

LFC Requester:	Julisa Rodriguez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/21/2024 *Check all that apply:*
Bill Number: SB503 Original Correction
 Amendment Substitute

Sponsor: Senator Larry Scott **Agency Name and Code Number:** Office of Superintendent of Insurance - 440
Short Title: Prohibit Certain Pharmacy Benefits Mgr. Acts **Person Writing:** Viara Ianakieva
Title: Benefits Mgr. Acts **Phone:** 505-508-9073 **Email:** Viara.ianakieva@osi.nm

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB62
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 503 (SB503) amends two sections of the Pharmacy Benefits Manager Regulation Act in the Insurance Code to prohibit pharmacy benefits managers licensed in New Mexico from engaging in patient steering and spread pricing.

Section 1 of SB503 amends Section 59A-61-2 NMSA 1978 to add two definitions in Subsection D. and Subsection K.:

D. "patient steering" means:

(1) a pharmacy benefits manager directing patients to use a preferred pharmacy through mandatory mail order requirements;

(2) a pharmacy benefits manager requiring a patient to use a restricted network of pharmacies that only consists of pharmacies approved by the pharmacy benefits manager; or

(3) the use of copay differentials for pharmacies contracted with the pharmacy benefits manager and pharmacies that are not contracted with the pharmacy benefits manager.

K. "spread pricing" means a pharmacy benefits manager reimbursing a pharmacy for a prescription and billing an insurer or an employer that provides health insurance at a higher price than was reimbursed for the same prescription.

Section 2 of SB503 amends Section 59A-61-5 NMSA 1978 by adding Subsection G to provide that a clerical or recordkeeping error that is identified during an audit of a pharmacy conducted by a pharmacy benefits manager (such as a typographical, clerical, or computer error) shall not in and of itself constitute fraud or intentional misrepresentation. Additionally, it shall not be the basis for a recoupment unless the error results in an actual overpayment to the pharmacy or the wrong medication being dispensed to a patient.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

None.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to SB62 which restricts the fees PBM's can charge

TECHNICAL ISSUES

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. This does not

appear to be the intent. OSI recommends amending the language such that these ideas are kept separate and not subject to misinterpretation.

Page 6, line 22: The term recoupment is vague and 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

Limiting the circumstances in which a recoupment can occur increases the net amount of pharmacy reimbursements.

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

The elimination of spread pricing is likely to have several downstream effects:

1. Increase the amount of money pharmacies are reimbursed for claims by creating parity between the amount of money PBM's bill insurance companies and reimburse pharmacies.
2. Adjust insurance plan drug formularies to favor low-cost medications instead of high-cost medications with large manufacturer rebates. This in turn may increase patient access to low-cost medications.
3. PBM's may increase administrative fees charged to insurance companies to make up the loss of profit caused by spread pricing prohibition.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PBM's reserve the right to utilize unequal pharmacy reimbursement practices and require patients to pay more if they don't use a preferred pharmacy. Clerical & record keeping errors may be construed by PBM's as fraud/intentional misrepresentation and may result in the complete clawback/recoupment of the entirety of previous paid claims.

AMENDMENTS

Page 6, lines 17 – 24:

G. A clerical or recordkeeping error identified during an audit of a pharmacy conducted by a pharmacy benefits manager, such as a typographical error, scrivener's error, omission or computer error, shall not ~~in and of itself, constitute fraud or intentional misrepresentation and shall not~~ be the basis of a recoupment unless the error results in an actual overpayment to the pharmacy or the wrong medication being dispensed to the patient. Only the amount overpaid to the pharmacy or charged for the incorrect medication shall be recouped. A clerical or recordkeeping error shall not, in and of itself, constitute fraud or intentional misrepresentation.