

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 153

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

AN ACT

RELATING TO HEALTH COVERAGE; ENACTING SECTIONS OF THE HEALTH CARE PURCHASING ACT, THE NEW MEXICO INSURANCE CODE, THE HEALTH MAINTENANCE ORGANIZATION LAW AND THE NONPROFIT HEALTH CARE PLAN LAW TO PROVIDE ENROLLEES WITH PARITY OF ACCESS AND PAYMENT BETWEEN PARTICIPATING MAIL-ORDER PHARMACIES AND PARTICIPATING COMMUNITY PHARMACIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** A new section of the Health Care Purchasing Act is enacted to read:

"[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act, that offers a prescription drug or device

.207437.2

underscored material = new  
[bracketed material] = delete

1 benefit shall permit:

2 (1) any pharmacy or pharmacist licensed in the  
3 state to participate as a participating community pharmacy or  
4 participating mail-order pharmacy if that pharmacy agrees to  
5 accept the terms and conditions the group health coverage  
6 establishes; and

7 (2) an enrollee to fill a covered prescription  
8 at the enrollee's option at any participating community  
9 pharmacy or participating mail-order pharmacy; provided that  
10 the participating community pharmacy accepts reimbursement at a  
11 rate comparable to that of a participating mail-order pharmacy.

12 B. A group health plan shall not impose a  
13 copayment, coinsurance or other condition on an enrollee who  
14 elects to fill a covered prescription from any participating  
15 community pharmacy that is not also imposed on an enrollee who  
16 elects to fill a covered prescription at a participating mail-  
17 order pharmacy or at any other community pharmacy.

18 C. A group health plan shall not require an  
19 enrollee, as a condition of payment or reimbursement, to  
20 purchase pharmacy services, including prescription drugs,  
21 exclusively through a mail-order pharmacy.

22 D. Any provision in a group health plan, including  
23 any form of self-insurance, offered, issued or renewed under  
24 the Health Care Purchasing Act, that is contrary to any  
25 provision of this section is void to the extent of that

.207437.2

1 conflict.

2 E. As used in this section:

3 (1) "covered prescription" means a drug or  
4 device for which a group health plan has agreed to make  
5 reimbursement under the terms of the group health plan;

6 (2) "participating community pharmacy" means  
7 an entity physically located in the state that operates in the  
8 regular course of business as a retail pharmacy, irrespective  
9 of the cost or type of prescription drugs it dispenses, and:

10 (a) that has agreed to accept a group  
11 health plan's contracted payment rate, and, pursuant to this  
12 agreement, an enrollee may fill a prescription and pay a  
13 copayment or coinsurance that is more advantageous to the  
14 enrollee than the copayment or coinsurance for a prescription  
15 sought from a retail pharmacy that has not agreed to the group  
16 health plan's contracted payment rate; and

17 (b) that, in the two years preceding the  
18 date the pharmacy has otherwise become eligible to become a  
19 participating community pharmacy, has not been convicted of  
20 fraud, waste or abuse, or entered into a settlement pursuant to  
21 allegations of fraud, waste or abuse, in matters related to or  
22 arising out of a health coverage program established pursuant  
23 to Title 18, 19 or 21 of the federal Social Security Act; and

24 (3) "participating mail-order pharmacy" means,  
25 irrespective of the cost or type of prescription drugs it

.207437.2

1 dispenses, a retail pharmacy:

2 (a) that is registered, headquartered or  
3 has its base of operations physically located in the state;

4 (b) for which the majority of the  
5 pharmacy's business consists of dispensing a prescription drug  
6 or device under a prescription drug order and having the drug  
7 or device delivered to a patient by the United States mail, a  
8 common carrier or a delivery service. Mail-order pharmacies  
9 include pharmacies that do business via the internet or other  
10 electronic media;

11 (c) that has agreed to accept a group  
12 health plan's contracted payment rate, and, pursuant to this  
13 agreement, an enrollee may fill a prescription and pay a  
14 copayment or coinsurance that is more advantageous to the  
15 enrollee than the copayment or coinsurance for a prescription  
16 sought from a retail pharmacy that has not agreed to the group  
17 health plan's contracted payment rate; and

18 (d) that, in the two years preceding the  
19 date the pharmacy has otherwise become eligible to become a  
20 participating mail-order pharmacy, has not been convicted of  
21 fraud, waste or abuse, or entered into a settlement pursuant to  
22 allegations of fraud, waste or abuse, in matters related to or  
23 arising out of a health coverage program established pursuant  
24 to Title 18, 19 or 21 of the federal Social Security Act."

25 **SECTION 2.** A new section of Chapter 59A, Article 22 NMSA

.207437.2

underscoring material = new  
~~[bracketed material] = delete~~

1 1978 is enacted to read:

2 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING  
3 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

4 A. An individual health insurance policy, health  
5 care plan or certificate of health insurance that is delivered,  
6 issued for delivery or renewed in this state and that provides  
7 a prescription drug or device benefit shall permit:

8 (1) any pharmacy or pharmacist licensed in the  
9 state to participate as a participating community pharmacy or  
10 participating mail-order pharmacy if that pharmacy agrees to  
11 accept the terms and conditions the health insurance policy,  
12 health care plan or certificate of insurance establishes; and

13 (2) an insured to fill a covered prescription  
14 at the insured's option at any participating community pharmacy  
15 or participating mail-order pharmacy; provided that the  
16 participating community pharmacy accepts reimbursement at a  
17 rate comparable to that of a participating mail-order pharmacy.

18 B. An insurer shall not impose a copayment,  
19 coinsurance or other condition on an insured who elects to fill  
20 a covered prescription from any participating community  
21 pharmacy that is not also imposed on an insured who elects to  
22 fill a covered prescription at any participating mail-order  
23 pharmacy.

24 C. An insurer shall not require an insured, as a  
25 condition of payment or reimbursement, to purchase pharmacy

.207437.2

underscoring material = new  
~~[bracketed material] = delete~~

1 services, including prescription drugs, exclusively through a  
2 mail-order pharmacy.

3 D. A health insurance policy, health care plan or  
4 certificate of insurance that is delivered, issued for delivery  
5 or renewed in this state and that contains a provision contrary  
6 to any provision of this section is void to the extent of that  
7 conflict.

8 E. As used in this section:

9 (1) "covered prescription" means a drug or  
10 device for which a group health plan has agreed to make  
11 reimbursement under the terms of the policy, plan or  
12 certificate;

13 (2) "participating community pharmacy" means  
14 an entity physically located in the state that operates in the  
15 regular course of business as a retail pharmacy, irrespective  
16 of the cost or type of prescription drugs it dispenses, and:

17 (a) that has agreed to accept an  
18 insurer's contracted payment rate, and, pursuant to this  
19 agreement, an insured may fill a prescription and pay a  
20 copayment or coinsurance that is more advantageous to the  
21 insured than the copayment or coinsurance for a prescription  
22 sought from a retail pharmacy that has not agreed to the  
23 insurer's contracted payment rate; and

24 (b) that, in the two years preceding the  
25 date the pharmacy has otherwise become eligible to become a

1 participating community pharmacy, has not been convicted of  
2 fraud, waste or abuse, or entered into a settlement pursuant to  
3 allegations of fraud, waste or abuse, in matters related to or  
4 arising out of a health coverage program established pursuant  
5 to Title 18, 19 or 21 of the federal Social Security Act; and

6 (3) "participating mail-order pharmacy" means,  
7 irrespective of the cost or type of prescription drugs it  
8 dispenses, a retail pharmacy:

9 (a) that is registered, headquartered or  
10 has its base of operations physically located in the state;

11 (b) for which the majority of the  
12 pharmacy's business consists of dispensing a prescription drug  
13 or device under a prescription drug order and having the drug  
14 or device delivered to a patient by the United States mail, a  
15 common carrier or a delivery service. Mail-order pharmacies  
16 include pharmacies that do business via the internet or other  
17 electronic media;

18 (c) that has agreed to accept an  
19 insurer's contracted payment rate, and, pursuant to this  
20 agreement, an insured may fill a prescription and pay a  
21 copayment or coinsurance that is more advantageous to the  
22 insured than the copayment or coinsurance for a prescription  
23 sought from a retail pharmacy that has not agreed to the  
24 insurer's contracted payment rate; and

25 (d) that, in the two years preceding the

.207437.2

1 date the pharmacy has otherwise become eligible to become a  
2 participating mail-order pharmacy, has not been convicted of  
3 fraud, waste or abuse, or entered into a settlement pursuant to  
4 allegations of fraud, waste or abuse, in matters related to or  
5 arising out of a health coverage program established pursuant  
6 to Title 18, 19 or 21 of the federal Social Security Act."

7 SECTION 3. A new section of Chapter 59A, Article 23 NMSA  
8 1978 is enacted to read:

9 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING  
10 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

11 A. A group or blanket health insurance policy,  
12 health care plan or certificate of health insurance that is  
13 delivered, issued for delivery or renewed in this state and  
14 that provides a prescription drug or device benefit shall  
15 permit:

16 (1) any pharmacy or pharmacist licensed in the  
17 state to participate as a participating community pharmacy or  
18 participating mail-order pharmacy if that pharmacy agrees to  
19 accept the terms and conditions the health insurance policy,  
20 health care plan or certificate of insurance establishes; and

21 (2) an insured to fill a covered prescription  
22 at the insured's option at any participating community pharmacy  
23 or participating mail-order pharmacy; provided that the  
24 participating community pharmacy accepts reimbursement at a  
25 rate comparable to that of a participating mail-order pharmacy.

.207437.2

1           B. An insurer shall not impose a copayment,  
2 coinsurance or other condition on an insured who elects to fill  
3 a covered prescription from any participating community  
4 pharmacy that is not also imposed on an insured who elects to  
5 fill a covered prescription at any participating mail-order  
6 pharmacy.

7           C. An insurer shall not require an insured, as a  
8 condition of payment or reimbursement, to purchase pharmacy  
9 services, including prescription drugs, exclusively through a  
10 mail-order pharmacy.

11           D. A health insurance policy, health care plan or  
12 certificate of insurance that is delivered, issued for delivery  
13 or renewed in this state and that contains a provision contrary  
14 to any provision of this section is void to the extent of that  
15 conflict.

16           E. As used in this section:

17               (1) "covered prescription" means a drug or  
18 device for which a group health plan has agreed to make  
19 reimbursement under the terms of the group health plan;

20               (2) "participating community pharmacy" means  
21 an entity physically located in the state that operates in the  
22 regular course of business as a retail pharmacy, irrespective  
23 of the cost or type of prescription drugs it dispenses, and:

24                   (a) that has agreed to accept an  
25 insurer's contracted payment rate, and, pursuant to this

.207437.2

1 agreement, an insured may fill a prescription and pay a  
2 copayment or coinsurance that is more advantageous to the  
3 insured than the copayment or coinsurance for a prescription  
4 sought from a retail pharmacy that has not agreed to the  
5 insurer's contracted payment rate; and

6 (b) that, in the two years preceding the  
7 date the pharmacy has otherwise become eligible to become a  
8 participating community pharmacy, has not been convicted of  
9 fraud, waste or abuse, or entered into a settlement pursuant to  
10 allegations of fraud, waste or abuse, in matters related to or  
11 arising out of a health coverage program established pursuant  
12 to Title 18, 19 or 21 of the federal Social Security Act; and

13 (3) "participating mail-order pharmacy" means,  
14 irrespective of the cost or type of prescription drugs it  
15 dispenses, a retail pharmacy:

16 (a) that is registered, headquartered or  
17 has its base of operations physically located in the state;

18 (b) for which the majority of the  
19 pharmacy's business consists of dispensing a prescription drug  
20 or device under a prescription drug order and having the drug  
21 or device delivered to a patient by the United States mail, a  
22 common carrier or a delivery service. Mail-order pharmacies  
23 include pharmacies that do business via the internet or other  
24 electronic media;

25 (c) that has agreed to accept an

1 insurer's contracted payment rate, and, pursuant to this  
 2 agreement, an insured may fill a prescription and pay a  
 3 copayment or coinsurance that is more advantageous to the  
 4 insured than the copayment or coinsurance for a prescription  
 5 sought from a retail pharmacy that has not agreed to the  
 6 insurer's contracted payment rate; and

7 (d) that, in the two years preceding the  
 8 date the pharmacy has otherwise become eligible to become a  
 9 participating mail-order pharmacy, has not been convicted of  
 10 fraud, waste or abuse, or entered into a settlement pursuant to  
 11 allegations of fraud, waste or abuse, in matters related to or  
 12 arising out of a health coverage program established pursuant  
 13 to Title 18, 19 or 21 of the federal Social Security Act."

14 SECTION 4. A new section of the Health Maintenance  
 15 Organization Law is enacted to read:

16 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING  
 17 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

18 A. An individual or group health maintenance  
 19 organization contract that is delivered, issued for delivery or  
 20 renewed in this state and that provides a prescription drug or  
 21 device benefit shall permit:

22 (1) any pharmacy or pharmacist licensed in the  
 23 state to participate as a participating community pharmacy or  
 24 participating mail-order pharmacy if that pharmacy agrees to  
 25 accept the terms and conditions the health maintenance contract

.207437.2

1 establishes; and

2 (2) an enrollee to fill a covered prescription  
3 at the enrollee's option at any participating community  
4 pharmacy or participating mail-order pharmacy; provided that  
5 the participating community pharmacy accepts reimbursement at a  
6 rate comparable to that of a participating mail-order pharmacy.

7 B. A health maintenance organization shall not  
8 impose a copayment, coinsurance or other condition on an  
9 enrollee who elects to fill a covered prescription from any  
10 participating community pharmacy that is not also imposed on an  
11 enrollee who elects to fill a covered prescription at a  
12 participating mail-order pharmacy.

13 C. An insurer shall not require an enrollee, as a  
14 condition of payment or reimbursement, to purchase pharmacy  
15 services, including prescription drugs, exclusively through a  
16 mail-order pharmacy.

17 D. A health insurance policy, health care plan or  
18 certificate of insurance that is delivered, issued for delivery  
19 or renewed in this state and that contains a provision contrary  
20 to any provision of this section is void to the extent of that  
21 conflict.

22 E. As used in this section:

23 (1) "covered prescription" means a drug or  
24 device for which a group health plan has agreed to make  
25 reimbursement under the terms of the group health plan;

.207437.2

1                   (2) "participating community pharmacy" means  
2 an entity physically located in the state that operates in the  
3 regular course of business as a retail pharmacy, irrespective  
4 of the cost or type of prescription drugs it dispenses, and:

5                   (a) that has agreed to accept an  
6 insurer's contracted payment rate, and, pursuant to this  
7 agreement, an insured may fill a prescription and pay a  
8 copayment or coinsurance that is more advantageous to the  
9 insured than the copayment or coinsurance for a prescription  
10 sought from a retail pharmacy that has not agreed to the  
11 insurer's contracted payment rate; and

12                   (b) that, in the two years preceding the  
13 date the pharmacy has otherwise become eligible to become a  
14 participating community pharmacy, has not been convicted of  
15 fraud, waste or abuse, or entered into a settlement pursuant to  
16 allegations of fraud, waste or abuse, in matters related to or  
17 arising out of a health coverage program established pursuant  
18 to Title 18, 19 or 21 of the federal Social Security Act; and

19                   (3) "participating mail-order pharmacy" means,  
20 irrespective of the cost or type of prescription drugs it  
21 dispenses, a retail pharmacy:

22                   (a) that is registered, headquartered or  
23 has its base of operations physically located in the state;

24                   (b) for which the majority of the  
25 pharmacy's business consists of dispensing a prescription drug

.207437.2

1 or device under a prescription drug order and having the drug  
2 or device delivered to a patient by the United States mail, a  
3 common carrier or a delivery service. Mail-order pharmacies  
4 include pharmacies that do business via the internet or other  
5 electronic media;

6 (c) that has agreed to accept an  
7 insurer's contracted payment rate, and, pursuant to this  
8 agreement, an insured may fill a prescription and pay a  
9 copayment or coinsurance that is more advantageous to the  
10 insured than the copayment or coinsurance for a prescription  
11 sought from a retail pharmacy that has not agreed to the  
12 insurer's contracted payment rate; and

13 (d) that, in the two years preceding the  
14 date the pharmacy has otherwise become eligible to become a  
15 participating mail-order pharmacy, has not been convicted of  
16 fraud, waste or abuse, or entered into a settlement pursuant to  
17 allegations of fraud, waste or abuse, in matters related to or  
18 arising out of a health coverage program established pursuant  
19 to Title 18, 19 or 21 of the federal Social Security Act."

20 SECTION 5. A new section of the Nonprofit Health Care  
21 Plan Law is enacted to read:

22 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING  
23 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

24 A. An individual or group health care plan that is  
25 delivered, issued for delivery or renewed in this state and

1 that provides a prescription drug or device benefit shall  
2 permit:

3 (1) any pharmacy or pharmacist licensed in the  
4 state to participate as a participating community pharmacy or  
5 participating mail-order pharmacy if that pharmacy agrees to  
6 accept the terms and conditions the health maintenance contract  
7 establishes; and

8 (2) a subscriber to fill a covered  
9 prescription at the subscriber's option at any participating  
10 community pharmacy or participating mail-order pharmacy;  
11 provided that the participating community pharmacy accepts  
12 reimbursement at a rate comparable to that of a participating  
13 mail-order pharmacy.

14 B. A health care plan shall not impose a copayment,  
15 coinsurance or other condition on a subscriber who elects to  
16 fill a covered prescription from any participating community  
17 pharmacy that is not also imposed on a subscriber who elects to  
18 fill a covered prescription at a participating mail-order  
19 pharmacy.

20 C. A health maintenance organization shall not  
21 require a subscriber, as a condition of payment or  
22 reimbursement, to purchase pharmacy services, including  
23 prescription drugs, exclusively through a mail-order pharmacy.

24 D. A health maintenance organization contract that  
25 contains a provision contrary to any provision of this section

.207437.2

1 is void to the extent of that conflict.

2 E. As used in this section:

3 (1) "covered prescription" means a drug or  
4 device for which a group health plan has agreed to make  
5 reimbursement under the terms of the group health plan;

6 (2) "participating community pharmacy" means  
7 an entity physically located in the state that operates in the  
8 regular course of business as a retail pharmacy, irrespective  
9 of the cost or type of prescription drugs it dispenses, and:

10 (a) that has agreed to accept a health  
11 care plan's contracted payment rate, and, pursuant to this  
12 agreement, a subscriber may fill a prescription and pay a  
13 copayment or coinsurance that is more advantageous to the  
14 subscriber than the copayment or coinsurance for a prescription  
15 sought from a retail pharmacy that has not agreed to the health  
16 care plan's contracted payment rate; and

17 (b) that, in the two years preceding the  
18 date the pharmacy has otherwise become eligible to become a  
19 participating community pharmacy, has not been convicted of  
20 fraud, waste or abuse, or entered into a settlement pursuant to  
21 allegations of fraud, waste or abuse, in matters related to or  
22 arising out of a health coverage program established pursuant  
23 to Title 18, 19 or 21 of the federal Social Security Act; and

24 (3) "participating mail-order pharmacy" means,  
25 irrespective of the cost or type of prescription drugs it

.207437.2

1 dispenses, a retail pharmacy:

2 (a) that is registered, headquartered or  
3 has its base of operations physically located in the state;

4 (b) for which the majority of the  
5 pharmacy's business consists of dispensing a prescription drug  
6 or device under a prescription drug order and having the drug  
7 or device delivered to a patient by the United States mail, a  
8 common carrier or a delivery service. Mail-order pharmacies  
9 include pharmacies that do business via the internet or other  
10 electronic media;

11 (c) that has agreed to accept a health  
12 care plan's contracted payment rate, and, pursuant to this  
13 agreement, a subscriber may fill a prescription and pay a  
14 copayment or coinsurance that is more advantageous to the  
15 subscriber than the copayment or coinsurance for a prescription  
16 sought from a retail pharmacy that has not agreed to the health  
17 care plan's contracted payment rate; and

18 (d) that, in the two years preceding the  
19 date the pharmacy has otherwise become eligible to become a  
20 participating mail-order pharmacy, has not been convicted of  
21 fraud, waste or abuse, or entered into a settlement pursuant to  
22 allegations of fraud, waste or abuse, in matters related to or  
23 arising out of a health coverage program established pursuant  
24 to Title 18, 19 or 21 of the federal Social Security Act."

