FISCAL IMPACT REPORT

SPONSOR Stefanics/Thomson/Gallegos **LAST UPDATED** 3/08/2023 **ORIGINAL DATE** 2/27/2023

SHORT TITLE Pharmacy Benefits Changes **BILL NUMBER** Senate Bill 14

ANALYST Toal

APPROPRIATION*
(dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	$500.0	Recurring	General

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		$500.0	$500.0	$1,000.0	Recurring	OSI
		$16,661.0	$16,661.0	$33,322.0	Recurring	NMHCRA
		$2,800.0	$2,800.0	$5,600.0	Recurring	GSD
		$11,150.0	$11,150.0	$23,300.0	Recurring	NMPSIA - OSF
Total		**$31,111.0**	**$31,111.0**	**$62,222.0**		

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

Relates to Senate Bill 498
Conflicts with NMRHCA Board Authority

Sources of Information

LFC Files

Responses Received From
Office of the Superintendent of Insurance (OSI)
Regulation and Licensing Department (RLD)
General Services Department (GSD)
Retiree Health Care Authority (NMRHCA)
Public Schools Insurance Authority (NMPSIA)

SUMMARY

Synopsis of Senate Bill 14

Senate Bill 14 amends the Pharmacy Benefit Manager Regulation Act as follows:

Section 1 of the bill revises the definitions section of the Pharmacy Benefits Manager Regulation Act, one of which is a definition of a "plan sponsor" which includes "an employer organization that offers group health plans to its employees or members," which is a broader definition than is currently found in the Insurance Code. Another provision in Section 1 is for "spread pricing," which is defined to be a "model of prescription drug pricing in which a pharmacy benefits manager charges a health benefit plan a contracted price for prescription drugs, and the contracted price for the prescription drugs differs from the amount the pharmacy benefits manager indirectly pays a pharmacist or pharmacy for pharmacist services."

Section 2 of the bill revises the application requirements for pharmacy benefit managers (PBMs) such that a PBM subcontractor to perform services must be independently licensed. The bill also gives the Superintendent the authority to require a PBM to report compliance with any portion of the Pharmacy Benefits Manager Regulation Act.

Section 3 amends the appeals process by requiring a PBM to reimburse a pharmacy in an amount that is calculated on a per-unit basis using the same generic product identifier or the generic code number. In addition, Section 3 further provides:

- That a pharmacy may file an exemption require to a maximum allowable cost denial when the average drug wholesale acquisition cost and the average sales price maximum allowable cost are unavailable to the pharmacy;
- Authorized the Superintendent to hear and resolve disputes between a PBM and pharmacy when the PBM processes have been exhausted;
- That a PBM may not reimburse a pharmacy for a prescription drug or pharmacy service in an amount less than the national average drug acquisition cost or the wholesale acquisition cost of the drug, or calculate a reimbursement amount as of any date other than the date the drug was dispenses or administered;
- That a PBM must provide a professional dispensing fee of greater than $10.49 per drug;
- That a PBM must disclose to the Superintendent the purchase prices negotiated on drugs and the prices paid to pharmacies in and out of network; and
- That a PBM shall not make or permit any reduction of payment for pharmacist services under a reconciliation process to an effective rate of reimbursement that reflects a reduction of payment.

Section 4 amends the existing provisions on PBM contracts so as to prohibit a PBM from requiring an insured to use a specific pharmacy if the PBM or its corporate affiliate has an ownership interest in the pharmacy, and also prohibits a PBM from charging a different cost-sharing amount for drugs or services at a non-affiliated pharmacy. Other provisions prohibit a PBM from requiring or incentivizing the purchase of a medication in a quantity greater than that prescribed, and prohibits denial or reduction of a claim unless the claim was intentionally submitted fraudulently, the claim was a duplicate of claim previously paid, or the goods or services were not properly rendered by the pharmacy or pharmacist.

Section 5 amends the prohibited pharmacy fees provisions so as to include imposition of a fee on a pharmacy for scores or metrics, and conducting spread pricing in New Mexico. Section 6 creates a new section to require that a pharmacy service administrative organization register with the Superintendent.

Section 7 creates a new section of the PBM Regulation Act entitled "Pharmacy Benefits Reimbursement Transparency" authorizing the Superintendent to review and approve the compensation program of a PBM to ensure that the reimbursement for pharmacist services is fair. In addition, PBMs are required to report to the Superintendent information that is based on the PBM requirements adopted by the Texas legislature in 2021. The provisions also prohibit a PBM from being paid on a percentage of the cost of a drug, and requires payment based on a fixed fee determined in advance.

Section 8 imposes a fiduciary duty on an insurer that contracts with a PBM.

Section 9 creates a new section of the act entitled "Patient Cost Sharing" which prohibits a PBM from requiring an insured to make a payment for a covered prescription drug in an amount greater than (1) the applicable cost-sharing amount for the drug, (2) the amount an insured would pay if the insured purchased the drug without using a health benefits plan, (3) the total amount the pharmacy would be reimbursed for the drug from the PBM, or (4) the value of the rebate from a drug manufacturer provided to the PBM for the drug. When calculating an insured's cost sharing obligation for covered drugs, an insurer must credit the insured for the out-of-pocket cost for the full value of any discounts provided or made by third parties at the time of the drug claim. The new provisions further provide that any rebate amount is to be counted toward the insured's out-of-pocket prescription drug costs.

Section 9 also provides that "if an insured or the insured's health care provider identifies a clinically appropriate, non-formulary, specialty prescription drug available at a lower cost than a drug covered on the PBM's formulary, the PBM must reimburse the insured, minus applicable cost sharing, for the non-formulary drug."

Section 10 requires a PBM to develop a drug formulary that covers "all medically necessary drugs."

Section 11 amends the act to include a provision that prohibits a PBM from restricting participation of a pharmacy in a pharmacy network if the pharmacy meets accreditation or certification requirements.

Section 13 of the bill appropriates $500 thousand from the general fund to the OSI in FY24 and subsequent fiscal years "to hire staff to regulate, monitor compliance and enforce the provisions of the Pharmacy Benefits Manager Regulation Act." Unexpended or unencumbered balances are not to revert to the general fund.

The effective date of the bill is July 1, 2023, although the provision relating to adoption of a preferred drug list by the Human Services Department (Section 12 of the bill) is effective January 1, 2025.

FISCAL IMPLICATIONS

NMPSIA and both the NMRHCA and the GSD report that the provisions of the bill would negatively impact their respective programs in a significant manner. The estimated negative cost impact to the three agencies for the next two fiscal years is in excess of $62 million. LFC is unable to estimate the cost impact to private insurers, or to PBMs. The elimination of cost sharing, the mandated use of drug manufacturer rebates, the minimum dispensing fee provision

and the other provisions of the bill can reasonably be expected to increase premium rates.

SIGNIFICANT ISSUES

The provisions of SB14 will have significant operational and cost impacts on both insurers and PBMs, including public health insurers, who use PBMs and have existing contracts for such services that run through the calendar year. The plans utilize a number of measures to contain pharmacy costs, and the bill would prohibit use of a number of them.

It should be noted that for understandable reasons, the bill does not address the fundamental problem of pharmacy program costs, namely, the cost of drugs imposed by manufacturers. It also should be noted that manufacturer price or rebate coupons are required to be used are typically issued for high cost medications, which also will drive PBM costs higher.

PERFORMANCE IMPLICATIONS

The contracts of health insurers, both private and public, typically are for a calendar year. The bill has an effective date of July 1, which will present both performance and contractual issues. Consideration should be given to changing the effective date to January 1, 2024.

ADMINISTRATIVE IMPLICATIONS

If the effective date of the bill is not changed, insurance administrators will be faced with great difficulty in implementing the many changes envisioned by the bill, and in some cases, will have contractual barriers to implementation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB14 is very similar to SB498, and to a lesser degree, to the substitute to SB51.

ALTERNATIVES

The OSI has some authority to issue rules on portions of the proposed bill.

RBT/rl/ne