

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 622

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Jim R. Trujillo

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PRESCRIPTION DRUGS; ENACTING THE PHARMACY BENEFITS
MANAGER REGULATION ACT; AMENDING AND ENACTING SECTIONS OF THE
NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 14 of this act may be cited as the "Pharmacy Benefits
Manager Regulation Act".

Section 2. [NEW MATERIAL] 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; or
an employer, labor union or other group of persons organized in

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

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

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

16 C. "maintenance drug" means a drug prescribed by a
17 prescribing practitioner authorized to prescribe drugs and used
18 to treat a medical condition for a period greater than thirty
19 days;

20 D. "medicare advantage plan" or "MA-PD" means a
21 prescription drug program authorized pursuant to Part C of
22 Title 18 of the federal Medicare Modernization Act that
23 provides qualified prescription drug coverage;

24 E. "pharmacist" means an individual licensed as a
25 pharmacist by the board of pharmacy;

underscored material = new
[bracketed material] = delete

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

4 G. "pharmacy benefits manager" means a person or a
5 wholly or partially owned or controlled subsidiary of a
6 pharmacy benefits manager or an administrator that provides
7 claims administration, benefit design and management, pharmacy
8 network management, negotiation and administration of product
9 discounts, rebates and other benefits accruing to the pharmacy
10 benefits manager or other prescription drug or device services
11 to third parties, but does not include licensed health care
12 facilities, pharmacies, licensed health care professionals,
13 insurance companies, unions, health maintenance organizations,
14 a medicare advantage plan or a prescription drug plan;

15 H. "prescription drug plan" or "PDP" means
16 prescription drug coverage that is offered pursuant to a
17 policy, contract or plan that has been approved as specified in
18 42 CFR Part 423 and that is offered by a prescription drug plan
19 sponsor that has a contract with the federal centers for
20 medicare and medicaid services of the federal department of
21 health and human services; and

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

24 Section 3. [NEW MATERIAL] LICENSE. --

25 A. A person shall not operate as a pharmacy

. 154782. 1

underscored material = new
[bracketed material] = delete

1 benefits manager unless licensed by the superintendent pursuant
2 to Section 59A-12A-3 NMSA 1978 and in accordance with the
3 Pharmacy Benefits Manager Regulation Act and applicable federal
4 and state laws.

5 B. The superintendent may suspend or revoke a
6 license issued to a pharmacy benefits manager or deny an
7 application for a license or renewal of a license if:

8 (1) the pharmacy benefits manager is operating
9 materially in contravention of:

10 (a) its application or other information
11 submitted as a part of its application for a license or renewal
12 of its license; or

13 (b) a condition imposed by the
14 superintendent with respect to the issuance or renewal of its
15 license;

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

19 (3) the continued operation of the pharmacy
20 benefits manager adversely affects the public health and
21 safety; or

22 (4) the pharmacy benefits manager has failed
23 to substantially comply with applicable state or federal laws
24 or rules.

25 C. If the certificate of authority of a pharmacy

. 154782. 1

underscored material = new
[bracketed material] = delete

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

9 Section 4. [NEW MATERIAL] RULES. -- The superintendent
10 shall adopt rules consistent with the Pharmacy Benefits Manager
11 Regulation Act regulating pharmacy benefits managers with
12 regard to all business and financial issues.

13 Section 5. [NEW MATERIAL] PHARMACY BENEFITS MANAGER
14 CONTRACTS. --

15 A. A pharmacy benefits manager that contracts with
16 a pharmacy or pharmacist to provide pharmacist services shall
17 inform the pharmacy in writing of the number of, and other
18 relevant information concerning, patients to be served under
19 the contract. There shall be a separate contract with each
20 independent pharmacy or pharmacy organization for each of the
21 pharmacy benefits manager's provider networks. Contracts
22 providing for indemnity of the pharmacy shall be separate from
23 contracts providing for cash discounts. A pharmacy benefits
24 manager shall not require that a pharmacy participate in one
25 contract in order to participate in another contract.

underscored material = new
[bracketed material] = delete

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

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

8 D. A pharmacy benefits manager contract shall not
9 mandate that any pharmacy change a patient's maintenance drug
10 unless the prescribing practitioner so orders.

11 E. Before terminating a pharmacy from a pharmacy
12 benefits manager's provider network, the pharmacy benefits
13 manager shall give the pharmacy a written explanation of the
14 reason for the termination thirty days before the actual
15 termination unless the termination is taken in reaction to:

- 16 (1) loss of a professional or facility
17 license;
18 (2) loss of professional liability insurance;
19 or
20 (3) conviction of fraud or misrepresentation.

21 F. A pharmacy shall not be held responsible for
22 acts or omissions of a pharmacy benefits manager. A pharmacy
23 benefits manager shall not be held responsible for the acts or
24 omissions of a pharmacy.

25 Section 6. [NEW MATERIAL] DISCLOSURE REQUIRED. --

. 154782. 1

underscored material = new
[bracketed material] = delete

1 A. A covered entity may request that any pharmacy
2 benefits manager with which it has a pharmacy benefits
3 management services contract disclose to the covered entity the
4 amount of all rebate revenues and the nature, type and amounts
5 of all other revenues that the pharmacy benefits manager
6 receives from each pharmaceutical manufacturer or labeler with
7 whom the pharmacy benefits manager has a contract. The
8 pharmacy benefits manager shall disclose in writing:

9 (1) the aggregate amount, and for a list of
10 drugs to be specified in the contract, the specific amount, of
11 all rebates and other retrospective utilization discounts
12 received by the pharmacy benefits manager directly or
13 indirectly, from each pharmaceutical manufacturer or labeler
14 that are earned in connection with the dispensing of
15 prescription drugs to covered individuals of the health benefit
16 plans issued by the covered entity or for which the covered
17 entity is the designated administrator;

18 (2) the nature, type and amount of all other
19 revenue received by the pharmacy benefits manager directly or
20 indirectly from each pharmaceutical manufacturer or labeler for
21 any other products or services provided to the pharmaceutical
22 manufacturer or labeler by the pharmacy benefits manager with
23 respect to programs that the covered entity offers or provides
24 to its enrollees; and

25 (3) any prescription drug utilization

. 154782. 1

underscored material = new
[bracketed material] = del ete

1 information requested by the covered entity or by the human
2 services department relating to covered individuals.

3 B. A pharmacy benefits manager shall provide such
4 information requested by the covered entity or by the human
5 services department within thirty days of receipt of the
6 request. If requested, the information shall be provided
7 annually. The contract entered into between the pharmacy
8 benefits manager and the covered entity shall set forth any
9 fees to be charged for drug utilization reports requested by
10 the covered entity.

11 Section 7. [NEW MATERIAL] CONSUMER CONTACT LIMITED. --A
12 pharmacy benefits manager, unless authorized by the terms of
13 its contract with a covered entity, shall not contact a covered
14 individual without express written permission of the covered
15 entity.

16 Section 8. [NEW MATERIAL] CONFIDENTIALITY. --Except for
17 utilization information, a covered entity shall maintain any
18 information disclosed in response to a request pursuant to
19 Section 6 of the Pharmacy Benefits Manager Regulation Act as
20 confidential and proprietary information, and shall not use
21 such information for any other purpose or disclose such
22 information to any person except as provided in that act or in
23 the pharmacy benefits management services contract between the
24 parties. A covered entity that discloses information in
25 violation of this section is subject to an action for

. 154782. 1

underscored material = new
[bracketed material] = delete

1 injunctive relief and is liable for any damages that are the
2 direct and proximate result of such disclosure. Nothing in
3 this section prohibits a covered entity from disclosing
4 confidential or proprietary information, upon request, to the
5 superintendent. Information obtained by the superintendent is
6 confidential and privileged and is not open to public
7 inspection or disclosure.

8 Section 9. [NEW MATERIAL] AUDITS. --The covered entity may
9 have the pharmacy benefits manager's books and records related
10 to the rebates or other information described in Paragraphs (1)
11 through (3) of Subsection A of Section 6 of the Pharmacy
12 Benefits Manager Regulation Act to the extent the information
13 related directly or indirectly to such covered entity's
14 contract, audited in accordance with the terms of the contract
15 between the parties, unless the parties have not expressly
16 provided for audit rights and the pharmacy benefits manager has
17 advised the covered entity that other reasonable options are
18 available and, subject to negotiation, the covered entity may
19 have such books and records audited as follows:

20 A. audits may be conducted no more frequently than
21 once in each twelve-month period upon not less than thirty
22 business days' written notice to the pharmacy benefits manager;

23 B. the covered entity may select an independent
24 firm to conduct such audit, and such independent firm shall
25 sign a confidentiality agreement with the covered entity and

underscored material = new
[bracketed material] = delete

1 the pharmacy benefits manager ensuring that all information
2 obtained during such audit will be confidential and that the
3 auditing firm may not use, disclose or otherwise reveal any
4 such information in any manner or form to any person except as
5 otherwise permitted under the confidentiality agreement; the
6 covered entity shall treat all information obtained as a result
7 of the audit as confidential, and shall not use or disclose
8 such information except as may be otherwise permitted under the
9 terms of the contract between the covered entity and the
10 pharmacy benefits manager or if ordered by a court of competent
11 jurisdiction for good cause shown; and

12 C. the audit shall be conducted at the pharmacy
13 benefits manager's office where such records are located,
14 during normal business hours, without undue interference with
15 the pharmacy benefits manager's business activities and in
16 accordance with reasonable audit procedures.

17 Section 10. [NEW MATERIAL] DRUG SUBSTITUTION. -- If a
18 pharmacy benefits manager wishes to make a substitution for a
19 prescription drug prescribed for a covered entity, substitution
20 of a prescription drug shall be in accordance with the Drug
21 Product Selection Act.

22 Section 11. [NEW MATERIAL] ENFORCEMENT. --

23 A. Enforcement of the Pharmacy Benefits Manager
24 Regulation Act shall be the responsibility of the
25 superintendent. The superintendent shall take action to bring

underscored material = new
[bracketed material] = delete

1 a non-complying pharmacy benefits manager into full compliance
2 with the Pharmacy Benefits Manager Regulation Act or shall
3 terminate the pharmacy benefits manager's license. The
4 superintendent shall adopt procedures for formal investigation
5 of complaints concerning the failure of a pharmacy benefits
6 manager to comply with the Pharmacy Benefits Manager Regulation
7 Act.

8 B. If the superintendent has reason to believe that
9 there may have been a violation of the Pharmacy Benefits
10 Manager Regulation Act, the superintendent shall issue and
11 serve upon the pharmacy benefits manager a statement of the
12 charges and a notice of a hearing. The hearing shall be held
13 at a time and place fixed in the notice, and not be less than
14 thirty days after the notice is served. At the hearing, the
15 pharmacy benefits manager shall have an opportunity to be heard
16 and to show cause why the superintendent should not:

17 (1) issue a cease and desist order against the
18 pharmacy benefits manager; or

19 (2) take other action, including termination
20 of the pharmacy benefits manager's license.

21 Section 12. [NEW MATERIAL] REMEDY.--A covered entity may
22 bring a civil action to enforce the provisions of the Pharmacy
23 Benefits Manager Regulation Act or to seek civil damages for
24 the violation of its provisions.

25 Section 13. [NEW MATERIAL] FUND CREATED.--The "pharmacy

. 154782. 1

underscored material = new
[bracketed material] = delete

1 benefits manager fund" is created in the state treasury. Fees
2 and penalties assessed pursuant to the Pharmacy Benefits
3 Manager Regulation Act shall be deposited in the fund. Money
4 in the fund is appropriated to the insurance division of the
5 public regulation commission to administer the Pharmacy
6 Benefits Manager Regulation Act. Money in the fund shall not
7 revert to the general or other fund. Money in the fund may be
8 expended pursuant to vouchers signed by the superintendent on
9 warrants signed by the secretary of finance and administration.

10 Section 14. [NEW MATERIAL] FEE DISTRIBUTION. -- Fees
11 imposed pursuant to Subsection Z of Section 59A-6-1 NMSA 1978
12 shall be distributed as follows:

13 A. fifty percent to the pharmacy benefits manager
14 fund for expenditure by the division of insurance for
15 administration of the Pharmacy Benefits Manager Regulation Act;
16 and

17 B. fifty percent to the human services department
18 for development and maintenance of the preferred drug list as
19 required by Section 27-2-12.13 NMSA 1978.

20 Section 15. Section 59A-6-1 NMSA 1978 (being Laws 1984,
21 Chapter 127, Section 101, as amended) is amended to read:

22 "59A-6-1. FEE SCHEDULE. -- The superintendent shall collect
23 the following fees:

24 A. insurer's certificate of authority -

25 (1) filing application for certificate of

. 154782. 1

underscored material = new
[bracketed material] = delete

1 authority, and issuance of certificate of authority, if issued,
2 including filing of all charter documents, financial
3 statements, service of process, power of attorney, examination
4 reports and other documents included with and part of the
5 application \$1,000.00
6 (2) annual continuation of certificate of
7 authority, per kind of insurance, each year
8 continued 200.00
9 (3) reinstatement of certificate of authority
10 (Section 59A-5-23 NMSA 1978) 150.00
11 (4) amendment to certificate of
12 authority 200.00
13 B. charter documents - filing amendment to any
14 charter document (as defined in Section 59A-5-3
15 NMSA 1978) 10.00
16 C. annual statement of insurer,
17 filing 200.00
18 D. service of process, acceptance by superintendent
19 and issuance of certificate of service, where issued . . 10.00
20 E. agents' licenses and appointments -
21 (1) filing application for original agent
22 license and issuance of license, if issued 30.00
23 (2) appointment of agent -
24 (a) filing appointment, per kind of
25 insurance, each insurer 20.00

. 154782. 1

underscored material = new
[bracketed material] = delete

1 (b) continuation of appointment, each
2 insurer, each year continued 20.00

3 (3) variable annuity agent's license -

4 (a) filing application for license and
5 issuance of license, if issued 30.00

6 (b) continuation of appointment each
7 year 20.00

8 (4) temporary license as to life and health
9 insurance or both 30.00

10 (a) as to property insurance . . . 30.00

11 (b) as to casualty/surety
12 insurance 30.00

13 (c) as to vehicle insurance . . . 30.00

14 F. solicitor license -

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

17 (2) continuation of appointment, per kind of
18 insurance, each year 20.00

19 G. broker license -

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

22 (2) annual continuation of
23 license 30.00

24 H. insurance vending machine license -

25 (1) filing application for original license

underscored material = new
[bracketed material] = delete

1 and issuance of license, if issued, each machine 25.00

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

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

9 J. surplus line insurer - filing application for
10 qualification as eligible surplus ~~lines~~ line
11 insurer 1,000.00

12 K. surplus line broker license -
13 (1) filing application for original license
14 and issuance of license, if issued 100.00
15 (2) annual continuation of
16 license 100.00

17 L. adjuster license -
18 (1) filing application for original license
19 and issuance of license, if issued 30.00
20 (2) annual continuation of
21 license 30.00

22 M rating organization or rating advisory
23 organization license -
24 (1) filing application for license and
25 issuance of license, if issued 100.00

. 154782. 1

underscored material = new
[bracketed material] = delete

1 (2) annual continuation of
2 license 100.00

3 N. nonprofit health care plans -

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

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

9 (3) annual statement, filing 200.00

10 (4) agents and solicitors -

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

13 (b) examination for license conducted
14 directly by superintendent, each instance of
15 examination 50.00

16 (c) annual continuation of
17 appointment 20.00

18 0. prepaid dental plans -

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

22 (2) annual report, filing 200.00

23 (3) agents and solicitors -

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

underscored material = new
[bracketed material] = delete

1 (b) examination for license conducted
2 directly by superintendent, each instance of
3 examination 50.00

4 (c) continuation of license, each
5 year 20.00

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

10 Q. premium finance companies -
11 (1) filing application for original license
12 and issuance of license, if issued 100.00
13 (2) annual renewal of license 100.00

14 R. motor clubs -
15 (1) certificate of authority -
16 (a) filing application for original
17 certificate of authority and issuance of certificate of
18 authority, if issued 200.00

19 (b) annual continuation of certificate
20 of authority 100.00

21 (2) sales representatives -
22 (a) filing application for registration
23 or license and issuance of registration or license, if issued,
24 each representative 20.00

25 (b) annual continuation of registration

. 154782. 1

underscored material = new
[bracketed material] = delete

1 or license, each representative 20.00

2 S. bail bondsmen -

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

6 (2) examination for license conducted directly
7 by superintendent, each instance of
8 examination 50.00

9 (3) continuation of appointment, each
10 year 20.00

11 T. securities salesperson license -

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

14 (2) renewal of license, each year . . . 25.00

15 U. for each signature and seal of the
16 superintendent affixed to any instrument 10.00

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

19 (1) rates 50.00

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

24 (3) incidental forms and rates - forms filed
25 for informational purposes; riders, applications, endorsements

underscored material = new
[bracketed material] = delete

1 and amendments filed individually; rate service organization
2 reference filings; rates filed for informational purposes 15.00

3 W. health maintenance organizations -

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

6 (2) annual continuation of certificate of
7 authority, each year continued 200.00

8 (3) filing each annual report 200.00

9 (4) filing an amendment to organizational
10 documents requiring approval 200.00

11 (5) filing informational
12 amendments 50.00

13 (6) agents and solicitors -

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

16 (b) examination for license, each
17 instance of examination 50.00

18 (c) annual continuation of
19 appointment 20.00

20 X. purchasing groups and foreign risk retention
21 groups -

22 (1) original registration 500.00

23 (2) annual continuation of
24 registration 200.00

25 (3) agent or broker fees same as for

underscored material = new
[bracketed material] = delete

- 1 authorized insurers
- 2 Y. third party administrators -
- 3 (1) filing application for original individual
- 4 insurance administrator license 30.00
- 5 (2) filing application for original officer,
- 6 manager or partner insurance administrator
- 7 license 30.00
- 8 (3) continuation or renewal of annual
- 9 license 30.00
- 10 (4) examination for license conducted directly
- 11 by the superintendent, each examination 75.00
- 12 (5) each request for a duplicate license or
- 13 for each name change 30.00
- 14 (6) filing of annual report 50.00
- 15 Z. pharmacy benefit managers -
- 16 (1) filing an application for a
- 17 license 5,000.00
- 18 (2) annual continuation of license, each year
- 19 continued 5,000.00
- 20 (3) filing each annual report 200.00
- 21 (4) filing an amendment to organizational
- 22 documents requiring approval 200.00
- 23 (5) filing informational
- 24 amendments 100.00
- 25 (6) agents -

1 (a) filing application for original
2 license and issuance of license, if issued 100.00
3 (b) annual continuation of
4 appointment 100.00.

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

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

21 Section 16. Section 59A-6-5 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 105, as amended) is amended to read:

23 "59A-6-5. DISTRIBUTION OF DIVISION COLLECTIONS. --

24 A. All money received by the division for fees,
25 licenses, penalties and taxes, except as provided in Subsection

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = del ete

1 Z of Section 59A-6-1 NMSA 1978, shall be paid daily by the
2 superintendent to the state treasurer and by him credited to
3 the "insurance department suspense fund" except as provided by:

- 4 (1) the Law Enforcement Protection Fund Act;
5 (2) Section 59A-6-1.1 NMSA 1978; and
6 (3) the Voter Action Act.

7 B. The superintendent may authorize refund of money
8 erroneously paid as fees, licenses, penalties or taxes from the
9 insurance department suspense fund under request for refund
10 made within three years after the erroneous payment.

11 C. The "insurance operations fund" is created in
12 the state treasury. The fund shall consist of the
13 distributions made to it pursuant to Subsection D of this
14 section. The legislature shall annually appropriate from the
15 fund to the division those amounts necessary for the division
16 to carry out its responsibilities pursuant to the Insurance
17 Code and other laws. Any balance in the fund at the end of a
18 fiscal year greater than one-half of that fiscal year's
19 appropriation shall revert to the general fund.

20 D. At the end of every month, after applicable
21 refunds are made pursuant to Subsection B of this section, the
22 treasurer shall make the following transfers from the balance
23 remaining in the insurance department suspense fund:

- 24 (1) to the "fire protection fund", that part
25 of the balance derived from property and vehicle insurance

underscored material = new
[bracketed material] = delete

1 business;

2 (2) to the insurance operations fund, that
3 part of the balance derived from the fees imposed pursuant to
4 Subsections A and E of Section 59A-6-1 NMSA 1978 other than
5 fees derived from property and vehicle insurance business; and

6 (3) to the general fund, the balance remaining
7 in the insurance department suspense fund derived from all
8 other kinds of insurance business. "

9 Section 17. Section 59A-12A-2 NMSA 1978 (being Laws 1989,
10 Chapter 374, Section 2) is amended to read:

11 "59A-12A-2. DEFINITIONS. --As used in Chapter 59A, Article
12 12A NMSA 1978:

13 A. unless otherwise specified in that article, all
14 definitions of the Insurance Code apply;

15 B. "administrator" or "third party administrator"
16 or "TPA" means a person who receives any form of administrative
17 or service fee, consideration, payment, premium, reimbursement
18 or compensation for performing or providing any service,
19 function, ~~[or]~~ duty or activity ~~[respecting]~~ relating to
20 insurance, pharmacy benefits managers or alternatives to
21 insurance in any administrative or management capacity,
22 including ~~[but not limited to]~~ claims or expense review,
23 underwriting, administration and management under a contract or
24 other agreement to be performed in this state or with respect
25 to risks located or partially located in this state or on

. 154782. 1

underscored material = new
[bracketed material] = delete

1 behalf of persons in this state for any:

2 (1) plan;

3 (2) insurance carrier; or

4 (3) person that self insures;

5 C. "administrator" does not include:

6 (1) an employer on behalf of its employees or
7 the employees of one or more subsidiaries or affiliated
8 corporations of that employer as long as only the functions of
9 a group policyholder are performed;

10 (2) a union on behalf of its members as long
11 as only the functions of a group policyholder are performed;

12 (3) an insurance company or a corporation
13 which owns more than fifty percent of an insurance company
14 licensed in this state or a health maintenance organization,
15 nonprofit health care plan or a dental plan that is licensed in
16 this state;

17 (4) an agent licensed in this state acting on
18 behalf of an admitted insurance carrier by whom he is appointed
19 and only within the scope of his license as an agent as defined
20 in the article of the Insurance Code under which he licensed;

21 (5) a creditor on behalf of its debtors with
22 respect to insurance covering its debtors as long as only the
23 functions of a group policyholder or creditor are performed;

24 (6) a trust and its trustees, agents and
25 employees acting under the trust, established in conformity

. 154782. 1

underscored material = new
[bracketed material] = delete

1 with 29 U. S. C. Sec. 186;

2 (7) a trust exempt from taxations under
3 Section 501(a) of the Internal Revenue Code of 1986, and its
4 trustees and employees acting under the trust, or a custodian
5 and its agents and employees acting pursuant to a custodian
6 account that meets the requirements of Section 401(f) of the
7 Internal Revenue Code of 1986;

8 (8) a bank that is subject to supervision or
9 examination by federal or state regulatory authorities as long
10 as the bank is only performing the function for which it is
11 licensed;

12 (9) a company that advances and collects any
13 premium or charge from its credit card holders who have
14 authorized it to do so, provided the company does not adjust or
15 settle claims and acts only in its debtor-creditor relationship
16 with its credit card holders;

17 (10) a person who adjusts or settles claims in
18 the normal course of his practice or employment as an attorney
19 at law who does not collect any charge or premium in connection
20 with life or health coverage or annuities;

21 (11) an adjuster licensed by the
22 superintendent, when engaged in the performance of his duties
23 as an adjuster;

24 (12) any joint fund, risk management pool or
25 self-insurance pool composed of political subdivisions of this

. 154782. 1

underscored material = new
[bracketed material] = delete

1 state that participate in such funds or pools through
2 interlocal agreements, and any administrative agency
3 established under the interlocal agreement to administer the
4 fund or pool;

5 (13) any person providing technical, advisory
6 or consulting services who does not make any management or
7 discretionary decisions on behalf of an insurance carrier, plan
8 or person that self-insures;

9 (14) any full-time salaried employee of an
10 insurance carrier to the extent that the functions performed
11 are only for that insurance carrier or any affiliated carrier;

12 (15) attorneys in fact for a Lloyd's or
13 reciprocal exchange as authorized respectively in Chapter 38 or
14 39 NMSA 1978, while acting as attorney in fact for such Lloyd's
15 or reciprocal exchange;

16 (16) a certified public accountant, attorney
17 at law or actuary when performing duties or undertaking
18 responsibilities within the authority and scope of that
19 particular profession;

20 (17) an association and any subsidiary,
21 affiliated or related corporations of that association. For
22 the purposes of this subsection, "association" means a bona
23 fide trade or professional association which has been in
24 existence for not less than five years and which enters into
25 agreements to pool its liabilities for ~~workers~~ workers'

underscored material = new
[bracketed material] = del etc

1 compensation benefits, pursuant to the Group Self-Insurance
2 Act; or

3 (18) a home owner warranty corporation
4 provided by a trade association that has been in business in
5 New Mexico for a least five years;

6 D. "alternatives to insurance" means any agreement
7 to indemnify against loss, risk, damage, liability or other
8 contingency relating to property or persons, whether or not
9 such agreement is deemed to be insurance under applicable law
10 or where persons self insure;

11 E. "bank" means a bank, savings and loan
12 association, credit union or other financial institution
13 authorized by law to accept and maintain deposits;

14 F. "person" includes a corporation, organization,
15 government or governmental subdivision or agency, business
16 trust, estate trust, partnership, association or any other
17 legal entity; and

18 G. "plan" means any employer-employee, multiple
19 employer-employee, group, member or other employee benefit or
20 welfare program, medical, accident, sickness, injury,
21 indemnity, death or health benefit program contracting to
22 provide indemnification or expense reimbursement in this state
23 to persons domiciled in this state or for risks located or
24 partially located in this state for any type of the following
25 coverages, expenses or benefits: medical, surgical,

. 154782. 1

underscored material = new
[bracketed material] = delete

1 orthopedic, chiropractic, physical therapy, speech pathology,
2 audiology, professional mental health, dental, hospital,
3 workers' compensation or optometric plan or programs, hospital
4 care or benefit or benefits in the event of sickness, accident,
5 disability, death or unemployment, or prepaid legal services. "

6 Section 18. Section 59A-12A-3 NMSA 1978 (being Laws 1989,
7 Chapter 374, Section 3) is amended to read:

8 "59A-12A-3. LICENSE REQUIRED--PENALTY.--

9 A. No administrator shall perform or provide any
10 service, function, duty or activity, including those of a
11 pharmacy benefits manager, respecting any insurance, plan,
12 self-insurance or alternatives to insurance in any
13 administrative or management capacity in this state or with
14 respect to risks located or partially located in this state or
15 on behalf of persons in this state unless licensed as an
16 administrator under the Insurance Code.

17 B. Licensing and examination procedures for
18 administrators shall be in accordance with Chapter 59A, Article
19 11 NMSA 1978, except that the superintendent may, in his
20 discretion, waive the examination requirements for
21 administrators who are operating in New Mexico prior to the
22 effective date of Chapter 59A, Article 12A NMSA 1978.

23 C. Every corporation or partnership to be licensed
24 under Chapter 59A, Article 12A NMSA 1978 shall have every
25 officer and manager of that corporation and every partner of

. 154782. 1

1 that partnership licensed as an administrator.

2 D. In addition to any applicable denial, suspension
3 or revocation of a license, refusal to continue license or
4 administrative fine, violation of this section shall be a
5 misdemeanor punishable by a fine not to exceed one thousand
6 dollars (\$1,000) and by forfeiture to the state of an amount
7 equal to all compensation for services as administrator
8 received or to be received by the violator by reason of the
9 prohibited transactions. "

10 Section 19. EFFECTIVE DATE. --The effective date of the
11 provisions of this act is July 1, 2005.

12 - 29 -
13
14
15
16
17
18
19
20
21
22
23
24
25

underscored material = new
[bracketed material] = delete