

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE HEALTH,
GOVERNMENT AND INDIAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 126

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

AN ACT

RELATING TO HEALTH CARE; ENACTING THE PHARMACY BENEFITS MANAGER
REGULATION ACT; PROVIDING PENALTIES; AMENDING AND ENACTING
SECTIONS OF THE NEW MEXICO INSURANCE CODE; REQUIRING LICENSURE
OF PHARMACY BENEFITS MANAGERS; ESTABLISHING GUIDELINES AND
NOTICE PROVISIONS FOR MAXIMUM ALLOWABLE COST FOR DRUGS AND FOR
CHALLENGING MAXIMUM ALLOWABLE COST PRICING.

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 6 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:

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1 "[NEW MATERIAL] DEFINITIONS.--As used in the Pharmacy
2 Benefits Manager Regulation Act:

3 A. "covered entity" means a nonprofit hospital or
4 medical service corporation, health insurer, health benefit
5 plan or health maintenance organization; a health program
6 administered by the state as a provider of health coverage; any
7 type of group health care coverage, including any form of self-
8 insurance offered, issued or renewed pursuant to the Health
9 Care Purchasing Act; or an employer, labor union or other group
10 of persons organized in the state that provides health coverage
11 to covered individuals who are employed or reside in the state.
12 "Covered entity" does not include a self-funded plan that is
13 exempt from state regulation pursuant to the federal Employee
14 Retirement Income Security Act of 1974; a plan issued for
15 coverage for federal employees; or a health plan that provides
16 coverage only for accidental injury, specified disease,
17 hospital indemnity, medicare supplement, disability income,
18 long-term care or other limited benefit health insurance
19 policies and contracts;

20 B. "covered individual" means a member,
21 participant, enrollee, contract holder, policy holder or
22 beneficiary of a covered entity who is provided health coverage
23 by the covered entity and includes a dependent or other person
24 provided health coverage through a policy, contract or plan for
25 a covered individual;

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1 C. "medicare advantage plan" or "MA-PD" means a
2 prescription drug program authorized pursuant to Part C of
3 Title 18 of the federal Medicare Prescription Drug,
4 Improvement, and Modernization Act of 2003 that provides
5 qualified prescription drug coverage;

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

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

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

17 (1) mail service pharmacies; and

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

22 G. "pharmacy benefits manager" means a person or a
23 wholly or partially owned or controlled subsidiary of a person
24 that provides claims administration, benefit design and
25 management, pharmacy network management, negotiation and

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1 administration of product discounts, rebates and other benefits
2 accruing to the pharmacy benefits manager or other prescription
3 drug or device services to third parties, but "pharmacy
4 benefits manager" does not include licensed health care
5 facilities, pharmacies, licensed health care professionals,
6 health insurers, unions, health maintenance organizations,
7 medicare advantage plans or prescription drug plans when
8 providing formulary services to their own patients, employees,
9 members or beneficiaries;

10 H. "prescription drug plan" or "PDP" means
11 prescription drug coverage that is offered pursuant to a
12 policy, contract or plan that has been approved as specified in
13 42 CFR Part 423 and that is offered by a prescription drug plan
14 sponsor that has a contract with the federal centers for
15 medicare and medicaid services of the United States department
16 of health and human services; and

17 I. "superintendent" means the superintendent of
18 insurance."

19 SECTION 3. A new section of the New Mexico Insurance Code
20 is enacted to read:

21 "[NEW MATERIAL] LICENSE.--

22 A. A person shall not operate as a pharmacy
23 benefits manager unless licensed by the superintendent in
24 accordance with the Pharmacy Benefits Manager Regulation Act
25 and applicable federal and state laws.

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1 B. An application for licensure as a pharmacy
2 benefits manager shall require only the following information:

3 (1) the identity of the pharmacy benefits
4 manager;

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

7 (3) where applicable, the federal employer
8 identification number for the pharmacy benefits manager.

9 C. The superintendent shall enforce the provisions
10 of the Pharmacy Benefits Manager Regulation Act and may suspend
11 or revoke a license issued to a pharmacy benefits manager or
12 deny an application for a license or renewal of a license if:

13 (1) the pharmacy benefits manager is operating
14 materially in contravention of its application;

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

18 (3) the pharmacy benefits manager has failed
19 to substantially comply with applicable state or federal laws
20 or rules; or

21 (4) the pharmacy benefits manager has
22 transacted insurance in the state without authorization or has
23 transacted insurance for a product that is not issued by an
24 authorized insurer.

25 D. If the license of a pharmacy benefits manager is

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1 revoked, the manager shall proceed, immediately following the
2 effective date of the order of revocation, to wind up its
3 affairs and conduct no further business except as may be
4 essential to the orderly conclusion of its affairs. The
5 superintendent may permit further operation of the pharmacy
6 benefits manager if the superintendent finds it to be in the
7 best interest of patients to obtain pharmacist services.

8 E. A person whose pharmacy benefits manager license
9 has been denied, suspended or revoked may seek review of the
10 denial, suspension or revocation pursuant to the provisions of
11 Chapter 59A, Article 4 NMSA 1978."

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

14 "[NEW MATERIAL] MAXIMUM ALLOWABLE COST PRICING
15 REQUIREMENTS.--

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

18 (1) to place a drug on a maximum allowable
19 cost list, ensure that the drug:

20 (a) is listed as "A" or "B" rated in the
21 most recent version of the United States food and drug
22 administration's approved drug products with therapeutic
23 equivalence evaluations, also known as the "orange book";

24 (b) has an "NR" or "NA" rating or a
25 similar rating by a nationally recognized reference; and

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1 (c) is generally available for purchase
2 by pharmacies in the state from national or regional
3 wholesalers and is not obsolete;

4 (2) provide to a network pharmacy provider, at
5 the time a contract is entered into or renewed with the network
6 pharmacy provider, the sources used to determine the maximum
7 allowable cost pricing for the maximum allowable cost list
8 specific to that provider;

9 (3) 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 (4) establish a process for eliminating
13 products from the maximum allowable cost list or modifying
14 maximum allowable cost prices in a timely manner to remain
15 consistent with pricing changes and product availability in the
16 marketplace;

17 (5) provide a procedure under which a network
18 pharmacy provider may challenge a listed maximum allowable cost
19 price for a drug and respond to a challenge not later than the
20 fifteenth day after the date the challenge is made. If the
21 challenge is successful, a pharmacy benefits manager using
22 maximum allowable cost pricing shall make an adjustment in the
23 drug price effective one day after the challenge is resolved,
24 and make the adjustment applicable to all similarly situated
25 network pharmacy providers, as determined by the managed care

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1 organization or pharmacy benefits manager, as appropriate. If
2 the challenge is denied, the pharmacy benefits manager using
3 maximum allowable cost pricing shall provide the reason for the
4 denial; and

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

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

11 C. As used in this section, "maximum allowable
12 cost" means the maximum amount that a pharmacy benefits manager
13 will reimburse a pharmacy for the cost of a generic drug."

14 SECTION 5. A new section of the New Mexico Insurance Code
15 is enacted to read:

16 "NEW MATERIAL] PHARMACY BENEFITS MANAGER CONTRACTS.--

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

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

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

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1 rendered."

2 SECTION 6. A new section of the New Mexico Insurance Code
3 is enacted to read:

4 "[NEW MATERIAL] AUDIT--PHARMACY BENEFITS MANAGER.--A
5 pharmacy benefits manager, whether licensed pursuant to the
6 Pharmacy Benefits Manager Regulation Act or exempt from
7 licensure pursuant to that act, shall be subject to Section
8 61-11-18.2 NMSA 1978."

9 SECTION 7. 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 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, filing . . . 200.00
5 D. service of process, acceptance by superintendent
6 and issuance of certificate of service, where issued . . . 10.00
7 E. agents' licenses and appointments -
8 (1) filing application for original agent
9 license and issuance of license, if issued 30.00
10 (2) appointment of agent -
11 (a) filing appointment, per kind of
12 insurance, each insurer 20.00
13 (b) annual continuation of appointment,
14 each insurer 20.00
15 (3) variable annuity agent's license -
16 (a) filing application for license and
17 issuance of license, if issued 30.00
18 (b) annual continuation of
19 appointment 20.00
20 (4) temporary license -
21 (a) as to life and health insurance or
22 both 30.00
23 (b) as to property insurance . . . 30.00
24 (c) as to casualty/surety
25 insurance 30.00

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

2 F. agency license and affiliations -

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

6 (2) filing of individual affiliation, per kind
7 of insurance 20.00

8 (3) annual continuation of individual
9 affiliation 20.00

10 G. solicitor license -

11 (1) filing application for original license
12 and issuance of license, if issued 30.00

13 (2) annual continuation of appointment, per
14 kind of insurance 20.00

15 H. broker license -

16 (1) filing application for license and
17 issuance of original license, if issued 30.00

18 (2) annual continuation of
19 license 30.00

20 I. insurance vending machine license -

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

23 (2) annual continuation of license, each
24 machine 25.00

25 J. examination for license, application for

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1 examination conducted directly by superintendent, each grouping
2 of kinds of insurance to be covered by the examination as
3 provided by the superintendent's rules, and payable as to each
4 instance of examination 50.00

5 K. surplus lines insurer - filing application for
6 qualification as eligible surplus lines
7 insurer 1,000.00

8 L. surplus lines broker license -
9 (1) filing application for original license
10 and issuance of license, if issued 100.00
11 (2) annual continuation of
12 license 100.00

13 M. surplus lines broker license and affiliations -
14 (1) filing application for original surplus
15 lines brokerage business entity license and issuance of
16 license, if issued 100.00

17 (2) filing of individual affiliation per kind
18 of insurance 20.00

19 (3) annual continuation of individual
20 affiliation 20.00

21 N. adjuster license -
22 (1) filing application for original license
23 and issuance of license, if issued 30.00

24 (2) annual continuation of
25 license 30.00

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0. insurance consultant license -

- (1) filing application for original license and issuance of license, if issued 50.00
- (2) application examination 10.00
- (3) biennial continuation of license . 100.00

P. viatical settlements license -

(1) providers -

- (a) filing application for original license and issuance of license, if issued 1,000.00
- (b) annual continuation of license 200.00

(2) brokers -

- (a) filing application for original license and issuance of license, if issued 100.00
- (b) annual continuation of license 100.00

(3) brokerages -

- (a) filing application for original license and issuance of license, if issued 100.00
- (b) annual continuation of license 20.00
- (c) filing of individual affiliation, per kind of insurance 20.00
- (d) annual continuation of individual affiliation 20.00

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- 1 Q. rating organization or rating advisory
- 2 organization license -
- 3 (1) filing application for license and
- 4 issuance of license, if issued 100.00
- 5 (2) annual continuation of
- 6 license 100.00
- 7 R. nonprofit health care plans -
- 8 (1) filing application for preliminary permit
- 9 and issuance of permit, if issued 100.00
- 10 (2) certificate of authority, application,
- 11 issuance, continuation, reinstatement, charter documents - same
- 12 as for insurers
- 13 (3) annual statement, filing 200.00
- 14 (4) agents and solicitors -
- 15 (a) filing application for original
- 16 license and issuance of license, if issued 30.00
- 17 (b) examination for license conducted
- 18 directly by superintendent, each instance of
- 19 examination 50.00
- 20 (c) annual continuation of
- 21 appointment 20.00
- 22 S. prepaid dental plans -
- 23 (1) certificate of authority, application,
- 24 issuance, continuation, reinstatement, charter documents - same
- 25 as for insurers

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- 1 (2) annual report, filing 200.00
- 2 (3) agents and solicitors -
- 3 (a) filing application for original
- 4 license and issuance of license, if issued 30.00
- 5 (b) examination for license conducted
- 6 directly by superintendent, each instance of
- 7 examination 50.00
- 8 (c) annual continuation of
- 9 license 20.00
- 10 T. prearranged funeral insurance - application for
- 11 certificate of authority, issuance, continuation,
- 12 reinstatement, charter documents, filing annual statement,
- 13 licensing of sales representatives - same as for insurers
- 14 U. premium finance companies -
- 15 (1) filing application for original license
- 16 and issuance of license, if issued 100.00
- 17 (2) annual renewal of license 100.00
- 18 V. motor clubs -
- 19 (1) certificate of authority -
- 20 (a) filing application for original
- 21 certificate of authority and issuance of certificate of
- 22 authority, if issued 200.00
- 23 (b) annual continuation of certificate
- 24 of authority 100.00
- 25 (2) sales representatives -

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1 (a) filing application for registration
2 or license and issuance of registration or license, if issued,
3 each representative 20.00

4 (b) annual continuation of registration
5 or license, each representative 20.00

6 W. bail bondsmen -

7 (1) filing application for original license as
8 bail bondsman or solicitor, and issuance of license, if
9 issued 30.00

10 (2) examination for license conducted directly
11 by superintendent, each instance of
12 examination 50.00

13 (3) annual continuation of
14 appointment 20.00

15 X. securities salesperson license -

16 (1) filing application for license and
17 issuance of license, if issued 25.00

18 (2) annual renewal of license 25.00

19 Y. required filing of forms or rates - by all lines
20 of business other than property or casualty -

21 (1) rates 50.00

22 (2) major form - each new policy and each
23 package submission, which can include multiple policy forms,
24 application forms, rider forms, endorsement forms or amendment
25 forms 30.00

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1 (3) incidental forms and rates - forms filed
 2 for informational purposes; riders, applications, endorsements
 3 and amendments filed individually; rate service organization
 4 reference filings; rates filed for informational
 5 purposes 15.00

6 Z. health maintenance organizations -

7 (1) filing an application for a certificate of
 8 authority 1,000.00

9 (2) annual continuation of certificate of
 10 authority 200.00

11 (3) filing each annual report 200.00

12 (4) filing an amendment to organizational
 13 documents requiring approval 200.00

14 (5) filing informational
 15 amendments 50.00

16 (6) agents and solicitors -

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

19 (b) examination for license, each
 20 instance of examination 50.00

21 (c) annual continuation of
 22 appointment 20.00

23 AA. purchasing groups and foreign risk retention

24 groups -

25 (1) original registration 500.00

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1 (2) annual continuation of
2 registration 200.00

3 (3) agent or broker fees - same as for
4 authorized insurers

5 BB. third party administrators -

6 (1) filing application for original individual
7 insurance administrator license 30.00

8 (2) filing application for original officer,
9 manager or partner insurance administrator
10 license 30.00

11 (3) annual continuation or renewal of
12 license 30.00

13 (4) examination for license conducted directly
14 by the superintendent, each examination 75.00

15 (5) filing of annual report 50.00

16 CC. miscellaneous fees -

17 (1) duplicate license 30.00

18 (2) name change 30.00

19 (3) for each signature and seal of
20 superintendent affixed to any instrument 10.00

21 DD. pharmacy benefits managers -

22 (1) filing an application for a
23 license 1,000.00

24 (2) annual continuation of license, each year
25 continued 500.00

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- 1 (3) filing each annual report 200.00
- 2 (4) filing an amendment to organizational
- 3 documents requiring approval 200.00
- 4 (5) filing informational amendments . 100.00
- 5 (6) agents -
- 6 (a) filing application for original
- 7 license and issuance of license, if issued 100.00
- 8 (b) annual continuation of
- 9 license 100.00.

10 An insurer shall be subject to additional fees or charges,
 11 termed retaliatory or reciprocal requirements, whenever form or
 12 rate-filing fees in excess of those imposed by state law are
 13 charged to insurers in New Mexico doing business in another
 14 state or whenever a condition precedent to the right to issue
 15 policies in another state is imposed by the laws of that state
 16 over and above the conditions imposed upon insurers by the laws
 17 of New Mexico; in those cases, the same form or rate-filing
 18 fees may be imposed upon an insurer from another state
 19 transacting or applying to transact business in New Mexico so
 20 long as the higher fees remain in force in the other state. If
 21 an insurer does not comply with the additional retaliatory or
 22 reciprocal requirement charges imposed under this subsection,
 23 the superintendent may refuse to grant or may withdraw approval
 24 of the tendered form or rate filing.

25 All fees are earned when paid and are not refundable."

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