LFC Requestor: Eric Chenier

2024 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: House
Number: 0165
Category: Bill
Type: Introduced

Date (of **THIS** analysis)**:** 01/22/24
Sponsor(s): Gail Armstrong and Tara Jaramillo
Short Title: Pharmacy Provider Reimbursement

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 24	**FY 25**		
$0	$0	N/A	N/A

Note: HB0165 proposes to appropriate $7,500,000 from the General Fund to the Health Care Authority Department for expenditure in FY25. Any unexpended or unencumbered balance at the end of fiscal year 2025 shall revert to the General Fund.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 24	**FY 25**	**FY 26**		
$0	$0	$0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 24	FY 25	FY 26	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	$0	$0	$0	$0	N/A	N/a

HB0165 will have no direct impact on NMDOH operating budget.

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: None

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

House Bill 165 (HB0165) proposes to introduce a new section of the Public Assistance Act (Section 27-2-12.34 NMSA 1978) that would:

- Require each managed care organization that contracts with the Health Care Authority Department to reimburse community-based pharmacy providers for the ingredient cost of a drug (at least equal to the national average drug acquisition cost, or the wholesale acquisition cost) and a professional dispensing fee.
- Require the Health Care Authority Department to conduct a study to determine a reasonable professional dispensing fee whenever it issues a requires for proposals for managed care organizations.
- Require that by January 1, 2025, and annually thereafter the Health Care Authority Department shall compile a list of all community-based pharmacy providers.

HB0165 also provides definitions, including for a "community-based pharmacy provider" as a pharmacy that is open to the public for filling prescriptions, located in the state or near the state border, and is not government-/hospital-/hospital-corporation-/medical practice-/corporate-owned or mail order.

HB0165 proposes to appropriate $7.5 million from the General Fund to the Health Care Authority Department for expenditure in FY25 to increase reimbursement for community-based pharmacy provider services and to conduct a study to determine a reasonable professional dispensing fee for pharmacy providers.

Is this an amendment or substitution? ☐ Yes ☒ No

Is there an emergency clause? ☐ Yes ☒ No

b) Significant Issues

New Mexico has a health care provider shortage which negatively impacts preventive care and access to treatment. (Health Equity (nmhealth.org)) In discussions related to access to care, pharmacy services are often not considered. Nevertheless, pharmacy services are similarly vulnerable. For example, the 2023 NM Health Care Workforce Committee's Annual Report indicate that there are 1,820 licensed pharmacists practicing in New Mexico - this represents a shortage of 482 pharmacists needed to bring all counties below benchmarks to national provider-to-population values. Additionally, 29 of 33 counties do not meet the national benchmark of provider to population.(NMHCWF_2023_Report_OCt_2023.pdf) In addition, recent closures and

bankruptcy of national chains have caused the potential for many to be left without access to the medications they need. (Drugstore closures could make pharmacy deserts even worse | CNN Business)

Community pharmacies serve as accessible locations for patient-centered, medication management services that enhance the health and wellness of communities. And while chain pharmacies are a significant stakeholder, access to community pharmacies in rural areas relies on regional franchises and independently owned pharmacies. (Access to community pharmacies: A nationwide geographic information systems cross-sectional analysis - Journal of the American Pharmacists Association (japha.org))

Closures of independent pharmacies can impact patient access to healthcare services. Independent pharmacies are particularly susceptible to closure due to decreased reimbursement associated with increased spread pricing and direct and indirect remuneration fees by pharmacy benefit managers. State policies that increase medication dispensing fees or create new billing opportunities for pharmacist-provided services in rural and medically underserved areas may help. The financial sustainability of independent pharmacies is crucial to maintaining population access to pharmacies in rural areas and to prevent a further exacerbation of the urban-rural divide in health care access.(Access to community pharmacies: A nationwide geographic information systems cross-sectional analysis - Journal of the American Pharmacists Association (japha.org))

In terms of options, fee-for-service Medicaid outpatient drug reimbursement is based on three principal factors. First, states pay an "ingredient cost," which compensates pharmacies for the costs of acquiring a drug. Second, states add an additional "dispensing fee" that is meant to help cover pharmacies' operating expenses and profit margins. Third, the Medicaid Drug Rebate Program establishes federally mandated rebates from manufacturers to Medicaid for each prescription. Because list prices have increased more quickly than the prices actually paid by pharmacies, estimating appropriate reimbursements has become challenging.(Abandoning List Prices In Medicaid Drug Reimbursement Did Not Affect Spending | Health Affairs)

HB0165 would help to support community pharmacies by improving reimbursement for medications as well as providing a mechanism to evaluate reimbursement for the services provided, ensuring the financial sustainability of these healthcare providers and access to care. Note: as of September 2022, the Medicaid-covered outpatient prescription drug reimbursement for New Mexico is the lower of the Federal Upper Limit (FUL), National Average Drug Acquisition Cost (NADAC), Wholesale Acquisition Cost (WAC) plus 6%, the ingredient cost, or the Usual and Customary Charge (U&C), plus a dispensing fee of $10.30.(Pharmacy Pricing | Medicaid; Medicaid Covered Outpatient Prescription Drug Reimbursement Information by State | Medicaid)

Of note, given the importance of pharmacies in general, it is unclear why HB0165 seeks to explicitly exclude government-/hospital-/hospital-corporation-/medical practice-/corporate-owned or mail order pharmacies (i.e., only applies to independent pharmacies) from consideration.

Related bills in 2023 included HB51 – Prescription Drug Affordability Board Act (died), HB132 – Mail-Order & Community Pharmacy Access (died), and HB451 – Medicaid Prgm Dispensing Fee Reimbursement (died).

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

☐ Yes ☒ No

- Is this proposal related to the NMDOH Strategic Plan? ☒ Yes ☐ No

☒ **Goal 1**: We expand equitable access to services for all New Mexicans
☐ **Goal 2**: We ensure safety in New Mexico healthcare environments
☒ **Goal 3**: We improve health status for all New Mexicans
☐ **Goal 4**: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

☐ Yes ☒ No ☐ N/A

- If there is an appropriation, is it included in the LFC Budget Request?

☐ Yes ☒ No ☐ N/A

- Does this bill have a fiscal impact on NMDOH? ☐ Yes ☒ No

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? ☐ Yes ☒ No

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None

6. TECHNICAL ISSUES

Are there technical issues with the bill? ☐ Yes ☒ No

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? ☐ Yes ☒ No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? ☐ Yes ☒ No
- Does this bill conflict with federal grant requirements or associated regulations?

☐ Yes ☒ No

- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? ☐ Yes ☒ No

8. DISPARITIES ISSUES

Pharmacies can be lifelines in rural or low-income areas. (Drugstore closures are leaving millions without easy access to a pharmacy (msn.com) The negative impact of a lack of access to pharmacies is most pronounced for minority groups. For example, a USC study published in 2021 found that black and Latino neighborhoods in 30 US cities had fewer pharmacies than white and diverse neighborhoods from 2007 to 2015. (Fewer Pharmacies In Black And Hispanic/Latino Neighborhoods Compared With White Or Diverse Neighborhoods, 2007–15 | Health Affairs) In some areas pharmacies do more than just fill medications - they may be an integral access point for primary care services for many underserved communities. (Drugstore closures could make pharmacy deserts even worse | CNN Business) HB0165 may help to improve access to care and healthcare status, especially for rural and minority communities.

9. HEALTH IMPACT(S)

The expanded role of 21st century pharmacists will position them to have greater impact in the shifting landscape of health care and public health. Beyond the dispensing of

medications, pharmacists also provide a spectrum of prevention services to help improve health outcomes. (How Pharmacists Can Improve Our Nation's Health | Public Health Grand Rounds | CDC). For example, most chronic diseases depend on the use of long-term medications and high levels of adherence for successful management. As medication experts, the pharmacist is a natural member of the chronic disease management team. CDC recognizes pharmacists can help to achieve public health outcomes not only in chronic diseases but also in disease testing, antimicrobial stewardship, immunizations, health coaching, and many others. (Pharmacy Contributions to Improved Population Health: Expanding the Public Health Roundtable (cdc.gov)) As a result, HB0165 may help to ensure a more sustainable financial environment for pharmacies that can contribute to improve health outcomes for communities.

10. ALTERNATIVES

Moving from list price–based reimbursement to invoice-based models appears to be able to change the composition of fee-for-service Medicaid payments to pharmacies. There are likely ways to further improve the accuracy of invoice-based pricing models and alter total payments. (Abandoning List Prices In Medicaid Drug Reimbursement Did Not Affect Spending | Health Affairs)

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If HB0165 is not enacted, then a new section of the Public Assistance Act (Section 27-2-12.34 NMSA 1978) would not be created that would require each managed care organization that contracts with the Health Care Authority Department to reimburse community-based pharmacy providers for costs of medications (including the ingredient cost and a professional dispensing fee).

12. **AMENDMENTS**

None