

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

SENATE BILL 16

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Dede Feldman and Danice Picraux

AN ACT

RELATING TO PRESCRIPTION DRUGS; ENACTING THE PHARMACY BENEFITS
MANAGER REGULATION ACT; PROVIDING PENALTIES; AMENDING AND
ENACTING SECTIONS OF THE NEW MEXICO INSURANCE CODE; MAKING AN
APPROPRIATION.

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:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 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:

"[NEW MATERIAL] DEFINITIONS.--As used in the Pharmacy
Benefits Manager Regulation Act:

underscoring material = new
[bracketed material] = delete

underscored material = new
~~[bracketed material] = delete~~

1 A. "covered entity" means a nonprofit hospital or
2 medical service corporation, health insurer, health benefit
3 plan or health maintenance organization; a health program
4 administered by the state as a provider of health coverage; any
5 type of group health care coverage, including any form of self-
6 insurance offered, issued or renewed pursuant to the Health
7 Care Purchasing Act; or an employer, labor union or other group
8 of persons organized in the state that provides health coverage
9 to covered individuals who are employed or reside in the state.
10 "Covered entity" does not include a self-funded plan that is
11 exempt from state regulation pursuant to the federal Employee
12 Retirement Income Security Act of 1974; a plan issued for
13 coverage for federal employees; or a health plan that provides
14 coverage only for accidental injury, specified disease,
15 hospital indemnity, medicare supplement, disability income,
16 long-term care or other limited benefit health insurance
17 policies and contracts;

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

24 C. "medicare advantage plan" or "MA-PD" means a
25 prescription drug program authorized pursuant to Part C of

.183167.2

1 Title 18 of the federal Medicare Prescription Drug,
2 Improvement, and Modernization Act of 2003 that provides
3 qualified prescription drug coverage;

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

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

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

15 (1) mail service pharmacies; and

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

20 G. "pharmacy benefits manager" means a person or a
21 wholly or partially owned or controlled subsidiary of a person
22 that provides claims administration, benefit design and
23 management, pharmacy network management, negotiation and
24 administration of product discounts, rebates and other benefits
25 accruing to the pharmacy benefits manager or other prescription

.183167.2

underscored material = new
[bracketed material] = delete

1 drug or device services to third parties, but "pharmacy
2 benefits manager" does not include licensed health care
3 facilities, pharmacies, licensed health care professionals,
4 health insurers, unions, health maintenance organizations,
5 medicare advantage plans or prescription drug plans when
6 providing formulary services to their own patients, employees,
7 members or beneficiaries;

8 H. "prescription drug plan" or "PDP" means
9 prescription drug coverage that is offered pursuant to a
10 policy, contract or plan that has been approved as specified in
11 42 CFR Part 423 and that is offered by a prescription drug plan
12 sponsor that has a contract with the federal centers for
13 medicare and medicaid services of the United States department
14 of health and human services; and

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

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

19 "[NEW MATERIAL] LICENSE.--

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

24 B. The superintendent shall enforce the provisions
25 of the Pharmacy Benefits Manager Regulation Act and may suspend

.183167.2

underscoring material = new
[bracketed material] = delete

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

3 (1) the pharmacy benefits manager is operating
4 materially in contravention of:

5 (a) its application or other information
6 submitted as a part of its application for a license or renewal
7 of its license; or

8 (b) a condition imposed by the
9 superintendent with respect to the issuance or renewal of its
10 license;

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

14 (3) the continued operation of the pharmacy
15 benefits manager adversely affects the public health and
16 safety;

17 (4) the pharmacy benefits manager has failed
18 to substantially comply with applicable state or federal laws
19 or rules; or

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

24 C. If the license of a pharmacy benefits manager is
25 revoked, the manager shall proceed, immediately following the

.183167.2

underscoring material = new
[bracketed material] = delete

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

7 D. The Pharmacy Benefits Manager Regulation Act
8 does not apply to a person that is a licensed health care
9 facility, pharmacy, licensed health care professional, health
10 insurer, union, health maintenance organization, medicare
11 advantage plan or prescription drug plan when that person is
12 providing formulary services to its own patients, employees,
13 members or beneficiaries."

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

16 "[NEW MATERIAL] PHARMACY BENEFITS MANAGER CONTRACTS.--

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

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

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

.183167.2

underscoring material = new
~~[bracketed material] = delete~~

1 rendered.

2 D. A pharmacy shall not be held responsible for
3 acts or omissions of a pharmacy benefits manager. A pharmacy
4 benefits manager shall not be held responsible for the acts or
5 omissions of a pharmacy."

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

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

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

15 "[NEW MATERIAL] AUDIT--PHARMACY BENEFITS MANAGER.--

16 A. A pharmacy benefits manager, whether licensed
17 pursuant to the Pharmacy Benefits Manager Regulation Act or
18 exempt from licensure pursuant to that act, shall be subject to
19 Section 61-11-18.2 NMSA 1978 to the same extent and in the same
20 manner as a pharmacy.

21 B. The covered entity may have the pharmacy
22 benefits manager's books and records audited to verify a
23 pharmacy benefits manager's performance in accordance with the
24 terms of the contract between the parties. If the parties have
25 not expressly provided for audit rights and the pharmacy

.183167.2

underscoring material = new
~~[bracketed material] = delete~~

1 benefits manager has advised the covered entity that other
2 reasonable options are available subject to negotiation, the
3 covered entity may have such books and records audited as
4 follows:

5 (1) audits may be conducted no more frequently
6 than once in each twelve-month period upon not less than thirty
7 business days' written notice to the pharmacy benefits manager;

8 (2) the covered entity and pharmacy benefits
9 manager shall select a mutually agreed-upon independent firm to
10 conduct such audit, and the independent firm shall sign a
11 confidentiality agreement with the covered entity and the
12 pharmacy benefits manager ensuring that all information
13 obtained during the audit will be kept confidential and that
14 the auditing firm shall not use, disclose or otherwise reveal
15 any such information in any manner or form to any person except
16 as otherwise permitted under the confidentiality agreement; the
17 covered entity shall treat all information obtained as a result
18 of the audit as confidential and shall not use or disclose such
19 information except as may be otherwise permitted under the
20 terms of the contract between the covered entity and the
21 pharmacy benefits manager or if ordered by a court of competent
22 jurisdiction for good cause shown; and

23 (3) the audit shall be conducted at the
24 pharmacy benefits manager's office where such records are
25 located, during normal business hours, without undue

.183167.2

underscored material = new
~~[bracketed material] = delete~~

1 interference with the pharmacy benefits manager's business
2 activities and in accordance with reasonable audit procedures."

3 SECTION 7. A new section of the New Mexico Insurance Code
4 is enacted to read:

5 "[NEW MATERIAL] REMEDY.--A covered entity may bring a
6 civil action to enforce the provisions of the Pharmacy Benefits
7 Manager Regulation Act or to seek civil damages for the
8 violation of its provisions, except where parties have agreed
9 by contract to alternative dispute resolution."

10 SECTION 8. A new section of the New Mexico Insurance Code
11 is enacted to read:

12 "[NEW MATERIAL] PHARMACY BENEFITS MANAGER FUND--CREATED.--
13 The "pharmacy benefits manager fund" is created in the state
14 treasury. Fees and penalties assessed pursuant to the Pharmacy
15 Benefits Manager Regulation Act shall be deposited in the fund.
16 Money in the fund is appropriated to the insurance division to
17 administer the Pharmacy Benefits Manager Regulation Act. Money
18 in the fund shall not revert to the general fund or any other
19 fund. Money in the fund may be expended pursuant to vouchers
20 signed by the superintendent on warrants drawn by the secretary
21 of finance and administration."

22 SECTION 9. Section 59A-6-1 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 101, as amended) is amended to read:

24 "59A-6-1. FEE SCHEDULE.--The superintendent shall collect
25 the following fees:

.183167.2

underscored material = new
[bracketed material] = delete

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

.183167.2

underscored material = new
~~[bracketed material] = delete~~

1 (a) filing appointment, per kind of
2 insurance, each insurer 20.00

3 (b) continuation of appointment, each
4 insurer, each year continued 20.00

5 (3) variable annuity agent's license -

6 (a) filing application for license and
7 issuance of license, if issued 30.00

8 (b) continuation of appointment each
9 year 20.00

10 (4) temporary license as to life and health
11 insurance or both 30.00

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

13 (b) as to casualty/surety
14 insurance 30.00

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

16 F. solicitor license -

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

19 (2) continuation of appointment, per kind of
20 insurance, each year 20.00

21 G. broker license -

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

24 (2) annual continuation of
25 license 30.00

.183167.2

underscored material = new
[bracketed material] = delete

- 1 H. insurance vending machine license -
- 2 (1) filing application for original license
- 3 and issuance of license, if issued, each machine 25.00
- 4 (2) annual continuation of license, each
- 5 machine 25.00
- 6 I. examination for license, application for
- 7 examination conducted directly by superintendent, each grouping
- 8 of kinds of insurance to be covered by the examination as
- 9 provided by the superintendent's rules, and payable as to each
- 10 instance of examination 50.00
- 11 J. surplus line insurer - filing application for
- 12 qualification as eligible surplus [~~lines~~] line
- 13 insurer 1,000.00
- 14 K. surplus line broker license -
- 15 (1) filing application for original license
- 16 and issuance of license, if issued 100.00
- 17 (2) annual continuation of
- 18 license 100.00
- 19 L. adjuster license -
- 20 (1) filing application for original license
- 21 and issuance of license, if issued 30.00
- 22 (2) annual continuation of
- 23 license 30.00
- 24 M. rating organization or rating advisory
- 25 organization license -

.183167.2

underscored material = new
[bracketed material] = delete

- 1 (1) filing application for license and
- 2 issuance of license, if issued 100.00
- 3 (2) annual continuation of
- 4 license 100.00
- 5 N. nonprofit health care plans -
- 6 (1) filing application for preliminary permit
- 7 and issuance of permit, if issued 100.00
- 8 (2) certificate of authority, application,
- 9 issuance, continuation, reinstatement, charter documents - same
- 10 as for insurers
- 11 (3) annual statement, filing 200.00
- 12 (4) agents and solicitors -
- 13 (a) filing application for original
- 14 license and issuance of license, if issued 30.00
- 15 (b) examination for license conducted
- 16 directly by superintendent, each instance of
- 17 examination 50.00
- 18 (c) annual continuation of
- 19 appointment 20.00
- 20 O. prepaid dental plans -
- 21 (1) certificate of authority, application,
- 22 issuance, continuation, reinstatement, charter documents - same
- 23 as for insurers
- 24 (2) annual report, filing 200.00
- 25 (3) agents and solicitors -

.183167.2

underscored material = new
~~[bracketed material] = delete~~

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

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

6 (c) continuation of license, each
7 year 20.00

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

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

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

21 (b) annual continuation of certificate
22 of authority 100.00

23 (2) sales representatives -
24 (a) filing application for registration
25 or license and issuance of registration or license, if issued,

.183167.2

underscored material = new
[bracketed material] = delete

1 each representative 20.00
2 (b) annual continuation of registration
3 or license, each representative 20.00
4 S. bail bondsmen -
5 (1) filing application for original license as
6 bail bondsman or solicitor, and issuance of license, if
7 issued 30.00
8 (2) examination for license conducted directly
9 by superintendent, each instance of
10 examination 50.00
11 (3) continuation of appointment, each
12 year 20.00
13 T. securities salesperson license -
14 (1) filing application for license and
15 issuance of license, if issued 25.00
16 (2) renewal of license, each year . . . 25.00
17 U. for each signature and seal of the
18 superintendent affixed to any instrument 10.00
19 V. required filing of forms or rates - by all lines
20 of business other than property or casualty -
21 (1) rates 50.00
22 (2) major form - each new policy and each
23 package submission, which can include multiple policy forms,
24 application forms, rider forms, endorsement forms or amendment
25 forms 30.00

.183167.2

underscored material = new
[bracketed material] = delete

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

5 W. health maintenance organizations -

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

8 (2) annual continuation of certificate of
9 authority, each year continued 200.00

10 (3) filing each annual report 200.00

11 (4) filing an amendment to organizational
12 documents requiring approval 200.00

13 (5) filing informational
14 amendments 50.00

15 (6) agents and solicitors -

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

18 (b) examination for license, each
19 instance of examination 50.00

20 (c) annual continuation of
21 appointment 20.00

22 X. purchasing groups and foreign risk retention
23 groups -

24 (1) original registration 500.00

25 (2) annual continuation of

.183167.2

underscored material = new
[bracketed material] = delete

1	registration	200.00
2	(3) agent or broker fees same as for	
3	authorized insurers	
4	Y. third party administrators -	
5	(1) filing application for original individual	
6	insurance administrator license	30.00
7	(2) filing application for original officer,	
8	manager or partner insurance administrator	
9	license	30.00
10	(3) continuation or renewal of annual	
11	license	30.00
12	(4) examination for license conducted directly	
13	by the superintendent, each examination	75.00
14	(5) each request for a duplicate license or	
15	for each name change	30.00
16	(6) filing of annual report	50.00
17	<u>Z. pharmacy benefits managers -</u>	
18	<u>(1) filing an application for a</u>	
19	<u>license</u>	<u>1,000.00</u>
20	<u>(2) annual continuation of license, each year</u>	
21	<u>continued</u>	<u>500.00</u>
22	<u>(3) filing each annual report</u>	<u>200.00</u>
23	<u>(4) filing an amendment to organizational</u>	
24	<u>documents requiring approval</u>	<u>200.00</u>
25	<u>(5) filing informational amendments.</u>	<u>100.00</u>

.183167.2

underscored material = new
[bracketed material] = delete

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

(6) agents -

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

(b) annual continuation of appointment 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."

SECTION 10. Section 59A-6-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 105, as amended) is amended to read:

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

A. All money received by the division for fees,

underscored material = new
[bracketed material] = delete

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

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

8 B. The superintendent may authorize refund of money
9 erroneously paid as fees, licenses, penalties or taxes from the
10 insurance department suspense fund under request for refund
11 made within three years after the erroneous payment. In the
12 case of premium taxes erroneously paid or overpaid in
13 accordance with law, refund may also be requested as a credit
14 against premium taxes due in any annual or quarterly premium
15 tax return filed within three years of the erroneous or excess
16 payment.

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

.183167.2

underscored material = new
[bracketed material] = delete

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

5 (1) to the "fire protection fund", that part
6 of the balance derived from property and vehicle insurance
7 business;

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

12 (3) to the general fund, the balance remaining
13 in the insurance department suspense fund derived from all
14 other kinds of insurance business.

15 E. Fees imposed pursuant to Subsection Z of Section
16 59A-6-1 NMSA 1978 shall be distributed as follows:

17 (1) fifty percent to the pharmacy benefits
18 manager fund for expenditure by the division for administration
19 of the Pharmacy Benefits Manager Regulation Act; and

20 (2) fifty percent to the human services
21 department for development and maintenance of the preferred
22 drug list as required by Section 27-2-12.13 NMSA 1978."