

LFC Requester: _____

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/13/25

Check all that apply:

Bill Number: SB62

Original Correction

Amendment Substitute

Agency Name

and Code

HCA-630

Number:

Sponsor: Sen. Liz Stefanics

Short Title: PBM Regulations

Person Writing: Keenan Ryan

Title:

Phone: 505.396.0223 **Email:** keenan.ryan@hca.nm.

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$0	\$0	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
\$0	\$0	\$0	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0	Unknown but potentially substantial	Unknown but potentially substantial	Unknown but potentially substantial	Recurring	State General Fund (through the State)

						Health Benefits Fund)
Total	\$0	Unknown but potentially substantial	Unknown but potentially substantial	Unknown but potentially substantial	Recurring	Cost to Employees (premiums)
Total	\$0	Unknown but potentially substantial	Unknown but potentially substantial	Unknown but potentially substantial	Recurring	Cost to Employees (cost-sharing)

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Not known
 Duplicates/Relates to Appropriation in the General Appropriation Act: Not known.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: This bill would amend the insurance code, through the Pharmacy Benefits Manger Regulation Act, to only allow PBMs to charge a flat rate fee that is consistent with the provision of services. The bill also adds verbiage regarding issues that are a conflict of interest for PBMs and affiliates. Key provisions include:

1. Definitions:

- a. Introduces or clarifies definitions for terms such as "bona fide service fee," "conflict of interest," and "pharmacy benefits management services."
- b. A "bona fide service fee" is defined as a flat, market-consistent fee solely related to providing pharmacy benefits management services.
- c. A "conflict of interest" is defined as a situation where a PBM or its affiliate derives financial gain outside of bona fide service fees.

2. Fee Restrictions:

- a. Limits PBMs to charging only bona fide service fees.
- b. Prohibits remuneration from activities that could constitute conflicts of interest.

3. Licensing Requirements:

- a. Requires all PBMs to obtain a license from the state superintendent of insurance.
- b. Licenses must be renewed annually, with non-compliance or failure to meet specified requirements subject to license suspension or revocation.

4. Prohibited Practices:

- a. Declares certain PBM practices as unfair or deceptive trade practices, enforceable under the state's Unfair Practices Act.

5. Operational Implications:

- a. Specifies that if a PBM's license is revoked, it must notify pharmacies in its network and cease operations in the state except for activities necessary to conclude its affairs.

6. Regulatory Oversight:

- a. Grants the state superintendent authority to enforce the provisions of the Act, including promulgating rules to ensure compliance.

FISCAL IMPLICATIONS

Medicaid

PBM regulation is through the insurance code and thus overseen by Office of the Superintendent of Insurance (OSI). Neither the oversight of the PBM for the Medicaid fee-for-service program, nor the oversight of the PBMs that operate for the MCOs are under the oversight of OSI. Therefore, there is no expected operating cost for implementing this legislation for Medicaid. PBM fees are not used to calculate capitation rates.

Depending on how this legislation is implemented, there is the possibility that MCOs will be required to either obtain a different PBM or have the current PBM change its administrative practices. Changing an MCO's PBM could have a large financial impact on the MCOs. Some MCOs have large national footprints with contractual relationships based on the size of the MCO nationally that yield large savings/revenue for both the MCO and PBM. Requiring change in PBM structure may decrease this revenue stream; however, these changes are currently not used in determining how much Medicaid pays the MCOs

State Health Benefits (SHB)

Until more is understood about how this bill would be interpreted and implemented by the Office of Superintendent of Insurance, reliable cost impacts to SHB, other IBAC entities, and the broader commercial insurance market cannot be calculated. It is possible that a fully transparent PBM model could be advantageous for the state, but since this model has not been exclusively adopted in law by any other state, it is difficult to assess the full impact of the bill.

SHB Member Impact

This bill could bring about fundamental changes to PBMs in New Mexico. These changes could be temporarily disruptive to members in terms of new formularies, mail order providers, prior authorization requirements, and other factors that are typically associated with PBM changes. The member cost impact is indeterminate considering this would be driven by how this bill would be implemented.

SIGNIFICANT ISSUES

State Health Benefits

This bill could potentially preclude the continued operation of traditional PBMs in New Mexico, including the vendor currently utilized by the State Health Benefits (SHB) plan. Traditional PBMs typically receive payments that would be characterized as a "conflict of interest" under the bill. To avoid a conflict of interest under this bill, PBM reimbursement would be limited to a "bona fide service fee", which is defined as a fee charged by a PBM that is: "(1) a flat dollar amount; (2) consistent with fair market value; and (3) solely related to the provision of pharmacy benefits management services."

The bill further indicates that the "...superintendent shall enforce and promulgate rules to implement the provisions of the Pharmacy Benefits Manager Regulation Act and may suspend or revoke a license issued to a pharmacy benefits manager or deny an application for a license or renewal of a license if..." the PBM has a conflict of interest as defined above.

As written, the bill would prohibit return on investment and shared savings fee structures, both of

which are common in the PBM industry and are often preferred by employers over flat fee structures. It is unclear whether revenue streams not specifically defined in the bill as pharmacy benefit activities -- such as mail order pharmacy, data analysis, care management, or wellness programs -- would be interpreted as a conflict of interest.

While this bill appears to favor fully transparent PBMs, these PBMs are new market entrants and may not have the experience, expertise, or capacity to provide the array of services and market power that traditional PBMs offer. In addition, some of the fully transparent PBMs rely on services from large traditional PBMs for rebates, mail order and/or specialty drugs. As such, even fully transparent PBMs may receive revenue streams that may be considered a conflict of interest under the bill.

PERFORMANCE IMPLICATIONS

Unclear.

ADMINISTRATIVE IMPLICATIONS

Medicaid

PBMs work by consolidating different health plans pharmacy benefit under their own management to improve purchasing power and benefit implementation. This can cause different health plans (Medicare, Medicaid, commercial) all to be represented by the same PBM. Medicaid plans technically are under the regulatory purview of the HCA and not OSI. Medicaid does align management with OSI currently, theoretic possibility of diverging implementation of oversight.

State Health Benefits

The terms of SHB's contract with its current vendor conflict with the requirements under this bill. SHB would either need to renegotiate significant aspects of its existing contract or issue a new RFP to meet the bill's requirements.

If an IT system change is required for this bill, it will be addressed under maintenance and operations (M &O) and will be at no additional cost.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

No direct impact to Medicaid. If this legislation is not passed there may be further closure of pharmacies throughout the state. This could impact the network adequacy for Medicaid members.

SHB would be able to continue its existing PBM arrangements until a new RFP is issued, and could continue to consider traditional PBM models if they are more favorable to the SHB plan and its members.

AMENDMENTS

N/A