AN ACT

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

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

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

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

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

B. "maximum allowable cost list" means a
searchable, electronic and internet-based listing of drugs
used by a pharmacy benefits manager setting the maximum
allowable cost on which reimbursement to a pharmacy or
pharmacist is made;
C. "obsolete" means a product that is listed in national drug pricing compendia but is no longer available to be dispensed based on the expiration date of the last lot manufactured;

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 a service provided to or conducted by a health plan as defined in Section 59A-16-21.1 NMSA 1978 or health insurer that involves:

   (1) prescription drug claim administration;
   
   (2) pharmacy network management;
   
   (3) negotiation and administration of prescription drug discounts, rebates and other benefits;
   
   (4) design, administration or management of prescription drug benefits;
   
   (5) formulary management;
   
   (6) payment of claims to pharmacies for dispensing prescription drugs;
   
   (7) negotiation or administration of contracts relating to pharmacy operations or prescription benefits; or
(8) any other service determined by the superintendent as specified by rule to be a pharmacy benefits management activity;

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

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

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

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

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

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

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. A licensee shall
renew the licensee's pharmacy benefits manager license
annually.

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

(1) the identity of the pharmacy benefits
manager;

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

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

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

C. The superintendent shall enforce and promulgate
rules to implement 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 in contravention of its application;

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

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

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 conclude its affairs, notify each pharmacy in its network and conduct no further pharmacy benefits management services in the state, 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.

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.

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

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

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

A. A pharmacy benefits manager shall determine a
reimbursement amount for a generic drug based on objective
and verifiable sources.

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

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

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

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

(3) is a drug with not fewer than two "A" or
"B" rated therapeutically equivalent drugs 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".

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

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

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

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

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

      (a) directly to the pharmacy benefits
manager; or

      (b) through a pharmacy services
administrative organization;

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

      (a) a dedicated telephone number and
electronic mail address or website for the purpose of
submitting appeals;
(b) the ability to submit an appeal
directly to the pharmacy benefits manager; and

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

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

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

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

(9) within one business day of granting or
denying a network pharmacy's appeal, notify all network
pharmacies of the decision;
(10) upon granting an appeal, allow other similarly situated network pharmacies to reverse and bill again for like claims that formed the basis of the granted appeal; and

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

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

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

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

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

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

B. A pharmacy benefits manager shall provide to a pharmacy by electronic mail, facsimile or certified mail, at
least thirty calendar days prior to its execution, a contract written in plain English.

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

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

E. A pharmacy benefits manager shall not:

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

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

(3) prohibit a pharmacy or pharmacist from:
   (a) mailing or delivering drugs to a patient as an ancillary service;
   (b) providing a patient information regarding the patient's total cost for pharmacist services for a prescription drug; or
(c) discussing information regarding the total cost for pharmacist services for a prescription drug or from selling a more affordable alternative to the insured if a more affordable alternative is available;

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

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

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

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

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

(1) a contract;

(2) an agreement;
(3) a claim appeal document;

(4) a disputed claim transaction document or

price list; or

(5) any other information specified by law.

H. In a time and manner required by rules

promulgated by the superintendent, a pharmacy benefits

manager shall issue to the superintendent a network adequacy

report describing the pharmacy benefits manager network and

the pharmacy benefits manager network's accessibility to

insureds statewide.

I. Pursuant to the provisions of Section 59A-4-3

NMSA 1978, the superintendent, or the superintendent's

designee, may examine the books, documents, policies,

procedures and records of a pharmacy benefits manager to

determine compliance with applicable law. The pharmacy

benefits manager shall pay the costs of the examination. At

the request of a person who provides information in response

to a complaint, investigation or examination, the

superintendent may deem the information confidential."

SECTION 5. Section 59A-61-6 NMSA 1978 (being Laws 2014,

Chapter 14, Section 6) is amended to read:

"59A-61-6. AUDIT--PHARMACY BENEFITS MANAGER.--A

pharmacy benefits manager licensed pursuant to the Pharmacy

Benefits Manager Regulation Act shall be subject to Section

61-11-18.2 NMSA 1978. A pharmacy benefits manager shall not
reduce or eliminate payment on an adjudicated claim except as permitted by Section 61-11-18.2 NMSA 1978."

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

"59A-61-7. PHARMACY BENEFITS MANAGERS--PROHIBITED

PHARMACY FEES.--

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

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

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

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

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

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

"REGISTRATION OF PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS REQUIRED.--A pharmacy services administrative organization shall register with the superintendent on a form and in a time frame and method of submission specified by the superintendent."
SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.