

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 495

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
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

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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;

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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

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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

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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

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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."

