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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/2019

SPONSOR Tallman LAST UPDATED _____ HB _____

SHORT TITLE Regulate Pharmacy Benefits Manager Practices SB 92

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Not Received From

Retiree Health Care Authority (RHCA)
 General Services Department (GSD)
 Human Services Department (HSD)
 Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 92 adds to the definitions section of the Patient Protection Act (Section 59A-57-3 NMSA 1978) a definition of the term “pharmacy benefit manager” (PBM) and applies the other provisions of the Patient Protection Act to this class of enterprise. This definition is lengthier than, but similar to, the Wikipedia definition of PBM: “In the United States, a pharmacy benefit manager (PBM) is a third-party administrator of prescription drug programs for commercial health plans, self-insured employer plans, Medicare Part D plans, the Federal Employees Health Benefits Program (FEHBP), and state government employee plans. As of 2018 they have become industrial behemoths in the US health sector.”

Amending another section of the Patient Protection Act (Section 59A-57-6 NMSA 1978) entitled “Fairness to Health Care Providers”, the bill would prohibit managed health care plans and pharmacy benefit managers equally from all of the following:

- 1) Adopting gag rules from discussing options with patients,
- 2) Requiring a provider to place his/her license in jeopardy by violating fiduciary responsibilities to patients, and

- 3) Terminating a provider’s participation in a managed health care plan or PBM network without a written rationale for the termination.

It would also require a grievance process for providers concerned about aspects of PBM functioning, similar to grievance processes already mandated for managed health care organizations.

FISCAL IMPLICATIONS

No fiscal impact is identified.

SIGNIFICANT ISSUES

From the statute on the books, that would be modified by the current bill:

59A-57-2. Purpose of act. (1998)

Statute text

The purpose of the Patient Protection Act is to regulate aspects of health insurance by specifying patient and provider rights and confirming and clarifying the authority of the department to adopt regulations to provide protections to persons enrolled in managed health care plans. The insurance protections should ensure that managed health care plans treat patients fairly and arrange for the delivery of good quality services.

As pharmacy benefit managers are intermediaries between health care insurers and patients, it appears appropriate for them to treat patients fairly, as health maintenance organizations are required to do.

Some identify PBMs as causing significant problems for patients and for health care costs. In a blog published on the website Health Affairs

(<https://www.healthaffairs.org/doi/10.1377/hblog20180823.383881/full/>), Michael Carrier wrote that

“In the past year, pharmacy benefit managers (PBMs) have catapulted into public attention. Previously flying under the radar, PBMs are now subject to heightened scrutiny amidst widespread attention to high drug prices and manufacturers’ attempts to shift blame elsewhere.

“PBMs initially lowered prices by aggregating health plan customers to form large networks that allowed them to negotiate discounts. But recently, increases in consolidation (with the three leading PBMs—CVS Caremark, Express Scripts, and OptumRX—controlling [85 percent](#) of the market), power, and secrecy have swung the needle in the opposite direction.

As PBMs have consolidated, prices have [risen](#). Manufacturers that wish to have their drugs covered on PBM formularies [pay](#) significant rebates and fees to PBMs, often paid for by raising the price tag. PBMs have yet another point of leverage over prescribing decisions in the form of prior-authorization requirements, which allow them to interrupt patient treatments.”

According to a managed care organization representative’s posting in response on the same

website, (<https://www.healthaffairs.org/doi/10.1377/hblog20181009.878948/full/>), “We negotiate lower costs for the people we serve for the medical services they need—including lower drug costs. Pharmacy benefit managers (PBMs) play an important role in those negotiations, and the savings achieved are passed on through lower premiums and lower out-of-pocket costs that we offer to our members.”

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