, physicians, and insurers of the financial relationships between PBMs, pharmacists, and drug manufacturers. On the other hand, PBMs have argued against legislation which they perceive to weaken their ability to bargain for cheaper drugs because it may allow competitors, drug manufacturers, and regulators to gain knowledge of price negotiations.

**OTHER SUBSTANTIVE ISSUES**

PBMs are accused of not passing on rebates and discounts from drug manufacturers to health plans and consumers, steering consumers to more expensive prescription drugs, and using anti-competitive practices.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

PRC/ID will not be able to impose licensing fees on PBM's operating in New Mexico.

**POSSIBLE QUESTIONS**

How many PBMs are doing business in New Mexico?

AHO/mew