

AN ACT

RELATING TO HEALTH CARE; ENACTING THE PHARMACY BENEFITS  
MANAGER REGULATION ACT; PROVIDING PENALTIES; AMENDING AND  
ENACTING SECTIONS OF THE NEW MEXICO INSURANCE CODE; REQUIRING  
LICENSURE OF PHARMACY BENEFITS MANAGERS; ESTABLISHING  
GUIDELINES AND NOTICE PROVISIONS FOR MAXIMUM ALLOWABLE COST  
FOR DRUGS AND FOR CHALLENGING MAXIMUM ALLOWABLE COST PRICING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** A new section of the New Mexico Insurance  
Code is enacted to read:

"SHORT TITLE.--Sections 1 through 6 of this act may be  
cited as the "Pharmacy Benefits Manager Regulation Act"."

**SECTION 2.** A new section of the New Mexico Insurance  
Code is enacted to read:

"DEFINITIONS.--As used in the Pharmacy Benefits Manager  
Regulation Act:

A. "covered entity" means a nonprofit hospital or  
medical service corporation, health insurer, health benefit  
plan or health maintenance organization; a health program  
administered by the state as a provider of health coverage;  
any type of group health care coverage, including any form of  
self-insurance offered, issued or renewed pursuant to the  
Health Care Purchasing Act; or an employer, labor union or  
other group of persons organized in the state that provides

health coverage to covered individuals who are employed or reside in the state. "Covered entity" does not include a self-funded plan that is exempt from state regulation pursuant to the federal Employee Retirement Income Security Act of 1974; a plan issued for coverage for federal employees; or a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, medicare supplement, disability income, long-term care or other limited benefit health insurance policies and contracts;

B. "covered individual" means a member, participant, enrollee, contract holder, policy holder or beneficiary of a covered entity who is provided health coverage by the covered entity and includes a dependent or other person provided health coverage through a policy, contract or plan for a covered individual;

C. "medicare advantage plan" or "MA-PD" means a prescription drug program authorized pursuant to Part C of Title 18 of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 that provides qualified prescription drug coverage;

D. "pharmacist" means an individual licensed as a pharmacist by the board of pharmacy;

E. "pharmacy" means a licensed place of business where drugs are compounded or dispensed and pharmacist services are provided;

F. "pharmacy benefits management" means the service provided to a health benefit plan or health insurer, directly or through another person, including the procurement of prescription drugs to be dispensed to patients, or the administration or management of prescription drug benefits, including:

(1) mail service pharmacies; and

(2) claims processing, retail network management or payment of claims to pharmacies for dispensing dangerous drugs, as those drugs are defined in the New Mexico Drug, Device and Cosmetic Act;

G. "pharmacy benefits manager" means a person or a wholly or partially owned or controlled subsidiary of a person that provides claims administration, benefit design and management, pharmacy network management, negotiation and administration of product discounts, rebates and other benefits accruing to the pharmacy benefits manager or other prescription drug or device services to third parties, but "pharmacy benefits manager" does not include licensed health care facilities, pharmacies, licensed health care professionals, health insurers, unions, health maintenance organizations, medicare advantage plans or prescription drug plans when providing formulary services to their own patients, employees, members or beneficiaries;

H. "prescription drug plan" or "PDP" means

prescription drug coverage that is offered pursuant to a policy, contract or plan that has been approved as specified in 42 CFR Part 423 and that is offered by a prescription drug plan sponsor that has a contract with the federal centers for medicare and medicaid services of the United States department of health and human services; and

I. "superintendent" means the superintendent of insurance."

**SECTION 3.** A new section of the New Mexico Insurance Code is enacted to read:

"LICENSE.--

A. A person shall not operate as a pharmacy benefits manager unless licensed by the superintendent in accordance with the Pharmacy Benefits Manager Regulation Act and applicable federal and state laws.

B. An application for licensure as a pharmacy benefits manager shall require only the following information:

(1) the identity of the pharmacy benefits manager;

(2) the name and business address of the contact person for the pharmacy benefits manager; and

(3) where applicable, the federal employer identification number for the pharmacy benefits manager.

C. The superintendent shall enforce the provisions of the Pharmacy Benefits Manager Regulation Act and may

suspend or revoke a license issued to a pharmacy benefits manager or deny an application for a license or renewal of a license if:

(1) the pharmacy benefits manager is operating materially in contravention of its application;

(2) the pharmacy benefits manager has failed to continuously meet or substantially comply with the requirements for issuance of a license;

(3) the pharmacy benefits manager has failed to substantially comply with applicable state or federal laws or rules; or

(4) the pharmacy benefits manager has transacted insurance in the state without authorization or has transacted insurance for a product that is not issued by an authorized insurer.

D. If the license of a pharmacy benefits manager is revoked, the manager shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and conduct no further business except as may be essential to the orderly conclusion of its affairs. The superintendent may permit further operation of the pharmacy benefits manager if the superintendent finds it to be in the best interest of patients to obtain pharmacist services.

E. A person whose pharmacy benefits manager license has been denied, suspended or revoked may seek review

of the denial, suspension or revocation pursuant to the provisions of Chapter 59A, Article 4 NMSA 1978."

**SECTION 4.** A new section of the New Mexico Insurance Code is enacted to read:

**"MAXIMUM ALLOWABLE COST PRICING REQUIREMENTS.--**

A. A pharmacy benefits manager using maximum allowable cost pricing shall:

(1) to place a drug on a maximum allowable cost list, ensure that the drug:

(a) is listed as "A" or "B" rated in the most recent version of the United States food and drug administration's approved drug products with therapeutic equivalence evaluations, also known as the "orange book";

(b) has an "NR" or "NA" rating or a similar rating by a nationally recognized reference; and

(c) is generally available for purchase by pharmacies in the state from national or regional wholesalers and is not obsolete;

(2) provide to a network pharmacy provider, at the time a contract is entered into or renewed with the network pharmacy provider, the sources used to determine the maximum allowable cost pricing for the maximum allowable cost list specific to that provider;

(3) review and update maximum allowable cost price information at least once every seven business days to

reflect any modification of maximum allowable cost pricing;

(4) establish a process for eliminating products from the maximum allowable cost list or modifying maximum allowable cost prices in a timely manner to remain consistent with pricing changes and product availability in the marketplace;

(5) provide a procedure under which a network pharmacy provider may challenge a listed maximum allowable cost price for a drug and respond to a challenge not later than the fifteenth day after the date the challenge is made. If the challenge is successful, a pharmacy benefits manager using maximum allowable cost pricing shall make an adjustment in the drug price effective one day after the challenge is resolved, and make the adjustment applicable to all similarly situated network pharmacy providers, as determined by the managed care organization or pharmacy benefits manager, as appropriate. If the challenge is denied, the pharmacy benefits manager using maximum allowable cost pricing shall provide the reason for the denial; and

(6) provide a process for each of its network pharmacy providers to readily access the maximum allowable cost list specific to that provider.

B. A maximum allowable cost list specific to a provider and maintained by a managed care organization or pharmacy benefits manager is confidential.

C. As used in this section, "maximum allowable cost" means the maximum amount that a pharmacy benefits manager will reimburse a pharmacy for the cost of a generic drug."

**SECTION 5.** A new section of the New Mexico Insurance Code is enacted to read:

"PHARMACY BENEFITS MANAGER CONTRACTS.--

A. A pharmacy benefits manager shall not require that a pharmacy participate in one contract in order to participate in another contract.

B. Each pharmacy benefits manager shall provide to the pharmacies, at least thirty days prior to its execution, a contract written in plain English.

C. A contract between a pharmacy benefits manager and a pharmacy shall provide specific time limits for the pharmacy benefits manager to pay the pharmacy for services rendered."

**SECTION 6.** A new section of the New Mexico Insurance Code is enacted to read:

"AUDIT--PHARMACY BENEFITS MANAGER.--A pharmacy benefits manager, whether licensed pursuant to the Pharmacy Benefits Manager Regulation Act or exempt from licensure pursuant to that act, shall be subject to Section 61-11-18.2 NMSA 1978."

**SECTION 7.** Section 59A-6-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 101, as amended) is amended to read:



"59A-6-1. FEE SCHEDULE.--The superintendent shall collect the following fees:

- A. insurer's certificate of authority -
  - (1) filing application for certificate of authority, and issuance of certificate of authority, if issued, including filing of all charter documents, financial statements, service of process, power of attorney, examination reports and other documents included with and part of the application. . . . . \$1,000.00
  - (2) annual continuation of certificate of authority, per kind of insurance. . . . . 200.00
  - (3) reinstatement of certificate of authority (Section 59A-5-23 NMSA 1978). . . . . 150.00
  - (4) amendment to certificate of authority. . . . . 200.00
- B. charter documents - filing amendment to any charter document (as defined in Section 59A-5-3 NMSA 1978). . . . . 10.00
- C. annual statement of insurer, filing. . . 200.00
- D. service of process, acceptance by superintendent and issuance of certificate of service, where issued. . . . . 10.00
- E. agents' licenses and appointments -
  - (1) filing application for original agent license and issuance of license, if issued. . . . . 30.00

(2) appointment of agent -	
(a) filing appointment, per kind of insurance, each insurer.. . . . .	20.00
(b) annual continuation of appointment, each insurer. . . . .	20.00
(3) variable annuity agent's license -	
(a) filing application for license and issuance of license, if issued. . . . .	30.00
(b) annual continuation of appointment . . . . .	20.00
(4) temporary license -	
(a) as to life and health insurance or both. . . . .	30.00
(b) as to property insurance.. .	30.00
(c) as to casualty/surety insurance.. . . . .	30.00
(d) as to vehicle insurance. . .	30.00

F. agency license and affiliations -

(1) filing application for original agency business entity license and issuance of license, if issued .. . . . .	30.00
(2) filing of individual affiliation, per kind of insurance . . . . .	20.00
(3) annual continuation of individual affiliation.. . . . .	20.00

G. solicitor license -

(1) filing application for original license and issuance of license, if issued. . . . . 30.00

(2) annual continuation of appointment, per kind of insurance.. . . . 20.00

H. broker license -

(1) filing application for license and issuance of original license, if issued.. . . . 30.00

(2) annual continuation of license.. . . . 30.00

I. insurance vending machine license -

(1) filing application for original license and issuance of license, if issued, each machine. . . . 25.00

(2) annual continuation of license, each machine.. . . . 25.00

J. examination for license, application for examination conducted directly by superintendent, each grouping of kinds of insurance to be covered by the examination as provided by the superintendent's rules, and payable as to each instance of examination. . . . . 50.00

K. surplus lines insurer - filing application for qualification as eligible surplus lines insurer.. . . . 1,000.00

L. surplus lines broker license -

(1) filing application for original license

and issuance of license, if issued. . . . . 100.00

    (2) annual continuation of  
license.. . . . 100.00

    M. surplus lines broker license and affiliations -

        (1) filing application for original surplus  
lines brokerage business entity license and issuance of  
license, if issued. . . . . 100.00

        (2) filing of individual affiliation per  
kind of insurance.. . . . 20.00

        (3) annual continuation of individual  
affiliation. . . . . 20.00

    N. adjuster license -

        (1) filing application for original license  
and issuance of license, if issued. . . . . 30.00

        (2) annual continuation of  
license.. . . . 30.00

    O. insurance consultant license -

        (1) filing application for original license  
and issuance of license, if issued .. . . . 50.00

        (2) application examination. . . . . 10.00

        (3) biennial continuation of license . 100.00

    P. viatical settlements license -

        (1) providers -

            (a) filing application for original  
license and issuance of license, if issued .. . . . 1,000.00

(b) annual continuation of  
license . . . . . 200.00

(2) brokers -

(a) filing application for original  
license and issuance of license, if issued .. . . . 100.00

(b) annual continuation of  
license . . . . . 100.00

(3) brokerages -

(a) filing application for original  
license and issuance of license, if issued .. . . . 100.00

(b) annual continuation of  
license.. . . . 20.00

(c) filing of individual affiliation,  
per kind of insurance . . . . . 20.00

(d) annual continuation of individual  
affiliation . . . . . 20.00

Q. rating organization or rating advisory  
organization license -

(1) filing application for license and  
issuance of license, if issued. . . . . 100.00

(2) annual continuation of  
license.. . . . 100.00

R. nonprofit health care plans -

(1) filing application for preliminary  
permit and issuance of permit, if issued. . . . . 100.00

(2) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers

(3) annual statement, filing. . . . . 200.00

(4) agents and solicitors -

(a) filing application for original license and issuance of license, if issued. . . . . 30.00

(b) examination for license conducted directly by superintendent, each instance of examination.. . . . 50.00

(c) annual continuation of appointment.. . . . 20.00

S. prepaid dental plans -

(1) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers

(2) annual report, filing. . . . . 200.00

(3) agents and solicitors -

(a) filing application for original license and issuance of license, if issued. . . . . 30.00

(b) examination for license conducted directly by superintendent, each instance of examination.. . . . 50.00

(c) annual continuation of license . . . . . 20.00

T. prearranged funeral insurance - application for certificate of authority, issuance, continuation, reinstatement, charter documents, filing annual statement, licensing of sales representatives - same as for insurers

U. premium finance companies -

(1) filing application for original license and issuance of license, if issued. . . . . 100.00

(2) annual renewal of license. . . . . 100.00

V. motor clubs -

(1) certificate of authority -

(a) filing application for original certificate of authority and issuance of certificate of authority, if issued. . . . . 200.00

(b) annual continuation of certificate of authority. . . . . 100.00

(2) sales representatives -

(a) filing application for registration or license and issuance of registration or license, if issued, each representative. . . . . 20.00

(b) annual continuation of registration or license, each representative. . . . . 20.00

W. bail bondsmen -

(1) filing application for original license as bail bondsman or solicitor, and issuance of license, if issued. . . . . 30.00

(2) examination for license conducted directly by superintendent, each instance of examination.. . . . 50.00

(3) annual continuation of appointment.. . . . 20.00

X. securities salesperson license -

(1) filing application for license and issuance of license, if issued. . . . . 25.00

(2) annual renewal of license. . . . . 25.00

Y. required filing of forms or rates - by all lines of business other than property or casualty -

(1) rates. . . . . 50.00

(2) major form - each new policy and each package submission, which can include multiple policy forms, application forms, rider forms, endorsement forms or amendment forms.. . . . 30.00

(3) incidental forms and rates - forms filed for informational purposes; riders, applications, endorsements and amendments filed individually; rate service organization reference filings; rates filed for informational purposes. . . . . 15.00

Z. health maintenance organizations -

(1) filing an application for a certificate of authority. . . . . 1,000.00

(2) annual continuation of certificate of



authority.. . . . .	200.00
(3) filing each annual report . . . . .	200.00
(4) filing an amendment to organizational documents requiring approval. . . . .	200.00
(5) filing informational amendments. . . . .	50.00
(6) agents and solicitors -	
(a) filing application for original license and issuance of license, if issued. . . . .	30.00
(b) examination for license, each instance of examination.. . . . .	50.00
(c) annual continuation of appointment . . . . .	20.00
AA. purchasing groups and foreign risk retention groups -	
(1) original registration. . . . .	500.00
(2) annual continuation of registration. . . . .	200.00
(3) agent or broker fees - same as for authorized insurers	
BB. third party administrators -	
(1) filing application for original individual insurance administrator license. . . . .	30.00
(2) filing application for original officer, manager or partner insurance administrator	

license.. . . . .	30.00
(3) annual continuation or renewal of	
license.. . . . .	30.00
(4) examination for license conducted	
directly by the superintendent, each examination. . . .	75.00
(5) filing of annual report. . . . .	50.00
CC. miscellaneous fees -	
(1) duplicate license . . . . .	30.00
(2) name change . . . . .	30.00
(3) for each signature and seal of	
superintendent affixed to any instrument .. . . .	10.00
DD. pharmacy benefits managers -	
(1) filing an application for a	
license.. . . . .	1,000.00
(2) annual continuation of license, each	
year continued. . . . .	500.00
(3) filing each annual report. . . . .	200.00
(4) filing an amendment to organizational	
documents requiring approval. . . . .	200.00
(5) filing informational amendments. . . . .	100.00
(6) agents -	
(a) filing application for original	
license and issuance of license, if issued. . . . .	100.00
(b) annual continuation of	
license.. . . . .	100.00.

An insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, whenever form or rate-filing fees in excess of those imposed by state law are charged to insurers in New Mexico doing business in another state or whenever a condition precedent to the right to issue policies in another state is imposed by the laws of that state over and above the conditions imposed upon insurers by the laws of New Mexico; in those cases, the same form or rate-filing fees may be imposed upon an insurer from another state transacting or applying to transact business in New Mexico so long as the higher fees remain in force in the other state. If an insurer does not comply with the additional retaliatory or reciprocal requirement charges imposed under this subsection, the superintendent may refuse to grant or may withdraw approval of the tendered form or rate filing.

All fees are earned when paid and are not refundable."           

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