

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 295

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

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 9 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:

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underscoring 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 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

1 Title 18 of the federal Medicare Modernization Act that
2 provides qualified prescription drug coverage;

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

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

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

13 (1) mail service pharmacy; and

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

18 G. "pharmacy benefits manager" means a person or a
19 wholly or partially owned or controlled subsidiary of a person
20 that provides claims administration, benefit design and
21 management, pharmacy network management, negotiation and
22 administration of product discounts, rebates and other benefits
23 accruing to the pharmacy benefits manager or other prescription
24 drug or device services to third parties, but "pharmacy
25 benefits manager" does not include licensed health care

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1 facilities, pharmacies, licensed health care professionals,
2 insurers, unions, health maintenance organizations, a medicare
3 advantage plan or a prescription drug plan when providing
4 formulary services to their own patients, employees, members or
5 beneficiaries;

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

13 I. "superintendent" means the superintendent of
14 insurance."

15 Section 3. A new section of the New Mexico Insurance Code
16 is enacted to read:

17 "[NEW MATERIAL] LICENSE.--

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

22 B. The superintendent shall enforce the provisions
23 of the Pharmacy Benefits Manager Regulation Act and may suspend
24 or revoke a license issued to a pharmacy benefits manager or
25 deny an application for a license or renewal of a license if:

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

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

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

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

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

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

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

22 C. If the license of a pharmacy benefits manager is
23 revoked, the manager shall proceed, immediately following the
24 effective date of the order of revocation, to wind up its
25 affairs and conduct no further business except as may be

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1 essential to the orderly conclusion of its affairs. The
2 superintendent may permit further operation of the pharmacy
3 benefits manager if the superintendent finds it to be in the
4 best interest of patients to obtain pharmacist services.

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

12 Section 4. A new section of the New Mexico Insurance Code
13 is enacted to read:

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

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

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

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

25 D. A pharmacy shall not be held responsible for

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

4 Section 5. A new section of the New Mexico Insurance Code
5 is enacted to read:

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

11 Section 6. A new section of the New Mexico Insurance Code
12 is enacted to read:

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

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

19 B. The covered entity may have the pharmacy
20 benefits manager's books and records audited to verify a
21 pharmacy benefits manager's performance in accordance with the
22 terms of the contract between the parties. If the parties have
23 not expressly provided for audit rights and the pharmacy
24 benefits manager has advised the covered entity that other
25 reasonable options are available and, subject to negotiation,

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1 the covered entity may have such books and records audited as
2 follows:

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

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

21 (3) the audit shall be conducted at the
22 pharmacy benefits manager's office where such records are
23 located, during normal business hours, without undue
24 interference with the pharmacy benefits manager's business
25 activities and in accordance with reasonable audit procedures."

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1 Section 7. A new section of the New Mexico Insurance Code
2 is enacted to read:

3 "[NEW MATERIAL] DRUG SUBSTITUTION.--

4 A. A resident pharmacy benefits manager who wishes
5 to make a substitution for a prescription drug prescribed for a
6 covered entity shall substitute a prescription drug in
7 accordance with the Drug Product Selection Act.

8 B. A nonresident pharmacy benefits manager who
9 wishes to make a substitution for a prescription drug
10 prescribed for a covered entity shall substitute a prescription
11 drug in accordance with the laws and regulations of the state
12 where the pharmacy benefits manager is a resident."

13 Section 8. A new section of the New Mexico Insurance Code
14 is enacted to read:

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

20 Section 9. A new section of the New Mexico Insurance Code
21 is enacted to read:

22 "[NEW MATERIAL] PHARMACY BENEFITS MANAGER FUND--CREATED.--
23 The "pharmacy benefits manager fund" is created in the state
24 treasury. Fees and penalties assessed pursuant to the Pharmacy
25 Benefits Manager Regulation Act shall be deposited in the fund.

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1 Money in the fund is appropriated to the insurance division of
2 the commission to administer the Pharmacy Benefits Manager
3 Regulation Act. Money in the fund shall not revert to the
4 general fund or any other fund. Money in the fund may be
5 expended pursuant to vouchers signed by the superintendent on
6 warrants signed by the secretary of finance and
7 administration."

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

10 "59A-6-1. FEE SCHEDULE.--The superintendent shall collect
11 the following fees:

12 A. insurer's certificate of authority -

13 (1) filing application for certificate of
14 authority, and issuance of certificate of authority, if issued,
15 including filing of all charter documents, financial
16 statements, service of process, power of attorney, examination
17 reports and other documents included with and part of the
18 application \$1,000.00

19 (2) annual continuation of certificate of
20 authority, per kind of insurance, each year
21 continued 200.00

22 (3) reinstatement of certificate of authority
23 (Section 59A-5-23 NMSA 1978) 150.00

24 (4) amendment to certificate of
25 authority 200.00

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1 B. charter documents - filing amendment to any
 2 charter document (as defined in Section 59A-5-3
 3 NMSA 1978) 10.00

4 C. annual statement of insurer,
 5 filing 200.00

6 D. service of process, acceptance by superintendent
 7 and issuance of certificate of service, where issued . . 10.00

8 E. agents' licenses and appointments -

9 (1) filing application for original agent
 10 license and issuance of license, if issued 30.00

11 (2) appointment of agent -

12 (a) filing appointment, per kind of
 13 insurance, each insurer 20.00

14 (b) continuation of appointment, each
 15 insurer, each year continued 20.00

16 (3) variable annuity agent's license -

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

19 (b) continuation of appointment each
 20 year 20.00

21 (4) temporary license as to life and health
 22 insurance or both 30.00

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

24 (b) as to casualty/surety
 25 insurance 30.00

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

2 F. solicitor license -

3 (1) filing application for original license
4 and issuance of license, if issued 30.00

5 (2) continuation of appointment, per kind of
6 insurance, each year 20.00

7 G. broker license -

8 (1) filing application for license and
9 issuance of original license, if issued 30.00

10 (2) annual continuation of
11 license 30.00

12 H. insurance vending machine license -

13 (1) filing application for original license
14 and issuance of license, if issued, each machine 25.00

15 (2) annual continuation of license, each
16 machine 25.00

17 I. examination for license, application for
18 examination conducted directly by superintendent, each grouping
19 of kinds of insurance to be covered by the examination as
20 provided by the superintendent's rules, and payable as to each
21 instance of examination 50.00

22 J. surplus line insurer - filing application for
23 qualification as eligible surplus [~~lines~~] line
24 insurer 1,000.00

25 K. surplus line broker license -

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

3 (2) annual continuation of
 4 license 100.00

5 L. adjuster license -

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

8 (2) annual continuation of
 9 license 30.00

10 M. rating organization or rating advisory
 11 organization license -

12 (1) filing application for license and
 13 issuance of license, if issued 100.00

14 (2) annual continuation of
 15 license 100.00

16 N. nonprofit health care plans -

17 (1) filing application for preliminary permit
 18 and issuance of permit, if issued 100.00

19 (2) certificate of authority, application,
 20 issuance, continuation, reinstatement, charter documents - same
 21 as for insurers

22 (3) annual statement, filing 200.00

23 (4) agents and solicitors -

24 (a) filing application for original
 25 license and issuance of license, if issued 30.00

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

4 (c) annual continuation of
5 appointment 20.00

6 O. prepaid dental plans -

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

10 (2) annual report, filing 200.00

11 (3) agents and solicitors -

12 (a) filing application for original
13 license and issuance of license, if issued 30.00

14 (b) examination for license conducted
15 directly by superintendent, each instance of
16 examination 50.00

17 (c) continuation of license, each
18 year 20.00

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

23 Q. premium finance companies -

24 (1) filing application for original license
25 and issuance of license, if issued 100.00

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1 (2) annual renewal of license 100.00

2 R. motor clubs -

3 (1) certificate of authority -

4 (a) filing application for original
5 certificate of authority and issuance of certificate of
6 authority, if issued 200.00

7 (b) annual continuation of certificate
8 of authority 100.00

9 (2) sales representatives -

10 (a) filing application for registration
11 or license and issuance of registration or license, if issued,
12 each representative 20.00

13 (b) annual continuation of registration
14 or license, each representative 20.00

15 S. bail bondsmen -

16 (1) filing application for original license as
17 bail bondsman or solicitor, and issuance of license, if
18 issued 30.00

19 (2) examination for license conducted directly
20 by superintendent, each instance of
21 examination 50.00

22 (3) continuation of appointment, each
23 year 20.00

24 T. securities salesperson license -

25 (1) filing application for license and

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1 issuance of license, if issued 25.00

2 (2) renewal of license, each year . . . 25.00

3 U. for each signature and seal of the
4 superintendent affixed to any instrument 10.00

5 V. required filing of forms or rates - by all lines
6 of business other than property or casualty -

7 (1) rates 50.00

8 (2) major form - each new policy and each
9 package submission, which can include multiple policy forms,
10 application forms, rider forms, endorsement forms or amendment
11 forms 30.00

12 (3) incidental forms and rates - forms filed
13 for informational purposes; riders, applications, endorsements
14 and amendments filed individually; rate service organization
15 reference filings; rates filed for informational purposes. 15.00

16 W. health maintenance organizations -

17 (1) filing an application for a certificate of
18 authority 1,000.00

19 (2) annual continuation of certificate of
20 authority, each year continued 200.00

21 (3) filing each annual report 200.00

22 (4) filing an amendment to organizational
23 documents requiring approval 200.00

24 (5) filing informational
25 amendments 50.00

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- 1 (6) agents and solicitors -
- 2 (a) filing application for original
- 3 license and issuance of license, if issued 30.00
- 4 (b) examination for license, each
- 5 instance of examination 50.00
- 6 (c) annual continuation of
- 7 appointment 20.00
- 8 X. purchasing groups and foreign risk retention
- 9 groups -
- 10 (1) original registration 500.00
- 11 (2) annual continuation of
- 12 registration 200.00
- 13 (3) agent or broker fees same as for
- 14 authorized insurers
- 15 Y. third party administrators -
- 16 (1) filing application for original individual
- 17 insurance administrator license 30.00
- 18 (2) filing application for original officer,
- 19 manager or partner insurance administrator
- 20 license 30.00
- 21 (3) continuation or renewal of annual
- 22 license 30.00
- 23 (4) examination for license conducted directly
- 24 by the superintendent, each examination 75.00
- 25 (5) each request for a duplicate license or

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1 for each name change 30.00

2 (6) filing of annual report 50.00

3 Z. pharmacy benefits managers -

4 (1) filing an application for a
5 license 1,000.00

6 (2) annual continuation of license, each year
7 continued 500.00

8 (3) filing each annual report 200.00

9 (4) filing an amendment to organizational
10 documents requiring approval 200.00

11 (5) filing informational amendments . 100.00

12 (6) agents -
13 (a) filing application for original

14 license and issuance of license, if issued 100.00

15 (b) annual continuation of
16 appointment100.00."

17 Section 11. Section 59A-6-5 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 105, as amended) is amended to read:

19 "59A-6-5. DISTRIBUTION OF DIVISION COLLECTIONS.--

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

25 (1) the Law Enforcement Protection Fund Act;

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1 (2) Section 59A-6-1.1 NMSA 1978; and

2 (3) the Voter Action Act.

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

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

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

25 (1) to the "fire protection fund", that part

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1 of the balance derived from property and vehicle insurance
2 business;

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

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

10 E. Fees imposed pursuant to Subsection Z of Section
11 59A-6-1 NMSA 1978 shall be distributed as follows:

12 (1) fifty percent to the pharmacy benefits
13 manager fund for expenditure by the insurance division of the
14 public regulation commission for administration of the Pharmacy
15 Benefits Manager Regulation Act; and

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