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## FISCAL IMPACT REPORT

SPONSOR SFC ORIGINAL DATE 3/13/17  
 LAST UPDATED 3/15/17 HB \_\_\_\_\_

SHORT TITLE Pharmacy Benefit Access Parity SB 495/SFCS

ANALYST Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate*	Indeterminate*	Indeterminate*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases) \*Indeterminate and perhaps considerable fiscal impact; see the discussion under “Financial Impact” and “Significant Issues.”

**Duplicate** of House Bill 153, Committee Substitute

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public School Insurance Authority (PSIA)

Office of the Superintendent of Insurance (OSI)

Retiree Health Care Authority (RHCA)

Each of these agencies submitted analyses on both HB 153 and SB 495.

### SUMMARY

#### Synopsis of Bill

Senate Bill 495 would require that health insurance plans offering prescription drug or device coverage make available local pharmacy supply of those drugs and devices with the same co-payment or coinsurance requirement of the patient as would be available for the same drug or device purchased through a U.S. mail-order pharmacy, and the community pharmacy must accept reimbursement at a rate “comparable” to participating mail-order pharmacies. Each section of the bill repeats the same requirements and same definitions. “Community pharmacies,” as defined in the bill, are located within New Mexico and operate as retail pharmacies and agree to the insurer’s contracted payment rate. “Participating mail-order pharmacies” must be registered in or headquartered in New Mexico and deliver drugs or devices to patients via the postal service or another delivery service. In both cases, the definitions hold regardless of the cost of the drugs obtained through those pharmacies, and both would be ineligible if they had been convicted of, or settled a case for, fraud, waste or abuse.

Each section of the bill repeats the same requirements for a different category of health plan, as indicated in the table below:

Section of Bill	Type of Insurance covered
1	Group health coverage, including self-insurance, issued or renewed through the Health Care Purchasing Act
2	Individual or group health insurance policies, health care plans, and certificates of insurance
3	Group or blanket health care policies, health care plans, and certificates of insurance
4	Individual or group health maintenance organization
5	Individual or group health care plans

### FISCAL IMPLICATIONS

None known, although OSI notes “Because the mail-order pharmacies can offer discounted rates through high-volume purchases that community-based pharmacies cannot, this may impact the insurance companies' purchasing leverage to keep prescription drug costs down. Splitting their purchasing power across a multitude of groups negotiating drug prices rather than one group might not be the right way to go. Although the retail pharmacy is required to accept reimbursement at the same rate as a mail order pharmacy, it may play off this dynamic to mitigate some of the costs. Taking away volume from mail order pharmacies would probably not be that helpful in controlling drug costs.” It might result in an increase in drug costs to self-funded programs, such as state employee benefit programs.

PSIA notes its concerns about fiscal effects of the bill, as follows: “SB495 would not only increase benefit costs, it opens the door to a massive influx of pharmacies intent on committing fraud, waste and abuse - which will increase costs.”

RHCA, similarly, states “The bill may significantly limit the New Mexico Retiree Health Care Authority’s ability to apply downward pressure toward its prescription drug spend (\$95 - \$100 million in FY17), by limiting the agency’s ability to offer incentives to its plan participants, to fill prescriptions from the lowest cost sources.”

### SIGNIFICANT IMPLICATIONS

OSI states “Because the mail-order pharmacies can offer discounted rates through high-volume purchases that community-based pharmacies cannot, this may impact the insurance companies' purchasing leverage to keep prescription drug costs down. Splitting their purchasing power across a multitude of groups negotiating drug prices rather than one group might not be the right way to go. Although the retail pharmacy is required to accept reimbursement at the same rate as a mail order pharmacy, it may play off this dynamic to mitigate some of the costs. By taking away volume from mail order pharmacies would probably not be that helpful in controlling drug costs. There is no clear indication of how this proposed legislation would expand the pharmacy benefit management responsibilities currently assigned to OSI. At present there is a single manager who is charged with overseeing the entire plan; there would need to be an evaluation of need for creation of new positions to support regulation and oversight.”

PSIA raises a number of concerns relative to pharmacies' having been combined of fraud, waste or abuse (FWA):

- Pharmacies with proven fraud, waste or abuse could re-enter the program if the conviction or settlement for FWA were more than two years before.
- Diabetic supplies appear to be an area rife for fraud and abuse.
- Out-of-state pharmacies in particular have been implicated in fraudulent activities, and PSIA has terminated several of them after egregious activities. PSIA is concerned that this bill “would open the door” to fraudulent activities of the sort PSIA has dealt with through the FWA Program at Express Scripts.

Except for short title, duplicates the committee substitute for House Bill 153.

### **OTHER SUBSTANTIVE ISSUES**

OSI notes that “This bill would also presumably provide some protections against loss/closure of the community pharmacy, although if the reimbursement that the local pharmacy receives is extremely low, it could also further the decline of the local small businesses.”

The committee substitute states that community pharmacies, to participate in the program, would have to provide drugs or devices “at a rate comparable to that of a participating mail-order pharmacy.” “Comparable” is not defined, but because community pharmacies may not be able to avail themselves of quantity discounts available to larger mail-order pharmacies, it may be difficult for them to compete.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Patient use of local pharmacies might continue to be disallowed by insurers or to be subject to higher co-pays and coinsurance than use of mail-order pharmacies, affecting negatively the amount of business done by the local pharmacies.

LAC/jle/sb/jle