LFC Requestor: ESQUIBEL, RubyAnn

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: Senate
Category: Bill
Number: 503
Type: Introduced

Date (of **THIS** analysis)**:** 02/24/2025
Sponsor(s): Larry Scott
Short Title: Prohibits certain Pharmacy Benefits MGR Acts

Reviewing Agency: Agency 665 - Department of Health
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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
$ 0	$ 0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
$ 0	$ 0	$ 0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	$ 0	$ 0	$ 0	$ 0	N/A	N/A

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: SB62, HB174

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

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

SB 503 would make changes to the Pharmacy Benefits Manager Regulation Act adding a definition for "patient steering" to mean:

- A pharmacy benefits manager directing patients to use a preferred pharmacy through mandatory mail order requirements.
- A pharmacy benefits manager requiring a patient to use a restricted network of pharmacies that only consists of pharmacies approved by the pharmacy benefits manager; or
- The use of copay differentials for pharmacies contracted with the pharmacy benefits manager and pharmacies that are not contracted with the pharmacy benefits manager.

SB 503 would also modify the Pharmacy Benefits Manager Regulation Act to prohibit:

- Conducting or participating in patient steering
- Conducting or participating in spread pricing
- Outlines that a clerical or record keeping error identified during an audit shall not alone constitute fraud or intentional misrepresentation and shall not be the basis of a recoupment unless the error results in an actual overpayment to the pharmacy or the wrong medications being dispensed to the patient.

Is this an amendment or substitution? ☐ Yes ☒ No

Is there an emergency clause? ☐ Yes ☒ No

b) Significant Issues

Pharmacy benefit managers (PBMs) act as the middlemen between pharmacies, drug manufacturers, wholesalers, and health insurance plans. PBMs are responsible for the following processes: prescription drug claim administration; pharmacy network management; negotiation and administration of prescription drug discounts, rebates and other benefits; design, administration or management of prescription drug benefits;

formulary management; payment of claims to pharmacies for dispensing prescription drugs; negotiation or administration of contracts relating to pharmacy operations or prescription benefits.

Vertical integration, which occurs when a PBM has exclusive agreements, specialized investments, or substantial stakes in partner companies, has become increasingly common. According to the Federal Trade Commission Interim Staff Report on PBMs, "The three largest PBMs now manage nearly 80 % of all prescriptions filled in the United States. They are also vertically integrated. As a result, they wield enormous power and influence over patients' access to drugs and the prices they pay." The report also provides the following statistics, which help to portray the significant influence the conglomerates hold:

- The top three PBMs processed nearly 80 percent of prescriptions dispensed by U.S. pharmacies in 2023
- The top six PBMs processed more than 90 percent of prescriptions dispensed by U.S. pharmacies in 2023.
- All top six PBMs are vertically integrated downstream, operating their own mail order and specialty pharmacies.
- Five of the top six PBMs are now part of corporate healthcare conglomerates that also own and operate some of the nation's largest health insurance companies.
- Four of the PBMs are owned by publicly traded parent companies that own affiliates that operate health care clinics.
- Three have recently expanded into the drug private labeling business, partnering with drug manufacturers to distribute drug products under different trade name

Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies

Drug Channels: Mapping the Vertical Integration of Insurers, PBMs, Specialty Pharmacies, and Providers: A May 2024 Update

On January 14, 2025, the FTC released, *Specialty Generic Drugs: A Growing Profit Center for Vertically Integrated Pharmacy Benefit Managers.* The report was a follow up that

focused on specialty generic drugs. The report notes that specialty drugs do not have a standard definition, and their cost may be a factor in their characterization as "specialty". According to the report, numerous specialty generic drugs dispensed at affiliated pharmacies to the largest three PBMs were marked up by hundreds to thousands of percent. All three PBMs reimbursed affiliated pharmacies at a higher rate than unaffiliated pharmacies on nearly every specialty generic drug examined. Furthermore, the report found that dispensing patterns suggest the PBMs may be steering highly profitable prescriptions to their own affiliated pharmacies. Specialty Generic Drugs: A Growing Profit Center for Vertically Integrated Pharmacy Benefit Managers

According to the FTC report, "Between 2013 and 2022, about ten percent of independent retail pharmacies in rural America closed." The FTC report indicates that the vertical integration of PBMs and preferential business agreements to affiliated business, is a disadvantage to unaffiliated pharmacies. Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies

New Mexico was listed as the state with the highest proportion of their adult population living in pharmacy deserts (14.9%) a trend that continues to increase nationwide. Locations and characteristics of pharmacy deserts in the United States: a geospatial study | Health Affairs Scholar | Oxford Academic Of added concern is the closure of pharmacies in rural locations. The Rural Policy Research Institute (RUPRI) brief, Changes in Rural Pharmacy Presence 2023, states that between 2018 and 2023, the number of retail pharmacies declined 5.9% in rural communities, compared to 3.4% in urban communities Rural_Pharmacy_Presence.pdf Rural community pharmacies have long played an important role in healthcare delivery and health education for their communities. They are often cornerstones of rural communities providing access to medication and medical equipment as well as providing medication counseling, monitoring of blood pressure and glucose, and other services. Rural Pharmacies Provide Multi-Faceted Value to Rural Communities - The Rural Monitor

According to a Health Affairs article, independent pharmacies were at greater risk for closure than chain pharmacies. The authors recommended that policy makers should consider strategies to increase the participation of independent pharmacies in Medicare and Medicaid preferred networks managed by pharmacy benefit managers and to increase public insurance reimbursement rates for pharmacies that are at the highest risk for closure. More US Pharmacies Closed Than Opened In 2018–21; Independent Pharmacies, Those In Black, Latinx Communities Most At Risk | Health Affairs

According to the National Academy for State Health Policy, all 50 states have passed legislation regarding pharmacy benefits managers. 30 states have legislation requiring licensure and registration of PBMs, 16 prohibit spread pricing, requiring the PBM to charge the same amount to the health plan as the dispensing pharmacy, 35 limit cost sharing, limiting the amount a patient has to pay, and 2 states have legislation where the PBM has a fiduciary duty to the health plan, requiring any reporting for conflicts of interest. https://nashp.org/state-tracker/state-pharmacy-benefit-manager-legislation/#overview

SB503 would help to support community pharmacies by preventing steering to vertically integrated pharmacies by pharmacy benefit managers, ensuring the financial sustainability of local pharmacies and continued access to care for New Mexicans.

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

SB503 is related to SB62 which restricts the types of fees pharmacy benefits managers can collect

SB503 is related to HB174 which requires group health coverage to reimburse community base pharmacy providers for the ingredient or wholesale acquisition cost of prescription drugs.

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

By ensuring that prescription management programs allow equal access to all pharmacies it can help communities where there are limited pharmacies to ensure any pharmacy can fill a prescription.

This bill helps reduce the risk of closure of community pharmacies and the creation of additional pharmacy deserts in New Mexico. Studies have shown that communities that are pharmacy deserts, as compared with non-pharmacy desert communities, have a higher proportion of people who have a high school education or less, have no health insurance, have public health insurance, speak English "not well" or "not at all", have an ambulatory disability, identify as non-Hispanic Black race, identify as American Indian or Alaskan Native, and identify as Hispanic White race. Locations and characteristics of pharmacy deserts in the United States: a geospatial study | Health Affairs Scholar | Oxford Academic Counties with a high vs low pharmacy desert density had a higher SVI Pharmacy Accessibility and Social Vulnerability | Public Health | JAMA Network Open | JAMA Network

9. HEALTH IMPACT(S)

None.

10. ALTERNATIVES

None.

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

The definition of patient steering would not be added to the Pharmacy Benefits Manager Regulation Act. The Act would not be modified to prohibit steering or spread pricing. Additionally, there would not be an addition to the Act that would prevent a clerical or record keeping error identified during an audit shall not in and of itself constitute fraud or intentional misrepresentation and shall not be the basis of a recoupment unless the error results in an actual overpayment to the pharmacy or the wrong medications being dispensed to the patient.

12. AMENDMENTS

None.