

OFFICE OF THE GOVERNOR  
STATE OF MONTANA

STEVE BULLOCK  
GOVERNOR



MIKE COONEY  
LT. GOVERNOR

May 9, 2019

The Honorable Corey Stapleton  
Secretary of State  
State Capitol  
Helena, MT 59601

Dear Secretary Stapleton:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 71 (SB 71), "AN ACT ESTABLISHING REQUIREMENTS FOR PRESCRIPTION DRUG BENEFITS OFFERED UNDER A HEALTH BENEFIT PLAN; ESTABLISHING THE METHOD OF DETERMINING THE PAYMENT FOR BRAND-NAME AND GENERIC PRESCRIPTION DRUGS; REQUIRING HEALTH INSURANCE ISSUERS TO USE COMPENSATION FOR PRESCRIPTION DRUGS TO LOWER CONSUMER HEALTH INSURANCE COSTS; PROHIBITING CONFLICTS OF INTEREST IN DEVELOPING FORMULARIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; AND PROVIDING A DELAYED EFFECTIVE DATE."

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I appreciate and respect the sponsor's commitment to lowering prescription drug costs. I share that commitment and today will sign a range of bills designed to lower those costs for Montanans, as well as lower health insurance and healthcare costs more broadly.

Unfortunately, SB 71 is likely to do just the opposite of what the sponsor intends: it will increase costs.

As will be further detailed below, this is not the case. The State Auditor's office estimated that SB 71 would save Montanans in the individual market between about \$7.5 million and \$8 million on prescription drugs in the first year alone. This is the only dollar estimate associated with SB 71 that has been produced by anyone. The estimate is based on the case study of the Montana State Health Plan, which saved \$7.4 million on prescription drugs (23% of the medication spend) the first year that reforms very similar to those contained in SB 71 went into effect. Kalispell Regional and others have also seen millions in savings by adopting reforms similar to SB 71. The Auditor's estimate was compiled by Marilyn Bartlett, CPA, using information obtained through lawsuits with PBMs and based on her experience at the State Plan (the estimate is based on actual data, it is not simply a best guess).

First, SB 71 may put Montanans served by regional or nonprofit health plans at a higher risk of increased prescription drug prices. Senate Bill 71 cuts pharmacy benefit managers out of the rebate process, requiring that rebates go directly to health insurers. While this may seem like a good idea on the surface, in practice it means that smaller and nonprofit health insurance plan customers can no longer take advantage of these rebates. The result is higher drug costs for plan members.

This is a misunderstanding of the bill. SB 71 does not “cut pharmacy benefit managers out of the rebate process;” what it does is require that rebates obtained from manufacturers be put toward reducing consumer premiums, rather than being retained by PBMs as profit. This is known as a “transparent pass-through” system, and several PBMs offer this model of business. Under the current system (without SB 71), consumers do not see the benefit of rebates because most or all of the rebate dollars are kept by PBMs. SB 71 ensures that insurers (regardless of size or profit status) and consumers actually DO get the benefit of the rebates, instead of PBMs. Again, all these reforms apply equally and achieve the same benefits across all health plans, regardless of size or profit/nonprofit status, and the result will be Montanans saving money.

Second, SB 71 will increase the administrative costs for regional or nonprofit health plans. Section 7 of the bill, for example, requires health plans to review brand-name drugs to determine whether they will be covered. These plans have to do so within 90 days of approval by the U.S. Federal Food and Drug Administration, rather than the 180-day period that federal law requires. Halving the time to review will lead to increased costs, which are likely to be passed on to insurance customers in the form of higher plan prices.

PBMs sometimes hold new drugs hostage until kickbacks are extracted from drug manufacturers. This provision of SB 71 ensures Montanans will have quicker access to new and innovative medicines. PBMs and manufacturers testified that 90 days is an adequate amount of time to review new drugs, and no evidence has been presented to support the assertion that this change will lead to any increased costs.

Third, SB 71 reduces many rural Montanans' choices when it comes to accessing their prescriptions. Senate Bill 71 prohibits certain mail-order pharmacies. Many Montanans who do not have easy access to brick-and-mortar pharmacies rely on the mail to obtain their prescription drugs. Banning certain mail-order pharmacies could make it harder for Montana seniors, Montanans living in rural areas, and others to access the drugs they need. It could also lead to more rural counties in Montana that lack insurance plan choices. Choice is the touchstone of competition and reduced costs, but SB 71 would restrict it in certain circumstances.

It is patently false that SB 71 prohibits any mail-order pharmacies. If you read the bill, you will see that no such provision exists. SB 71 DOES require, however, that insurers have to include brick-and-mortar pharmacies in their network adequacy calculations, meaning that insurers can't ONLY provide medications through the mail. This provision was included in the bill to prevent PBMs from using anti-competitive practices to kill rural pharmacies and establish monopolies over consumers' access to medications.

Finally, SB 71 is directed only at the individual market for insurance. This is already the most volatile of the health insurance markets. Upward pressure on prescription drug prices for these plans could lead to significant increases in insurance prices---either driving regional and nonprofit plans out of business or forcing Montanans off of their coverage because it costs too much. Senate Bill 125, which I recently approved, is designed to stabilize the individual market to lower insurance premiums for Montanans. It passed the legislature with bipartisan support. But the defects with SB 71 could offset all the savings generated by SB 125-to the detriment of Montana insurance consumers.

SB 71 was intentionally written to target only the individual health insurance market. This is because federal law supersedes state regulation in other areas of health insurance, and PBMs have repeatedly and successfully won lawsuits striking down bills in other states that applied outside of the individual market. SB 71 is designed to withstand similar lawsuits and actually have an impact for consumers. As repeatedly explained, SB 71 will lower drug costs and thereby also reduce insurance premiums. SB 71 and SB 125 work hand-in-hand to lower insurance rates (SB 71 by lowering health care costs, and SB 125 by providing a financial backstop for insurers paying large medical claims). Both SB 71 and SB 125 passed with veto-proof, bipartisan support. SB 71 was carried by medical professionals in both chambers of the legislature (one a Republican, one a Democrat). By lowering the cost of prescription drugs, SB 71 aids SB 125 in reducing claims expenses to insurers, leading to lower insurance rates for Montanans.

For these reasons, I veto SB 71.

In the meantime, I have signed or look forward to signing the following bills to address health care costs in Montana:

- SB 83, which gets at the problem directly by applying strict protections from certain pharmacy benefit manager practices;
  - SB 83 helps pharmacies fight back against some bad PBM practices, but it does not lower drug prices for consumers.
- SB 125, the reinsurance bill to lower individual insurance premiums;
- SB 270, which prohibits pharmacy benefit managers from requiring pharmacies to charge consumers more in copayments than it costs to make a drug; and
  - SB 270 also prevents some bad PBM practices but does not lower drug prices.
- SB 335, which protects federally-qualified health centers from discrimination in prescription drug pricing.
  - SB 335 also does not lower the cost of medications. SB 71 is the only bill that does.

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STEVE BULLOCK  
Governor

cc: Legislative Services Division  
Scott Sales, President of the Senate  
Greg Hertz, Speaker of the House