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HOUSE BILL 138

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Elizabeth "Liz" Thomson

AN ACT

RELATING TO HEALTH COVERAGE; 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 COVERED PERSONS 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 benefit

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1 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 that 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.

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 for
4 which a group health plan has agreed to make reimbursement
5 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 that:

11 (a) has agreed to accept a group health
12 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 (b) in the two years preceding the date
19 the pharmacy has otherwise become eligible to become a
20 participating community 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; and

25 (3) "participating mail-order pharmacy" means,

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1 irrespective of the cost or type of prescription drugs it
2 dispenses, a retail pharmacy:

3 (a) that is registered, headquartered or
4 has its base of operations physically located in the state;

5 (b) for which the majority of the
6 pharmacy's business consists of dispensing a prescription drug
7 under a prescription drug order and having the drug delivered
8 to a patient by the United States mail, a common carrier or a
9 delivery service. Mail-order pharmacies include pharmacies
10 that do business via the internet or other 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 or group health insurance policy,
5 health care plan or certificate of insurance that is delivered,
6 issued for delivery or renewed in the state and that provides a
7 prescription drug 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 that the health insurance
12 policy, health care plan or certificate of insurance
13 establishes; and

14 (2) an insured to fill a covered prescription
15 at the insured's option at any participating community pharmacy
16 or participating mail-order pharmacy; provided that the
17 participating community pharmacy accepts reimbursement at a
18 rate comparable to that of a participating mail-order pharmacy.

19 B. An insurer shall not impose a copayment,
20 coinsurance or other condition on an insured who elects to fill
21 a covered prescription from any participating community
22 pharmacy that is not also imposed on an insured who elects to
23 fill a covered prescription at any participating mail-order
24 pharmacy.

25 C. An insurer shall not require an insured, as a

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1 condition of payment or reimbursement, to purchase pharmacy
2 services, including prescription drugs, exclusively through a
3 mail-order pharmacy.

4 D. A health insurance policy, health care plan or
5 certificate of insurance that is delivered, issued for delivery
6 or renewed in the state and that contains a provision contrary
7 to any provision of this section is void to the extent of that
8 conflict.

9 E. The provisions of this section apply to health
10 insurance policies, health care plans and certificates of
11 insurance delivered or issued for delivery after January 1,
12 2020.

13 F. As used in this section:

14 (1) "covered prescription" means a drug for
15 which a health insurance policy, health care plan or
16 certificate of insurance has agreed to make reimbursement under
17 the terms of the health insurance policy, health care plan or
18 certificate of insurance;

19 (2) "participating community pharmacy" means
20 an entity physically located in the state that operates in the
21 regular course of business as a retail pharmacy, irrespective
22 of the cost or type of prescription drugs it dispenses and
23 that:

24 (a) has agreed to accept an insurer's
25 contracted payment rate, and, pursuant to this agreement, an

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1 insured may fill a prescription and pay a copayment or
2 coinsurance that is more advantageous to the insured than the
3 copayment or coinsurance for a prescription sought from a
4 retail pharmacy that has not agreed to the carrier's contracted
5 payment rate; and

6 (b) in the two years preceding the date
7 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 under a prescription drug order and having the drug delivered
21 to a patient by the United States mail, a common carrier or a
22 delivery service. Mail-order pharmacies include pharmacies
23 that do business via the internet or other electronic media;

24 (c) 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 (d) that in the two years preceding the
7 date the pharmacy has otherwise become eligible to become a
8 participating mail-order 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."

13 SECTION 3. A new section of Chapter 59A, Article 23 NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
16 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

17 A. An individual or group health insurance policy,
18 health care plan or certificate of insurance that is delivered,
19 issued for delivery or renewed in the state and that provides a
20 prescription drug benefit shall permit:

21 (1) any pharmacy or pharmacist licensed in the
22 state to participate as a participating community pharmacy or
23 participating mail-order pharmacy if that pharmacy agrees to
24 accept the terms and conditions that the health insurance
25 policy, health care plan or certificate of insurance

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1 establishes; and

2 (2) an insured to fill a covered prescription
3 at the insured's option at any participating community pharmacy
4 or participating mail-order pharmacy; provided that the
5 participating community pharmacy accepts reimbursement at a
6 rate comparable to that of a participating mail-order pharmacy.

7 B. An insurer shall not impose a copayment,
8 coinsurance or other condition on an insured who elects to fill
9 a covered prescription from any participating community
10 pharmacy that is not also imposed on an insured who elects to
11 fill a covered prescription at any participating mail-order
12 pharmacy.

13 C. An insurer shall not require an insured, 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 the 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. The provisions of this section apply to health
23 insurance policies, health care plans and certificates of
24 insurance delivered or issued for delivery after January 1,
25 2020.

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F. As used in this section:

(1) "covered prescription" means a drug for which a health insurance policy, health care plan or certificate of insurance has agreed to make reimbursement under the terms of the health insurance policy, health care plan or certificate of insurance;

(2) "participating community pharmacy" means an entity physically located in the state that operates in the regular course of business as a retail pharmacy, irrespective of the cost or type of prescription drugs it dispenses and that:

(a) has agreed to accept an insurer's contracted payment rate, and, pursuant to this agreement, an insured may fill a prescription and pay a copayment or coinsurance that is more advantageous to the insured than the copayment or coinsurance for a prescription sought from a retail pharmacy that has not agreed to the carrier's contracted payment rate; and

(b) in the two years preceding the date the pharmacy has otherwise become eligible to become a participating community pharmacy, has not been convicted of fraud, waste or abuse, or entered into a settlement pursuant to allegations of fraud, waste or abuse, in matters related to or arising out of a health coverage program established pursuant to Title 18, 19 or 21 of the federal Social Security Act; and

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1 (3) "participating mail-order pharmacy" means,
2 irrespective of the cost or type of prescription drugs it
3 dispenses, a retail pharmacy:

4 (a) that is registered, headquartered or
5 has its base of operations physically located in the state;

6 (b) for which the majority of the
7 pharmacy's business consists of dispensing a prescription drug
8 under a prescription drug order and having the drug delivered
9 to a patient by the United States mail, a common carrier or a
10 delivery service. Mail-order pharmacies include pharmacies
11 that do business via the internet or other electronic media;

12 (c) that has agreed to accept an
13 insurer's contracted payment rate, and, pursuant to this
14 agreement, an insured may fill a prescription and pay a
15 copayment or coinsurance that is more advantageous to the
16 insured than the copayment or coinsurance for a prescription
17 sought from a retail pharmacy that has not agreed to the
18 insurer's contracted payment rate; and

19 (d) that in the two years preceding the
20 date the pharmacy has otherwise become eligible to become a
21 participating mail-order pharmacy, has not been convicted of
22 fraud, waste or abuse, or entered into a settlement pursuant to
23 allegations of fraud, waste or abuse, in matters related to or
24 arising out of a health coverage program established pursuant
25 to Title 18, 19 or 21 of the federal Social Security Act."

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1 SECTION 4. A new section of the Health Maintenance
2 Organization Law is enacted to read:

3 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
4 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

5 A. A health maintenance organization contract that
6 is delivered, issued for delivery or renewed in the state and
7 that provides a prescription drug 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 that the contract establishes;
12 and

13 (2) an enrollee to fill a covered prescription
14 at the enrollee's option at any participating community
15 pharmacy or participating mail-order pharmacy; provided that
16 the participating community pharmacy accepts reimbursement at a
17 rate comparable to that of a participating mail-order pharmacy.

18 B. A carrier shall not impose a copayment,
19 coinsurance or other condition on an enrollee who elects to
20 fill a covered prescription from any participating community
21 pharmacy that is not also imposed on an enrollee who elects to
22 fill a covered prescription at any participating mail-order
23 pharmacy.

24 C. A carrier shall not require an enrollee, 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 maintenance organization contract that
4 is delivered, issued for delivery or renewed in the state and
5 that contains a provision contrary to any provision of this
6 section is void to the extent of that conflict.

7 E. The provisions of this section apply to health
8 maintenance organization contracts delivered or issued for
9 delivery after January 1, 2020.

10 F. As used in this section:

11 (1) "covered prescription" means a drug for
12 which a health maintenance organization contract has agreed to
13 make reimbursement under the terms of the health maintenance
14 organization contract;

15 (2) "participating community pharmacy" means
16 an entity physically located in the state that operates in the
17 regular course of business as a retail pharmacy, irrespective
18 of the cost or type of prescription drugs it dispenses and
19 that:

20 (a) has agreed to accept a carrier's
21 contracted payment rate, and, pursuant to this agreement, an
22 enrollee may fill a prescription and pay a copayment or
23 coinsurance that is more advantageous to the enrollee than the
24 copayment or coinsurance for a prescription sought from a
25 retail pharmacy that has not agreed to the carrier's contracted

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1 payment rate; and

2 (b) in the two years preceding the date
3 the pharmacy has otherwise become eligible to become a
4 participating community pharmacy, has not been convicted of
5 fraud, waste or abuse, or entered into a settlement pursuant to
6 allegations of fraud, waste or abuse, in matters related to or
7 arising out of a health coverage program established pursuant
8 to Title 18, 19 or 21 of the federal Social Security Act; and

9 (3) "participating mail-order pharmacy" means,
10 irrespective of the cost or type of prescription drugs it
11 dispenses, a retail pharmacy:

12 (a) that is registered, headquartered or
13 has its base of operations physically located in the state;

14 (b) for which the majority of the
15 pharmacy's business consists of dispensing a prescription drug
16 under a prescription drug order and having the drug delivered
17 to a patient by the United States mail, a common carrier or a
18 delivery service. Mail-order pharmacies include pharmacies
19 that do business via the internet or other electronic media;

20 (c) that has agreed to accept a
21 carrier's contracted payment rate, and, pursuant to this
22 agreement, an enrollee may fill a prescription and pay a
23 copayment or coinsurance that is more advantageous to the
24 enrollee than the copayment or coinsurance for a prescription
25 sought from a retail pharmacy that has not agreed to the

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1 carrier's contracted payment rate; and

2 (d) that in the two years preceding the
3 date the pharmacy has otherwise become eligible to become a
4 participating mail-order pharmacy, has not been convicted of
5 fraud, waste or abuse, or entered into a settlement pursuant to
6 allegations of fraud, waste or abuse, in matters related to or
7 arising out of a health coverage program established pursuant
8 to Title 18, 19 or 21 of the federal Social Security Act."

9 SECTION 5. A new section of the Nonprofit Health Care
10 Plan Law is enacted to read:

11 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
12 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

13 A. A health care plan that is delivered, issued for
14 delivery or renewed in the state and that provides a
15 prescription drug benefit shall 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 that the contract establishes;
20 and

21 (2) a subscriber to fill a covered
22 prescription at the subscriber's option at any participating
23 community pharmacy or participating mail-order pharmacy;
24 provided that the participating community pharmacy accepts
25 reimbursement at a rate comparable to that of a participating

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1 mail-order pharmacy.

2 B. A health care plan shall not impose a copayment,
3 coinsurance or other condition on a subscriber who elects to
4 fill a covered prescription from any participating community
5 pharmacy that is not also imposed on a subscriber who elects to
6 fill a covered prescription at any participating mail-order
7 pharmacy.

8 C. A health care plan shall not require a
9 subscriber, as a condition of payment or reimbursement, to
10 purchase pharmacy services, including prescription drugs,
11 exclusively through a mail-order pharmacy.

12 D. A health care plan that is delivered, issued for
13 delivery or renewed in the state and that contains a provision
14 contrary to any provision of this section is void to the extent
15 of that conflict.

16 E. The provisions of this section apply to health
17 care plans delivered or issued for delivery after January 1,
18 2020.

19 F. As used in this section:

20 (1) "covered prescription" means a drug for
21 which a health care plan has agreed to make reimbursement under
22 the terms of the health care plan;

23 (2) "participating community pharmacy" means
24 an entity physically located in the state that operates in the
25 regular course of business as a retail pharmacy, irrespective

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1 of the cost or type of prescription drugs it dispenses and
2 that:

3 (a) has agreed to accept a health care
4 plan's contracted payment rate, and, pursuant to this
5 agreement, a subscriber may fill a prescription and pay a
6 copayment or coinsurance that is more advantageous to the
7 subscriber than the copayment or coinsurance for a prescription
8 sought from a retail pharmacy that has not agreed to the health
9 care plan's contracted payment rate; and

10 (b) in the two years preceding the date
11 the pharmacy has otherwise become eligible to become a
12 participating community pharmacy, has not been convicted of
13 fraud, waste or abuse, or entered into a settlement pursuant to
14 allegations of fraud, waste or abuse, in matters related to or
15 arising out of a health coverage program established pursuant
16 to Title 18, 19 or 21 of the federal Social Security Act; and

17 (3) "participating mail-order pharmacy" means,
18 irrespective of the cost or type of prescription drugs it
19 dispenses, a retail pharmacy:

20 (a) that is registered, headquartered or
21 has its base of operations physically located in the state;

22 (b) for which the majority of the
23 pharmacy's business consists of dispensing a prescription drug
24 under a prescription drug order and having the drug delivered
25 to a patient by the United States mail, a common health care

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1 plan or a delivery service. Mail-order pharmacies include
2 pharmacies that do business via the internet or other
3 electronic media;

4 (c) that has agreed to accept a health
5 care plan's contracted payment rate, and, pursuant to this
6 agreement, a subscriber may fill a prescription and pay a
7 copayment or coinsurance that is more advantageous to the
8 subscriber than the copayment or coinsurance for a prescription
9 sought from a retail pharmacy that has not agreed to the health
10 care plan's contracted payment rate; and

11 (d) that in the two years preceding the
12 date the pharmacy has otherwise become eligible to become a
13 participating mail-order pharmacy, has not been convicted of
14 fraud, waste or abuse, or entered into a settlement pursuant to
15 allegations of fraud, waste or abuse, in matters related to or
16 arising out of a health coverage program established pursuant
17 to Title 18, 19 or 21 of the federal Social Security Act."