

1 AN ACT

2 RELATING TO HEALTH CARE; AMENDING AND ENACTING SECTIONS OF  
3 THE PHARMACY BENEFITS MANAGER REGULATION ACT; PROVIDING FOR  
4 RENEWAL OF PHARMACY BENEFITS MANAGER LICENSURE; REQUIRING  
5 DISCLOSURE OF DOCUMENTS DURING AN INVESTIGATION; PROVIDING  
6 FOR CONFIDENTIALITY; PROVIDING FOR CHANGES TO THE  
7 REIMBURSEMENT PROCESS; PROVIDING FOR AN APPEALS PROCESS;  
8 REQUIRING THE PROVISION OF CERTAIN DOCUMENTS OR INFORMATION  
9 UPON REQUEST; REQUIRING CERTAIN CONTRACTUAL PROVISIONS;  
10 LIMITING PHARMACY BENEFITS MANAGER CHARGES TO THOSE ITEMIZED  
11 IN A CONTRACT.

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 SECTION 1. Section 59A-61-2 NMSA 1978 (being Laws 2014,  
15 Chapter 14, Section 2) is amended to read:

16 "59A-61-2. DEFINITIONS.--As used in the Pharmacy  
17 Benefits Manager Regulation Act:

18 A. "maximum allowable cost" means the maximum  
19 amount that a pharmacy benefits manager will reimburse a  
20 pharmacy for the cost of a generic drug;

21 B. "maximum allowable cost list" means a  
22 searchable, electronic and internet-based listing of drugs  
23 used by a pharmacy benefits manager setting the maximum  
24 allowable cost on which reimbursement to a pharmacy or  
25 pharmacist is made;

1 C. "obsolete" means a product that is listed in  
2 national drug pricing compendia but is no longer available to  
3 be dispensed based on the expiration date of the last lot  
4 manufactured;

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

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

10 F. "pharmacy benefits management" means a service  
11 provided to or conducted by a health plan as defined in  
12 Section 59A-16-21.1 NMSA 1978 or health insurer that  
13 involves:

14 (1) prescription drug claim administration;

15 (2) pharmacy network management;

16 (3) negotiation and administration of  
17 prescription drug discounts, rebates and other benefits;

18 (4) design, administration or management of  
19 prescription drug benefits;

20 (5) formulary management;

21 (6) payment of claims to pharmacies for  
22 dispensing prescription drugs;

23 (7) negotiation or administration of  
24 contracts relating to pharmacy operations or prescription  
25 benefits; or

1 (8) any other service determined by the  
2 superintendent as specified by rule to be a pharmacy benefits  
3 management activity;

4 G. "pharmacy benefits manager" means an entity  
5 that provides pharmacy benefits management services;

6 H. "pharmacy benefits manager affiliate" means a  
7 pharmacy or pharmacist that directly or indirectly, through  
8 one or more intermediaries, owns or controls, is owned or  
9 controlled by or is under common ownership or control with a  
10 pharmacy benefits manager;

11 I. "pharmacy services administrative organization"  
12 means an entity that contracts with a pharmacy or pharmacist  
13 to act as the pharmacy or pharmacist's agent with respect to  
14 matters involving a pharmacy benefits manager or third-party  
15 payor, including negotiating, executing or administering  
16 contracts with the pharmacy benefits manager or third-party  
17 payor; and

18 J. "superintendent" means the superintendent of  
19 insurance."

20 SECTION 2. Section 59A-61-3 NMSA 1978 (being Laws 2014,  
21 Chapter 14, Section 3) is amended to read:

22 "59A-61-3. LICENSURE--INITIAL APPLICATION--ANNUAL  
23 RENEWAL REQUIRED--REVOCATION.--

24 A. A person shall not operate as a pharmacy  
25 benefits manager unless licensed by the superintendent in

1 accordance with the Pharmacy Benefits Manager Regulation Act  
2 and applicable federal and state laws. A licensee shall  
3 renew the licensee's pharmacy benefits manager license  
4 annually.

5 B. An initial application and a renewal  
6 application for licensure as a pharmacy benefits manager  
7 shall be made on a form and in a manner provided for by the  
8 superintendent, but at a minimum shall require:

9 (1) the identity of the pharmacy benefits  
10 manager;

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

13 (3) where applicable, the federal employer  
14 identification number for the pharmacy benefits manager; and

15 (4) any other information specified in rules  
16 promulgated by the superintendent.

17 C. The superintendent shall enforce and promulgate  
18 rules to implement the provisions of the Pharmacy Benefits  
19 Manager Regulation Act and may suspend or revoke a license  
20 issued to a pharmacy benefits manager or deny an application  
21 for a license or renewal of a license if:

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

24 (2) the pharmacy benefits manager has failed  
25 to continuously meet or comply with the requirements for

1 issuance or maintenance of a license; or

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

4 D. If the license of a pharmacy benefits manager  
5 is revoked, the manager shall proceed, immediately following  
6 the effective date of the order of revocation, to conclude  
7 its affairs, notify each pharmacy in its network and conduct  
8 no further pharmacy benefits management services in the  
9 state, except as may be essential to the orderly conclusion  
10 of its affairs. The superintendent may permit further  
11 operation of the pharmacy benefits manager if the  
12 superintendent finds it to be in the best interest of  
13 patients.

14 E. A person whose pharmacy benefits manager  
15 license has been denied, suspended or revoked may seek review  
16 of the denial, suspension or revocation pursuant to the  
17 provisions of Chapter 59A, Article 4 NMSA 1978.

18 F. Nothing in the Pharmacy Benefits Manager  
19 Regulation Act shall be construed to authorize a pharmacy  
20 benefits manager to transact the business of insurance."

21 SECTION 3. Section 59A-61-4 NMSA 1978 (being Laws 2014,  
22 Chapter 14, Section 4) is amended to read:

23 "59A-61-4. PHARMACY REIMBURSEMENT PRACTICES FOR GENERIC  
24 DRUGS--APPEALS PROCESS REQUIRED.--

25 A. A pharmacy benefits manager shall determine a

1 reimbursement amount for a generic drug based on objective  
2 and verifiable sources.

3 B. A pharmacy benefits manager shall reimburse a  
4 pharmacy an amount no less than the amount that the pharmacy  
5 benefits manager reimburses a pharmacy benefits manager  
6 affiliate in the same network for providing the same or  
7 equivalent service.

8 C. A pharmacy benefits manager using maximum  
9 allowable cost pricing may place a drug on a maximum  
10 allowable cost list if the drug:

11 (1) is listed as "A" or "B" rated in the  
12 most recent version of the United States food and drug  
13 administration's approved drug products with therapeutic  
14 equivalence evaluations, also known as the "orange book", or  
15 has an "NR" or "NA" rating or a similar rating by a  
16 nationally recognized reference;

17 (2) is available for purchase by pharmacies  
18 in the state at the time of claim submission from national or  
19 regional wholesalers and is not obsolete; and

20 (3) is a drug with not fewer than two "A" or  
21 "B" rated therapeutically equivalent drugs in the most recent  
22 version of the United States food and drug administration's  
23 approved drug products with therapeutic equivalence  
24 evaluations, also known as the "orange book".

25 D. A pharmacy benefits manager using maximum

1 allowable cost pricing shall:

2 (1) upon a network pharmacy's request,  
3 provide that network pharmacy with the sources used to  
4 determine the maximum allowable cost pricing for the maximum  
5 allowable cost list specific to that provider;

6 (2) review and update maximum allowable cost  
7 price information at least once every seven business days to  
8 reflect any modification of maximum allowable cost pricing;

9 (3) establish and maintain a process for  
10 eliminating products from the maximum allowable cost list or  
11 modifying maximum allowable cost prices in at least seven  
12 business days to remain consistent with pricing changes and  
13 product availability in the marketplace;

14 (4) provide a procedure that allows a  
15 pharmacy to choose the entity to which it will appeal  
16 reimbursement for generic drugs. A pharmacy may appeal:

17 (a) directly to the pharmacy benefits  
18 manager; or

19 (b) through a pharmacy services  
20 administrative organization;

21 (5) provide an appeals process that, at a  
22 minimum, includes the following:

23 (a) a dedicated telephone number and  
24 electronic mail address or website for the purpose of  
25 submitting appeals;

1 (b) the ability to submit an appeal  
2 directly to the pharmacy benefits manager; and

3 (c) the allowance of at least  
4 twenty-one business days to file an appeal after the date a  
5 pharmacy receives notice of the reimbursement amount;

6 (6) grant an appeal if the pharmacy benefits  
7 manager fails to respond to a complete submission as defined  
8 by rules promulgated by the superintendent of the appealing  
9 party in writing within fourteen business days after the  
10 pharmacy benefits manager receives the appeal;

11 (7) if an appeal is granted, notify the  
12 challenging pharmacy and its pharmacy services administrative  
13 organization, if any, that the appeal is granted and make the  
14 change in the maximum allowable cost effective for the  
15 appealing pharmacy and for each other pharmacy in its network  
16 and permit the appealing pharmacy to reverse and bill again  
17 the claim or claims that formed the basis of the appeal;

18 (8) when an appeal is denied, provide the  
19 challenging pharmacy and its pharmacy services administrative  
20 organization, if any, the national drug code number and  
21 supplier that has the product available for purchase in  
22 New Mexico at or below the maximum allowable cost;

23 (9) within one business day of granting or  
24 denying a network pharmacy's appeal, notify all network  
25 pharmacies of the decision;



1 (10) upon granting an appeal, allow other  
2 similarly situated network pharmacies to reverse and bill  
3 again for like claims that formed the basis of the granted  
4 appeal; and

5 (11) provide for each of its network  
6 pharmacy providers and the superintendent a process and  
7 mechanism to readily access the maximum allowable cost list  
8 specific to that provider.

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

12 F. Pursuant to Section 59A-4-3 NMSA 1978, a  
13 pharmacy benefits manager shall provide information contained  
14 in a maximum allowable cost list to the superintendent upon  
15 request by the superintendent."

16 SECTION 4. Section 59A-61-5 NMSA 1978 (being Laws 2014,  
17 Chapter 14, Section 5) is amended to read:

18 "59A-61-5. PHARMACY BENEFITS MANAGER CONTRACTS--CERTAIN  
19 PRACTICES PROHIBITED--CERTAIN DISCLOSURES REQUIRED UPON  
20 REQUEST.--

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

24 B. A pharmacy benefits manager shall provide to a  
25 pharmacy by electronic mail, facsimile or certified mail, at

1 least thirty calendar days prior to its execution, a contract  
2 written in plain English.

3 C. A contract between a pharmacy benefits manager  
4 and a pharmacy shall identify the industry standard  
5 reimbursement practice that the pharmacy benefits manager  
6 will use to determine a reimbursement amount, unless the  
7 contract is modified in writing to specify another industry  
8 standard practice.

9 D. The provisions of the Pharmacy Benefits Manager  
10 Regulation Act shall not be waived, voided or nullified by  
11 contract.

12 E. A pharmacy benefits manager shall not:

13 (1) cause or knowingly permit the use of any  
14 advertisement, promotion, solicitation, representation,  
15 proposal or offer that is untrue, deceptive or misleading;

16 (2) require pharmacy validation and  
17 revalidation standards inconsistent with, more stringent than  
18 or in addition to federal and state requirements for  
19 licensure and operation as a pharmacy in this state;

20 (3) prohibit a pharmacy or pharmacist from:

21 (a) mailing or delivering drugs to a  
22 patient as an ancillary service;

23 (b) providing a patient information  
24 regarding the patient's total cost for pharmacist services  
25 for a prescription drug; or

1 (c) discussing information regarding  
2 the total cost for pharmacist services for a prescription  
3 drug or from selling a more affordable alternative to the  
4 insured if a more affordable alternative is available;

5 (4) require or prefer a generic drug over  
6 its generic therapeutic equivalent;

7 (5) prohibit, restrict or limit disclosure  
8 of information by a pharmacist or pharmacy to the  
9 superintendent; or

10 (6) prohibit, restrict or limit pharmacies  
11 or pharmacists from providing to state or federal government  
12 officials general information for public policy purposes.

13 F. A pharmacy benefits manager or health benefit  
14 plan shall not impose a fee on a pharmacy for scores or  
15 metrics or both scores and metrics. Nothing in this  
16 subsection prohibits a pharmacy benefits manager or health  
17 benefit plan from offering incentives to a pharmacy based on  
18 a score or metric; provided that the incentive is equally  
19 available to all in-network pharmacies.

20 G. Within seven business days of a request by the  
21 superintendent or a contracted pharmacy or pharmacist, a  
22 pharmacy benefits manager or pharmacy services administrative  
23 organization shall provide as appropriate:

24 (1) a contract;

25 (2) an agreement;

- 1 (3) a claim appeal document;  
2 (4) a disputed claim transaction document or  
3 price list; or  
4 (5) any other information specified by law.

5 H. In a time and manner required by rules  
6 promulgated by the superintendent, a pharmacy benefits  
7 manager shall issue to the superintendent a network adequacy  
8 report describing the pharmacy benefits manager network and  
9 the pharmacy benefits manager network's accessibility to  
10 insureds statewide.

11 I. Pursuant to the provisions of Section 59A-4-3  
12 NMSA 1978, the superintendent, or the superintendent's  
13 designee, may examine the books, documents, policies,  
14 procedures and records of a pharmacy benefits manager to  
15 determine compliance with applicable law. The pharmacy  
16 benefits manager shall pay the costs of the examination. At  
17 the request of a person who provides information in response  
18 to a complaint, investigation or examination, the  
19 superintendent may deem the information confidential."

20 SECTION 5. Section 59A-61-6 NMSA 1978 (being Laws 2014,  
21 Chapter 14, Section 6) is amended to read:

22 "59A-61-6. AUDIT--PHARMACY BENEFITS MANAGER.--A  
23 pharmacy benefits manager licensed pursuant to the Pharmacy  
24 Benefits Manager Regulation Act shall be subject to Section  
25 61-11-18.2 NMSA 1978. A pharmacy benefits manager shall not

1 reduce or eliminate payment on an adjudicated claim except as  
2 permitted by Section 61-11-18.2 NMSA 1978."

3 SECTION 6. Section 59A-61-7 NMSA 1978 (being Laws 2017,  
4 Chapter 16, Section 2) is amended to read:

5 "59A-61-7. PHARMACY BENEFITS MANAGERS--PROHIBITED  
6 PHARMACY FEES.--

7 A. A pharmacy benefits manager shall not charge a  
8 pharmacy a fee related to the adjudication of a claim,  
9 including:

10 (1) the receipt and processing of a pharmacy  
11 claim;

12 (2) the development or management of a claim  
13 processing or adjudication network; or

14 (3) participation in a claim processing or  
15 claim adjudication network.

16 B. A pharmacy benefits manager shall not charge a  
17 pharmacy a fee for a service unless the fee for service is  
18 itemized in the pharmacy benefits management contract."

19 SECTION 7. A new section of the Pharmacy Benefits  
20 Manager Regulation Act is enacted to read:

21 "REGISTRATION OF PHARMACY SERVICES ADMINISTRATIVE  
22 ORGANIZATIONS REQUIRED.--A pharmacy services administrative  
23 organization shall register with the superintendent on a form  
24 and in a time frame and method of submission specified by the  
25 superintendent."

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SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019. \_\_\_\_\_