

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."

I appreciate and respect the sponsor's commitment to lowering prescription drug costs.

Maybe true, although signing the bill would've demonstrated that better than vetoing it.

I share that commitment and today will sign a range of bills designed to lower those costs for Montanans,

False. While some of the other bills do some good things, none of them address the cost of prescription drugs. SB 71 was the only bill this session that would've actually lowered the cost of medications.

as well as lower health insurance and healthcare costs more broadly.

This is mostly true, actually. SB 125 creates a reinsurance program to lower health insurance rates. Reinsurance was first proposed in Montana by the State Auditor in 2017. Bullock vetoed reinsurance twice that year before finally coming around to the idea this session. Former Rep. Rob Cook called Bullock a "slow learner" on reinsurance.

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

False. There has never been any actual evidence presented by anyone to back up this assertion. At the same time, 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. That estimate was created by Marilyn Bartlett, a Certified Public Accountant, who saved Montana's health plan for state employees \$7.4 million on drug costs in the first year after she enacted very similar reforms to those contained within SB 71.

First, SB 71 may put Montanans served by regional or nonprofit health plans at a higher risk of increased prescription drug prices.

False. Note the use of the word "may"—it's complete speculation. There is no evidence to back up this assertion, but it is a talking point put forward by certain insurance companies.

Senate Bill 71 cuts pharmacy benefit managers out of the rebate process, requiring that rebates go directly to health insurers.

This is also false. SB 71 does not prohibit PBMs from participating in the rebate process, and it does not require that rebates go "directly" from manufacturers to health insurers. In fact, most likely PBMs would continue to handle rebates for insurers. What SB 71 DOES do is require that the PBMs then pass on those rebate dollars to the insurer to lower premiums for Montanans.

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.

Again, false (see above). The rebates would still be there for all the health insurers (regardless of size or nonprofit status).

The result is higher drug costs for plan members.

The opposite is true. SB 71 would have required that the millions of dollars in rebates be directed specifically to lowering health insurance premiums, instead of being retained by the PBMs to pad their multi-billion-dollar revenues. The rebate portion of SB 71 alone would have saved Montanans millions.

Second, SB 71 will increase the administrative costs for regional or nonprofit health plans.

Possibly, but the net savings to consumers would've been millions of dollars. Any increase in administrative costs would've been tiny compared to the overall savings.

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 rebates are extracted from drug manufacturers. This provision of SB 71 would have given Montanans quicker access to innovative medicines, and there's no evidence that this would have increased costs.

Third, SB 71 reduces many rural Montanans' choices when it comes to accessing their prescriptions. **The opposite is true. SB 71 specifically ensured that rural Montanans would have had options to access prescription drugs, instead of being limited to only one PBM or insurer-owned mail-order pharmacy.**

Senate Bill 71 prohibits certain mail-order pharmacies.

**No, it didn't. SB 71 contained no prohibition of mail-order pharmacies, period.**

Many Montanans who do not have easy access to brick-and-mortar pharmacies rely on the mail to obtain their prescription drugs.

**True.**

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.

**No, it wouldn't. There was no ban on mail-order pharmacies in SB 71. SB 71 DID, however, require that health insurance companies had to maintain adequate networks by including brick-and-mortar pharmacies as part of their plans, instead of *only* providing prescriptions through the mail. This 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.

**True. This was done intentionally in order for SB 71 to survive lawsuits from PBMs and actually have an impact. This fact was widely reported on by the Montana press.**

This is already the most volatile of the health insurance markets.

**True. It's also incredibly expensive for many Montanans, who need relief from high prescription drug costs.**

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.

**This is a false premise. SB 71 would've lowered costs, not created higher costs or "upward pressure."**

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.

**True. SB 125 will have a stabilizing effect on the market, and should've helped insurers adjust to complying with SB 71. SB 125 did pass the legislature with bipartisan support; so did SB 71. SB 71 was sponsored by a Republican (Sen. Al Olszewski, an orthopedic surgeon) and carried by a Democrat (Rep. Gordon Pierson, a nurse) in the House, and received overwhelming support in both chambers, from both parties.**

But the defects with SB 71 could offset all the savings generated by SB 125-to the detriment of Montana insurance consumers.

**This is both a false premise and just false in general. There is no evidence to support this fantastical assertion.**

For these reasons, I veto SB 71.

**True, Bullock did veto SB 71, standing up for the multi-billion-dollar PBMs and insurance companies and leaving Montanans to continue to struggle with ever-increasing prescription drug prices.**

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 will not lower the cost of prescription drugs**
- SB 125, the reinsurance bill to lower individual insurance premiums;
  - **True**
- SB 270, which prohibits pharmacy benefit managers from requiring pharmacies to charge consumers more in copayments than it costs to make a drug; and
  - **Does not lower the cost of prescription drugs**
- SB 335, which protects federally-qualified health centers from discrimination in prescription drug pricing.
  - **Does not lower the cost of prescription drugs**

Sincerely,



STEVE BULLOCK

Governor

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