

HOUSE BILL 107

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Elizabeth "Liz" Thomson

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO HEALTH COVERAGE; ENACTING SECTIONS OF THE HEALTH CARE PURCHASING ACT, THE NEW MEXICO INSURANCE CODE, THE HEALTH MAINTENANCE ORGANIZATION LAW, THE NONPROFIT HEALTH CARE PLAN LAW AND THE PHARMACY BENEFITS MANAGER REGULATION ACT TO PROVIDE COVERED PERSONS WITH PARITY OF ACCESS AND PAYMENT BETWEEN PARTICIPATING MAIL-ORDER PHARMACIES AND PARTICIPATING COMMUNITY PHARMACIES.

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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 shall permit:

(1) any pharmacy or pharmacist licensed in the state to participate as a participating community pharmacy or participating mail-order pharmacy if that pharmacy agrees to accept the terms and conditions that the group health coverage establishes; and

(2) an enrollee to fill a covered prescription at the enrollee's option at any participating community pharmacy HJC→~~or participating mail-order pharmacy~~←HJC ; provided that the participating community pharmacy accepts reimbursement at a rate HJC→comparable←HJC HJC→equal←HJC to that of a participating mail-order pharmacy.

B. A group health plan shall not impose a copayment, coinsurance or other condition on an enrollee who elects to fill a covered prescription from any participating community pharmacy that is not also imposed on an enrollee who elects to fill a covered prescription at a participating mail-order pharmacy.

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C. A group health plan shall not require an enrollee, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy.

D. Any provision in a group health plan, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act, that is contrary to any provision of this section is void to the extent of that conflict.

E. As used in this section:

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

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

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(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

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

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

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

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

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

SECTION 2. A new section of Chapter 59A, Article 22 NMSA 1978 is enacted to read:

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

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

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

(2) an insured to fill a covered prescription at the insured's option at any participating community pharmacy HJC→~~or participating mail-order pharmacy~~←HJC ; provided that the participating community pharmacy accepts reimbursement at a

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rate HJC→comparable←HJC HJC→equal←HJC to that of a participating mail-order pharmacy.

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

C. An insurer shall not require an insured, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy.

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

E. The provisions of this section apply to health insurance policies, health care plans and certificates of insurance delivered or issued for delivery after January 1, 2022.

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

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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

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

(a) that is registered, headquartered or

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has its base of operations physically located in the state;

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

(c) that 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 insurer's contracted payment rate; and

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

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

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

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

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

(2) an insured to fill a covered prescription at the insured's option at any participating community pharmacy HJC→~~or participating mail-order pharmacy~~←HJC ; provided that the participating community pharmacy accepts reimbursement at a rate HJC→~~comparable~~←HJC HJC→~~equal~~←HJC to that of a participating mail-order pharmacy.

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

C. An insurer shall not require an insured, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a

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mail-order pharmacy.

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

E. The provisions of this section apply to health insurance policies, health care plans and certificates of insurance delivered or issued for delivery after January 1, 2022.

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

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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

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

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

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

(c) that 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

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insured than the copayment or coinsurance for a prescription sought from a retail pharmacy that has not agreed to the insurer's contracted payment rate; and

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

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

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

A. A health maintenance organization contract that is delivered, issued for delivery or renewed in the state and that provides a prescription drug benefit shall permit:

(1) any pharmacy or pharmacist licensed in the state to participate as a participating community pharmacy or participating mail-order pharmacy if that pharmacy agrees to accept the terms and conditions that the contract establishes; and

(2) an enrollee to fill a covered prescription at the enrollee's option at any participating community pharmacy HJC→~~or participating mail-order pharmacy~~←HJC ;

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provided that the participating community pharmacy accepts reimbursement at a rate HJC→comparable←HJC HJC→equal←HJC to that of a participating mail-order pharmacy.

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

C. A carrier shall not require an enrollee, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy.

D. A health maintenance organization contract that is delivered, issued for delivery or renewed in the state and that contains a provision contrary to any provision of this section is void to the extent of that conflict.

E. The provisions of this section apply to health maintenance organization contracts delivered or issued for delivery after January 1, 2022.

F. As used in this section:

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

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(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 a carrier's contracted payment rate, and, pursuant to this agreement, an enrollee may fill a prescription and pay a copayment or coinsurance that is more advantageous to the enrollee 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

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

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

(b) for which the majority of the

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pharmacy's business consists of dispensing a prescription drug under a prescription drug order and having the drug delivered to a patient by the United States mail, a common carrier or a delivery service. Mail-order pharmacies include pharmacies that do business via the internet or other electronic media;

(c) that has agreed to accept a carrier's contracted payment rate, and, pursuant to this agreement, an enrollee may fill a prescription and pay a copayment or coinsurance that is more advantageous to the enrollee 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

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

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

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

A. A health care plan that is delivered, issued for delivery or renewed in the state and that provides a

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prescription drug benefit shall permit:

(1) any pharmacy or pharmacist licensed in the state to participate as a participating community pharmacy or participating mail-order pharmacy if that pharmacy agrees to accept the terms and conditions that the contract establishes; and

(2) a subscriber to fill a covered prescription at the subscriber's option at any participating community pharmacy HJC→~~or participating mail-order~~ pharmacy←HJC ; provided that the participating community pharmacy accepts reimbursement at a rate HJC→~~comparable~~←HJC HJC→equal←HJC to that of a participating mail-order pharmacy.

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

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

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

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of that conflict.

E. The provisions of this section apply to health care plans delivered or issued for delivery after January 1, 2022.

F. As used in this section:

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

(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 a health care plan's contracted payment rate, and, pursuant to this agreement, a subscriber may fill a prescription and pay a copayment or coinsurance that is more advantageous to the subscriber than the copayment or coinsurance for a prescription sought from a retail pharmacy that has not agreed to the health care plan'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

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arising out of a health coverage program established pursuant to Title 18, 19 or 21 of the federal Social Security Act; and

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

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

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

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

(d) that in the two years preceding the date the pharmacy has otherwise become eligible to become a participating mail-order 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

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arising out of a health coverage program established pursuant to Title 18, 19 or 21 of the federal Social Security Act."

SECTION 6. A new section of the Pharmacy Benefits Manager Regulation Act is enacted to read:

"[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING PHARMACIES--ACCESS PARITY.--

A. A pharmacy benefits manager or intermediary that contracts with an employer, a managed care company, a nonprofit hospital or a medical service organization, an insurance company or a third-party payer for the provision of a prescription drug benefit shall permit:

(1) any pharmacy or pharmacist licensed in the state to participate as a participating community pharmacy or participating mail-order pharmacy if that pharmacy agrees to accept the reasonable standard terms and conditions that the contract establishes; and

(2) an enrollee to fill a covered prescription at the enrollee's option at any participating community pharmacy HJC→~~or participating mail-order pharmacy~~←HJC ; provided that the participating community pharmacy accepts reimbursement at a rate HJC→~~comparable~~←HJC HJC→~~equal~~←HJC to that of other participating contracted pharmacies.

B. A pharmacy benefits manager shall not impose a copayment, coinsurance or other condition on an enrollee who elects to fill a covered prescription from any participating

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community pharmacy that is not also imposed on an enrollee who elects to fill a covered prescription at any participating mail-order pharmacy.

C. A pharmacy benefits manager shall not require an enrollee, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, through a mail-order pharmacy.

D. A pharmacy benefits manager contract that is entered into with any employer, managed care company, nonprofit hospital or medical service organization, insurance company or third-party payer and that contains a provision contrary to any provision of this section is void to the extent of that conflict.

E. As used in this section:

(1) "covered prescription" means a drug on the formulary of the contracted pharmacy benefits manager for which the pharmacy benefits manager has agreed to make reimbursement under the terms of its contract;

(2) "participating community pharmacy" means an entity licensed by 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 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

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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

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

(a) that is licensed by the state;

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

(c) that in the two years preceding the date the pharmacy has otherwise become eligible to become a participating mail-order pharmacy, has not been convicted of fraud, waste or abuse in a matter related to or arising out of a health coverage program established pursuant to Title 18, 19 or 21 of the federal Social Security Act."