

1 SENATE BILL 295

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Dede Feldman

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9  
10 AN ACT

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

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
20 Pharmacy Benefits Manager Regulation Act:

21 A. "covered entity" means a nonprofit hospital or  
22 medical service corporation, health insurer, health benefit  
23 plan or health maintenance organization, a health program  
24 administered by the state as a provider of health coverage; or  
25 an employer, labor union or other group of persons organized in

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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;

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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 person  
6 that provides claims administration, benefit design and  
7 management, pharmacy network management, negotiation and  
8 administration of product discounts, rebates and other benefits  
9 accruing to the pharmacy benefits manager or other prescription  
10 drug or device services to third parties, but "pharmacy  
11 benefits manager" 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 United States department  
21 of 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

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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

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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.

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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.--

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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

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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 such  
21 information for any other purpose or disclose such information  
22 to any person except as provided in that act or in the pharmacy  
23 benefits manager services contract between the parties. A  
24 covered entity that discloses information in violation of this  
25 section is subject to an action for injunctive relief and is

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

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

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

22 B. the covered entity may select an independent  
23 firm to conduct such audit, and such independent firm shall  
24 sign a confidentiality agreement with the covered entity and  
25 the pharmacy benefits manager ensuring that all information

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

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

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

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

22 A. Enforcement of the Pharmacy Benefits Manager  
23 Regulation Act shall be the responsibility of the  
24 superintendent. The superintendent shall take action to bring  
25 a non-complying pharmacy benefits manager into full compliance

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

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

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

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

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

24 Section 13. [NEW MATERIAL] PHARMACY BENEFITS MANAGER  
25 FUND--CREATED.--The "pharmacy benefits manager fund" is created  
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1 in the state treasury. Fees and penalties assessed pursuant to  
2 the Pharmacy Benefits Manager Regulation Act shall be deposited  
3 in the fund. Money in the fund is appropriated to the  
4 insurance division of the public regulation commission to  
5 administer the Pharmacy Benefits Manager Regulation Act. Money  
6 in the fund shall not revert to the general fund or any other  
7 fund. Money in the fund may be expended pursuant to vouchers  
8 signed by the superintendent on warrants signed by the  
9 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 insurance division of the public  
15 regulation commission for administration of the Pharmacy  
16 Benefits Manager Regulation Act; 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. A new section of Chapter 59A, Article 1 NMSA  
21 1978 is enacted to read:

22 "[NEW MATERIAL] DEFINITION.--"Pharmacy benefits manager"  
23 means a person or a wholly or partially owned or controlled  
24 subsidiary of a pharmacy benefits manager or an administrator  
25 that provides claims administration, benefit design and

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1 management, pharmacy network management, negotiation and  
2 administration of product discounts, rebates and other benefits  
3 accruing to the pharmacy benefits manager or other prescription  
4 drug or device services to third parties, but "pharmacy  
5 benefits manager" does not include licensed health care  
6 facilities, pharmacies, licensed health care professionals,  
7 insurance companies, unions, health maintenance organizations,  
8 a medicare advantage plan or a prescription drug plan."

9 Section 16. Section 59A-6-1 NMSA 1978 (being Laws 1984,  
10 Chapter 127, Section 101, as amended) is amended to read:

11 "59A-6-1. FEE SCHEDULE.--The superintendent shall collect  
12 the following fees:

- 13 A. insurer's certificate of authority -
  - 14 (1) filing application for certificate of  
15 authority, and issuance of certificate of authority, if issued,  
16 including filing of all charter documents, financial  
17 statements, service of process, power of attorney, examination  
18 reports and other documents included with and part of the  
19 application . . . . . \$1,000.00
  - 20 (2) annual continuation of certificate of  
21 authority, per kind of insurance, each year  
22 continued . . . . . 200.00
  - 23 (3) reinstatement of certificate of authority  
24 (Section 59A-5-23 NMSA 1978) . . . . . 150.00
  - 25 (4) amendment to certificate of

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1 authority . . . . . 200.00

2 B. charter documents - filing amendment to any

3 charter document (as defined in Section 59A-5-3

4 NMSA 1978) . . . . . 10.00

5 C. annual statement of insurer,

6 filing . . . . . 200.00

7 D. service of process, acceptance by superintendent

8 and issuance of certificate of service, where issued . . 10.00

9 E. agents' licenses and appointments -

10 (1) filing application for original agent

11 license and issuance of license, if issued . . . . . 30.00

12 (2) appointment of agent -

13 (a) filing appointment, per kind of

14 insurance, each insurer . . . . . 20.00

15 (b) continuation of appointment, each

16 insurer, each year continued . . . . . 20.00

17 (3) variable annuity agent's license -

18 (a) filing application for license and

19 issuance of license, if issued . . . . . 30.00

20 (b) continuation of appointment each

21 year . . . . . 20.00

22 (4) temporary license as to life and health

23 insurance or both . . . . . 30.00

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

25 (b) as to casualty/surety

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1 insurance . . . . . 30.00  
2 (c) as to vehicle insurance . . . 30.00  
3 F. solicitor license -  
4 (1) filing application for original license  
5 and issuance of license, if issued . . . . . 30.00  
6 (2) continuation of appointment, per kind of  
7 insurance, each year . . . . . 20.00  
8 G. broker license -  
9 (1) filing application for license and  
10 issuance of original license, if issued . . . . . 30.00  
11 (2) annual continuation of  
12 license . . . . . 30.00  
13 H. insurance vending machine license -  
14 (1) filing application for original license  
15 and issuance of license, if issued, each machine . . . . 25.00  
16 (2) annual continuation of license, each  
17 machine . . . . . 25.00  
18 I. examination for license, application for  
19 examination conducted directly by superintendent, each grouping  
20 of kinds of insurance to be covered by the examination as  
21 provided by the superintendent's rules, and payable as to each  
22 instance of examination . . . . . 50.00  
23 J. surplus line insurer - filing application for  
24 qualification as eligible surplus ~~lines~~ line  
25 insurer . . . . . 1,000.00

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- 1                   K. surplus line broker license -
- 2                   (1) filing application for original license
- 3                   and issuance of license, if issued . . . . . 100.00
- 4                   (2) annual continuation of
- 5                   license . . . . . 100.00
- 6                   L. adjuster license -
- 7                   (1) filing application for original license
- 8                   and issuance of license, if issued . . . . . 30.00
- 9                   (2) annual continuation of
- 10                  license . . . . . 30.00
- 11                  M. rating organization or rating advisory
- 12                  organization license -
- 13                  (1) filing application for license and
- 14                  issuance of license, if issued . . . . . 100.00
- 15                  (2) annual continuation of
- 16                  license . . . . . 100.00
- 17                  N. nonprofit health care plans -
- 18                  (1) filing application for preliminary permit
- 19                  and issuance of permit, if issued . . . . . 100.00
- 20                  (2) certificate of authority, application,
- 21                  issuance, continuation, reinstatement, charter documents - same
- 22                  as for insurers
- 23                  (3) annual statement, filing . . . . . 200.00
- 24                  (4) agents and solicitors -
- 25                  (a) filing application for original

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1 license and issuance of license, if issued . . . . . 30.00

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

5 (c) annual continuation of  
6 appointment . . . . . 20.00

7 O. prepaid dental plans -

8 (1) certificate of authority, application,  
9 issuance, continuation, reinstatement, charter documents - same  
10 as for insurers

11 (2) annual report, filing . . . . . 200.00

12 (3) 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) continuation of license, each  
19 year . . . . . 20.00

20 P. prearranged funeral insurance - application for  
21 certificate of authority, issuance, continuation,  
22 reinstatement, charter documents, filing annual statement,  
23 licensing of sales representatives - same as for insurers

24 Q. premium finance companies -

25 (1) filing application for original license

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1	and issuance of license, if issued . . . . .	100.00
2	(2) annual renewal of license . . . . .	100.00
3	R. motor clubs -	
4	(1) certificate of authority -	
5	(a) filing application for original	
6	certificate of authority and issuance of certificate of	
7	authority, if issued . . . . .	200.00
8	(b) annual continuation of certificate	
9	of authority . . . . .	100.00
10	(2) sales representatives -	
11	(a) filing application for registration	
12	or license and issuance of registration or license, if issued,	
13	each representative . . . . .	20.00
14	(b) annual continuation of registration	
15	or license, each representative . . . . .	20.00
16	S. bail bondsmen -	
17	(1) filing application for original license as	
18	bail bondsman or solicitor, and issuance of license, if	
19	issued . . . . .	30.00
20	(2) examination for license conducted directly	
21	by superintendent, each instance of	
22	examination . . . . .	50.00
23	(3) continuation of appointment, each	
24	year . . . . .	20.00
25	T. securities salesperson license -	

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- 1 (1) filing application for license and
- 2 issuance of license, if issued . . . . . 25.00
- 3 (2) renewal of license, each year . . . 25.00
- 4 U. for each signature and seal of the
- 5 superintendent affixed to any instrument . . . . . 10.00
- 6 V. required filing of forms or rates - by all lines
- 7 of business other than property or casualty -
- 8 (1) rates . . . . . 50.00
- 9 (2) major form - each new policy and each
- 10 package submission, which can include multiple policy forms,
- 11 application forms, rider forms, endorsement forms or amendment
- 12 forms . . . . . 30.00
- 13 (3) incidental forms and rates - forms filed
- 14 for informational purposes; riders, applications, endorsements
- 15 and amendments filed individually; rate service organization
- 16 reference filings; rates filed for informational purposes. 15.00
- 17 W. health maintenance organizations -
- 18 (1) filing an application for a certificate of
- 19 authority . . . . . 1,000.00
- 20 (2) annual continuation of certificate of
- 21 authority, each year continued . . . . . 200.00
- 22 (3) filing each annual report . . . . . 200.00
- 23 (4) filing an amendment to organizational
- 24 documents requiring approval . . . . . 200.00
- 25 (5) filing informational

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1 amendments . . . . . 50.00

2 (6) agents and solicitors -

3 (a) filing application for original

4 license and issuance of license, if issued . . . . . 30.00

5 (b) examination for license, each

6 instance of examination . . . . . 50.00

7 (c) annual continuation of

8 appointment . . . . . 20.00

9 X. purchasing groups and foreign risk retention

10 groups -

11 (1) original registration . . . . . 500.00

12 (2) annual continuation of

13 registration . . . . . 200.00

14 (3) agent or broker fees same as for

15 authorized insurers

16 Y. third party administrators -

17 (1) filing application for original individual

18 insurance administrator license . . . . . 30.00

19 (2) filing application for original officer,

20 manager or partner insurance administrator

21 license . . . . . 30.00

22 (3) continuation or renewal of annual

23 license . . . . . 30.00

24 (4) examination for license conducted directly

25 by the superintendent, each examination . . . . . 75.00

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- 1 (5) each request for a duplicate license or
- 2 for each name change . . . . . 30.00
- 3 (6) filing of annual report . . . . . 50.00.
- 4 Z. pharmacy benefits managers -
- 5 (1) filing an application for a
- 6 license . . . . . 5,000.00
- 7 (2) annual continuation of license, each year
- 8 continued . . . . . 5,000.00
- 9 (3) filing each annual report . . . . . 200.00
- 10 (4) filing an amendment to organizational
- 11 documents requiring approval . . . . . 200.00
- 12 (5) filing informational amendments . . 100.00
- 13 (6) agents -
- 14 (a) filing application for original
- 15 license and issuance of license, if issued . . . . . 100.00
- 16 (b) annual continuation of
- 17 appointment . . . . . 100.00.

18 Section 17. Section 59A-6-5 NMSA 1978 (being Laws 1984,  
19 Chapter 127, Section 105, as amended) is amended to read:

20 "59A-6-5. DISTRIBUTION OF DIVISION COLLECTIONS.--

21 A. All money received by the division for fees,  
22 licenses, penalties and taxes, except as provided in  
23 Subsection Z of Section 59A-6-1 NMSA 1978, shall be paid daily  
24 by the superintendent to the state treasurer and credited to  
25 the "insurance department suspense fund" except as provided

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1 by:

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

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

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

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

2 (1) to the "fire protection fund", that part  
3 of the balance derived from property and vehicle insurance  
4 business;

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

9 (3) to the general fund, the balance  
10 remaining in the insurance department suspense fund derived  
11 from all other kinds of insurance business."

12 Section 18. Section 59A-12A-2 NMSA 1978 (being Laws  
13 1989, Chapter 374, Section 2) is amended to read:

14 "59A-12A-2. DEFINITIONS.--As used in Chapter 59A,  
15 Article 12A NMSA 1978:

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

18 B. "administrator" or "third party administrator"  
19 or "TPA" means a person who receives any form of  
20 administrative or service fee, consideration, payment,  
21 premium, reimbursement or compensation for performing or  
22 providing any service, function or duty, or activity  
23 [~~respecting~~] relating to insurance, pharmacy benefits managers  
24 or alternatives to insurance in any administrative or  
25 management capacity, including [~~but not limited to~~] claims or

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1 expense review, underwriting, administration and management  
2 under a contract or other agreement to be performed in this  
3 state or with respect to risks located or partially located in  
4 this state or on behalf of persons in this state for any:

5 (1) plan;

6 (2) insurance carrier; or

7 (3) person that self insures;

8 C. "administrator" does not include:

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

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

15 (3) an insurance company or a corporation  
16 [~~which~~] that owns more than fifty percent of an insurance  
17 company licensed in this state or a health maintenance  
18 organization, nonprofit health care plan or a dental plan that  
19 is licensed in this state;

20 (4) an agent licensed in this state acting on  
21 behalf of an admitted insurance carrier by whom [~~he~~] the agent  
22 is appointed and only within the scope of [~~his~~] the agent's  
23 license as an agent as defined in the article of the Insurance  
24 Code under which [~~he~~] the agent is licensed;

25 (5) a creditor on behalf of its debtors with

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1 respect to insurance covering its debtors as long as only the  
2 functions of a group policyholder or creditor are performed;

3 (6) a trust and its trustees, agents and  
4 employees acting under the trust, established in conformity  
5 with 29 U.S.C. Sec. 186;

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

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

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

21 (10) a person who adjusts or settles claims  
22 in the normal course of [his] practice or employment as an  
23 attorney at law who does not collect any charge or premium in  
24 connection with life or health coverage or annuities;

25 (11) an adjuster licensed by the

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1 superintendent, when engaged in the performance of [~~his~~]  
2 duties as an adjuster;

3 (12) any joint fund, risk management pool or  
4 self-insurance pool composed of political subdivisions of this  
5 state that participate in such funds or pools through  
6 interlocal agreements, and any administrative agency  
7 established under the interlocal agreement to administer the  
8 fund or pool;

9 (13) [~~any~~] a person providing technical,  
10 advisory or consulting services who does not make [~~any~~]  
11 management or discretionary decisions on behalf of an  
12 insurance carrier, plan or person that self-insures;

13 (14) [~~any~~] a full-time salaried employee of  
14 an insurance carrier to the extent that the functions  
15 performed are only for that insurance carrier or any  
16 affiliated carrier;

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

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

25 (17) an association and any subsidiary,

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1 affiliated or related corporations of that association. For  
2 the purposes of this subsection, "association" means a bona  
3 fide trade or professional association which has been in  
4 existence for not less than five years and which enters into  
5 agreements to pool its liabilities for workers compensation  
6 benefits, pursuant to the Group Self-Insurance Act; or

7 (18) a home owner warranty corporation  
8 provided by a trade association that has been in business in  
9 New Mexico for [~~a~~] at least five years;

10 D. "alternatives to insurance" means [~~any~~] an  
11 agreement to indemnify against loss, risk, damage, liability  
12 or other contingency relating to property or persons, whether  
13 or not such agreement is deemed to be insurance under  
14 applicable law or where persons self insure;

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

18 F. "person" includes a corporation, organization,  
19 government or governmental subdivision or agency, business  
20 trust, estate trust, partnership, association or any other  
21 legal entity; and

22 G. "plan" means any employer-employee, multiple  
23 employer-employee, group, member or other employee benefit or  
24 welfare program, medical, accident, sickness, injury,  
25 indemnity, death or health benefit program contracting to

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1 provide indemnification or expense reimbursement in this state  
2 to persons domiciled in this state or for risks located or  
3 partially located in this state for any type of the following  
4 coverages, expenses or benefits: medical, surgical,  
5 orthopedic, chiropractic, physical therapy, speech pathology,  
6 audiology, professional mental health, dental, hospital,  
7 workers' compensation or optometric plan or programs, hospital  
8 care or benefit or benefits in the event of sickness,  
9 accident, disability, death or unemployment, or prepaid legal  
10 services."

11 Section 19. Section 59A-12A-3 NMSA 1978 (being Laws  
12 1989, Chapter 374, Section 3) is amended to read:

13 "59A-12A-3. LICENSE REQUIRED--PENALTY.--

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

22 B. Licensing and examination procedures for  
23 administrators shall be in accordance with Chapter 59A,  
24 Article 11 NMSA 1978, except that the superintendent may, in  
25 [~~his~~] the superintendent's discretion, waive the examination

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1 requirements for administrators who are operating in New  
2 Mexico prior to the effective date of Chapter 59A, Article 12A  
3 NMSA 1978.

4 C. Every corporation or partnership to be licensed  
5 under Chapter 59A, Article 12A NMSA 1978 shall have every  
6 officer and manager of that corporation and every partner of  
7 that partnership licensed as an administrator.

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

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