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SENATE BILL 498

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

David M. Gallegos

AN ACT

RELATING TO PHARMACEUTICALS; AMENDING SECTIONS OF THE PHARMACY  
BENEFITS MANAGER REGULATION ACT; CREATING ADDITIONAL  
RESTRICTIONS FOR PHARMACY BENEFITS MANAGERS; EXPANDING THE  
APPEAL PROCEDURES RELATED TO MAXIMUM ALLOWABLE COST LISTS;  
UPDATING DEFINITIONS.

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, as amended) is amended to read:

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

A. "in-network pharmacy" means a pharmacy that has  
contracted with a pharmacy benefits manager to provide  
pharmaceutical drugs and services;

~~[A.]~~ B. "maximum allowable cost" means the maximum

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1 amount that a pharmacy benefits manager will reimburse a  
2 pharmacy for the cost of a [~~generic~~] pharmaceutical drug;

3 [~~B.~~] C. "maximum allowable cost list" means a  
4 searchable, electronic and internet-based listing of drugs used  
5 by a pharmacy benefits manager [~~setting the maximum allowable~~  
6 cost on which reimbursement to a pharmacy or pharmacist is  
7 made] that sets the maximum allowable payment to a pharmacy or  
8 pharmacist for a pharmaceutical drug. "Maximum allowable cost  
9 list" includes:

10 (1) average acquisition cost, including  
11 national average drug acquisition cost;

12 (2) average manufacturer price;

13 (3) average wholesale price;

14 (4) brand effective rate or generic effective  
15 rate;

16 (5) discount indexing;

17 (6) federal upper limits;

18 (7) wholesale acquisition cost; and

19 (8) any other term that a pharmacy benefits  
20 manager or a health care insurer may use to establish  
21 reimbursement rates to a pharmacist or pharmacy for pharmacist  
22 services;

23 [~~C.~~] D. "obsolete" means a [~~product~~] pharmaceutical  
24 drug that is listed in national drug pricing compendia but is  
25 no longer available to be dispensed based on the expiration

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1 date of the last lot manufactured;

2 ~~[D-]~~ E. "pharmacist" means an individual licensed  
3 as a pharmacist by the board of pharmacy;

4 ~~[E-]~~ F. "pharmacy" means a licensed place of  
5 business where drugs are compounded or dispensed and pharmacist  
6 services are provided;

7 G. "pharmacy acquisition cost" means the amount  
8 that a pharmaceutical wholesaler charges for a pharmaceutical  
9 drug as listed on the pharmacy's billing invoice;

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

13 (1) prescription drug claim administration;

14 (2) pharmacy network management;

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

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

19 (5) formulary management;

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

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

24 (8) any other service determined by the  
25 superintendent as specified by rule to be a pharmacy benefits

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1 management activity;

2 [G.] I. "pharmacy benefits manager" means an entity  
3 that provides pharmacy benefits management services;

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

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

16 L. "preferred pharmacy network" means a group of  
17 in-network pharmacies that have contracted with a pharmacy  
18 benefits manager to provide pharmaceutical drugs and services  
19 at a lower price than the average in-network pharmacy in  
20 exchange for an increased volume of sales; and

21 [J.] M. "superintendent" means the superintendent  
22 of insurance."

23 SECTION 2. Section 59A-61-4 NMSA 1978 (being Laws 2014,  
24 Chapter 14, Section 4, as amended) is amended to read:

25 "59A-61-4. PHARMACY REIMBURSEMENT PRACTICES FOR [GENERIC]  
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1     PHARMACEUTICAL DRUGS--APPEALS PROCESS REQUIRED.--

2             A. A pharmacy benefits manager shall determine a  
3 reimbursement amount for a [~~generic~~] pharmaceutical drug based  
4 on objective and verifiable sources.

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

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

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

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

22                   (3) is a drug with not fewer than two "A" or  
23 "B" rated therapeutically equivalent drugs in the most recent  
24 version of the United States food and drug administration's  
25 approved drug products with therapeutic equivalence

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1 evaluations, also known as the "orange book".

2 D. A pharmacy benefits manager [~~using maximum~~  
3 ~~allowable cost pricing~~] that uses a maximum allowable cost list  
4 shall:

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

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

12 (3) establish and maintain a process for  
13 eliminating [~~products~~] pharmaceutical drugs from the maximum  
14 allowable cost list or modifying maximum allowable cost prices  
15 in at least seven business days to remain consistent with  
16 pricing changes and [~~product~~] drug availability in the  
17 marketplace;

18 (4) provide a [~~procedure that~~] process for  
19 each network pharmacy to receive prompt notification of an  
20 update to the maximum allowable cost list;

21 (5) provide a reasonable administrative appeal  
22 procedure that:

23 (a) allows pharmacies to challenge  
24 reimbursements made under a maximum allowable cost list for a  
25 specific drug or drugs as: 1) not meeting the requirements of

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1 this section; or 2) being below the pharmacy acquisition cost;

2 (b) allows a pharmacy to choose the  
3 entity to which it will appeal reimbursement for [~~generic~~]  
4 pharmaceutical drugs. A pharmacy may appeal: [~~(a)~~] 1)  
5 directly to the pharmacy benefits manager; or [~~(b)~~] 2) through  
6 a pharmacy services administrative organization; and

7 [~~(5) provide an appeals process that]~~

8 (c) at a minimum, includes the  
9 following: [~~(a)~~] 1) a dedicated telephone number and  
10 electronic mail address or website for the purpose of  
11 submitting appeals; [~~(b)~~] 2) the ability to submit an appeal  
12 directly to the pharmacy benefits manager; and [~~(c)~~] 3) the  
13 allowance of at least twenty-one business days to file an  
14 appeal after the date a pharmacy receives notice of the  
15 reimbursement amount;

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

21 (7) if an appeal is granted:

22 (a) notify the challenging pharmacy and  
23 its pharmacy services administrative organization, if any, that  
24 the appeal is granted and make the change in the maximum  
25 allowable cost effective for the appealing pharmacy and for

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1 each other pharmacy in its network; ~~and~~

2 (b) permit the appealing pharmacy to  
3 reverse and bill again the claim or claims that formed the  
4 basis of the appeal; and

5 (c) reimburse the appealing pharmacy for  
6 any reasonable costs that it incurred due to the appeal  
7 process;

8 (8) when an appeal is denied:

9 (a) provide the challenging pharmacy and  
10 its pharmacy services administrative organization, if any, the  
11 national drug code number and supplier that has the ~~[product]~~  
12 pharmaceutical drug available for purchase in New Mexico at or  
13 below the maximum allowable cost; and

14 (b) if the pharmaceutical drug  
15 identified by the national drug code provided by the pharmacy  
16 benefits manager is not available below the pharmacy  
17 acquisition cost from the pharmaceutical wholesaler from whom  
18 the pharmacy or pharmacist purchases the majority of  
19 prescription drugs for resale, adjust the maximum allowable  
20 cost as listed on the maximum allowable cost list above the  
21 challenging pharmacy's pharmacy acquisition cost and permit the  
22 pharmacy to reverse and rebill each claim affected by the  
23 inability to procure the drug at a cost that is equal to or  
24 less than the previously challenged maximum allowable cost;

25 (9) within one business day of granting or

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1 denying a network pharmacy's appeal, notify all network  
2 pharmacies of the decision;

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

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

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

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

18 G. A pharmacy or pharmacist may decline to provide  
19 services to a patient or pharmacy benefits manager if, as a  
20 result of a maximum allowable cost list, a pharmacy or  
21 pharmacist will be paid less than its pharmacy acquisition  
22 cost."

23 SECTION 3. Section 59A-61-5 NMSA 1978 (being Laws 2014,  
24 Chapter 14, Section 5, as amended) is amended to read:

25 "59A-61-5. PHARMACY BENEFITS MANAGER CONTRACTS--CERTAIN  
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1 PRACTICES PROHIBITED--CERTAIN DISCLOSURES REQUIRED UPON  
2 REQUEST.--

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

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

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

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

19 E. A pharmacy benefits manager shall not:

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

23 (2) require pharmacy validation and  
24 revalidation standards inconsistent with, more stringent than  
25 or in addition to federal and state requirements for licensure

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1 and operation as a pharmacy in this state;

2 (3) prohibit a pharmacy or pharmacist from:

3 (a) mailing or delivering drugs to a  
4 patient as an ancillary service;

5 (b) providing a patient information  
6 regarding the patient's total cost for pharmacist services for  
7 a prescription drug; or

8 (c) discussing information regarding the  
9 total cost for pharmacist services for a prescription drug or  
10 from selling a more affordable alternative to the insured if a  
11 more affordable alternative is available;

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

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

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

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

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1 in-network pharmacies.

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

- 6 (1) a contract;  
7 (2) an agreement;  
8 (3) a claim appeal document;  
9 (4) a disputed claim transaction document or  
10 price list; or  
11 (5) any other information specified by law.

12 H. In a time and manner required by rules  
13 promulgated by the superintendent, a pharmacy benefits manager  
14 shall issue to the superintendent a network adequacy report  
15 describing the pharmacy benefits manager network and the  
16 pharmacy benefits manager network's accessibility to insureds  
17 statewide.

18 I. Pursuant to the provisions of Section 59A-4-3  
19 NMSA 1978, the superintendent, or the superintendent's  
20 designee, may examine the books, documents, policies,  
21 procedures and records of a pharmacy benefits manager to  
22 determine compliance with applicable law. The pharmacy  
23 benefits manager shall pay the costs of the examination. At  
24 the request of a person who provides information in response to  
25 a complaint, investigation or examination, the superintendent

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