FISCAL IMPACT REPORT

SPONSOR Scott **LAST UPDATED**
ORIGINAL DATE 3/21/2025
SHORT TITLE Prohibit Certain Pharmacy Benefits Mgr. Acts **BILL NUMBER** Senate Bill 503
ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMPSIA		$786.0	$859.0	$1,645.0	Recurring	NMPSIA Fund
RHCA		$2,460.0	$2,460.0	$4,920.0	Recurring	RHCA Fund
Medicaid		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund, Matching Federal Funds
State Health Benefit Plan		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	SHBP Fund
Total		$3,246.0	$3,319.0	$6,565.0	Recurring	Multiple

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

Sources of Information
LFC Files

Agency Analysis Received From
Attorney General's Office (NMAG)
Department of Health (DOH)
Health Care Authority (HCA)
New Mexico Public School Insurance Authority (NMPSIA)
Regulation and Licensing Department (RLD)
Retiree Health Care Authority (RHCA)
Office of Superintendent of Insurance (OSI)
University of New Mexico Health Sciences Center (UNM-HSC)

SUMMARY

Synopsis of Senate Bill 503

Senate Bill 503 (SB503) would amend the Pharmacy Benefits Manager Regulation Act. The bill defines patient steering as a pharmacy benefits manager (PBM) directing a patient to use a preferred pharmacy through mandatory mail order requirements, a PBM requiring a patient to use a restricted network of pharmacies that only consists of pharmacies approved by the PBM, or the use of copay differentials for pharmacies contracted with the PBM and pharmacies that are not contracted with the PBM.

The bill defines spread pricing as when a PBM reimburses a pharmacy for a prescription and bills the health plan payor at a higher price than was reimbursed for the same prescription.

Section 2 seeks to amend Section 59A-61-5 of the Act by prohibiting PBMs from engaging in spread pricing and patient steering as defined. Section 2 adds a new Subsection(G) that states that a clerical or recordkeeping error does not constitute fraud or intentional misrepresentation and cannot be the basis for recoupment unless the error results in an actual overpayment to the pharmacy or the wrong medication is dispensed to the patient.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The New Mexico Public School Insurance Authority (NMPSIA) reports under the provisions of the bill the agency could have an estimated impact of $786 thousand impact in the first year. The estimate reflects diminished price efficiencies from their PBM's "spread pricing" model, and administrative fees.

The Retiree Health Care Authority (RHCA) reports under the provisions of the bill the agency could have an estimated impact of $2.4 million impact in the first year. Eliminating pharmacy network contracting as a strategy to control costs could increase plan costs.

The Health Care Authority (HCA) reports that, for Medicaid managed care, the bill could increase costs the MCOs pay to pharmacies possibly driving up capitation rates. HCA was unable to determine the potential impact to the general fund.

HCA estimates the state health benefits plan (SHB) would incur increased costs under the provisions of the bill but is unable to determine estimated costs. The bill would disincentivize encouraging members to use network pharmacies by imposing higher cost sharing at non-network pharmacies, likely increasing drug costs. Eliminating spread pricing has the potential to generate savings, but it is not clear how much savings this would generate.

SIGNIFICANT ISSUES

The Office of the Superintendent of Insurance (OSI) notes limiting the circumstances in which a recoupment can occur could increase the net amount of pharmacy reimbursements.

The elimination of patient steering may have a positive effect on reducing out-of-pocket expenses for patients utilizing pharmacy benefits.

Spread pricing is a PBM business practice wherein PBMs charge more to health plans than they pay pharmacies for prescription drugs. The difference, or "spread," is the PBM's profit. Spread pricing increases PBM revenue while fostering unsustainably low reimbursement rates for pharmacies. The proposed elimination of spread pricing could increase the amount pharmacies are reimbursed for claims by creating parity between the amount PBMs bill insurance and reimburse pharmacies. It could also affect insurance plan drug formularies to favor low-cost medications with large manufacturer rebates and increase access to low-cost medications.

PBMs could increase administrative fees charged to insurance companies to make up for the loss of profit caused by spread pricing prohibitions.

The University of New Mexico Health Sciences Center (UNMHSC) reports the bill's proposed additional regulations could save costs for UNMHSC's pharmacy operations.

UNMHSC notes patient steering, such as encouraging mail-order services or removing preferred pharmacies from a network, increases PBM market share while lowering reimbursement rates for competing pharmacies.

In the specialty market the following tactics are used:

- Requiring providers to obtain drugs from PBM-affiliated pharmacies for clinical administration (white bagging).
- Requiring patients to obtain drugs from PBM-affiliated pharmacies and bring them to providers for administration (brown bagging).
- Bundling exclusive services and assets to promote use of affiliated pharmacies.
- Expediting resolution of drug utilization management requirements for prescriptions sent to affiliated pharmacies, but not for independent providers.
- Conducting targeted marketing campaigns to patients and specialty providers.

ADMINISTRATIVE IMPLICATIONS

NMPSIA notes the bill's proposed changes would necessitate adjustments to existing contract management, accounting processes, and oversight of claims management due to the per claim fee structure.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 503 relates to Senate Bill 62 as both seek to regulate PBMs, and House Bill 174 which addresses pharmacy practices.

TECHNICAL ISSUES

OSI suggests the following amendments.

> On page 6, lines 17 – 24: As written, the paragraph indicates that a clerical or typographical error could be inferred or interpreted to constitute fraud in the case of an overpayment. OSI recommends amending the language such that these ideas are kept separate.
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> On page 6, line 22: The term recoupment could be interpreted to mean recoupment of the entire claim. OSI recommends clarifying that only the amount overpaid to the pharmacy or charged for the wrong medication can be recouped.

OTHER SUBSTANTIVE ISSUES

The Retiree Health Care Authority (RHCA) reports all pharmaceutical pricing methodologies could be evaluated such as pass-through, traditional (i.e., spread pricing), national average drug

acquisition costs (NADAC), and hybrids for the best approach on behalf members while ensuring community access. In addition, alternative models could be used to adjust discounts from average wholesale pricing (AWP) and provide a higher dispensing fee for independent pharmacies. Under this approach, the current AWP methodology is maintained. Another option could be to carve out local independent pharmacies from pricing guarantees without added administrative fees.

The Department of Health notes, according to a Health Affairs article, independent pharmacies are 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.

According to the National Academy for State Health Policy, all 50 states have passed legislation regarding pharmacy benefits managers. Thirty 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 two states have legislation where the PBM has a fiduciary duty to the health plan requiring reporting on conflicts of interest.

RAE/hj/SL2