LFC Requestor: ESQUIBEL, RubyAnn

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: Senate

Category: Bill

Number: SB0062

Type: Introduced

Date (of **THIS** analysis)**:** 1/27/2025

Sponsor(s): Elizabeth Stefanics and Elizabeth Thomson

Short Title: Pharmacy Benefit Manager Fees

Reviewing Agency: Agency 665 - Department of Health

Analysis Contact Person: Arya Lamb

Phone Number: 505-470-4141

e-Mail: Arya.Lamb@doh.nm.ogv

Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
$0	$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
$0	$0	$0	N/A	N/A

.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	$0	$0	$0	$0	N/A	N/A

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: None

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

Senate Bill 62 proposes to amend the Pharmacy Benefits Manager Regulation Act restricting certain types of fees that can be collected by pharmacy benefits managers (PBMs) and revealing certain actions made by pharmacy benefits managers as unfair or deceptive within their scope of operations.

The bill intends to define standard fees, include conflicts of interest that prevent additional fees outside of the standard fee, and includes language for additional third parties providing pharmacy benefits management who along with pharmacy benefits managers cannot provide pharmacy benefits management without licensure from the superintendent of insurance.

Language is included that can suspend or revoke licensure when a pharmacy benefits manager has a conflict of interest. If a license is revoked, the pharmacy benefits manager must conclude its business. If the pharmacy benefits manager fails to do so, the superintendent of insurance will consider it as an unfair or deceptive trade practice following the Unfair Practices Act.

Is this an amendment or substitution? ☐ Yes ☒ No

Is there an emergency clause? ☐ Yes ☒ No

b) Significant Issues

According to the National Academy for State Health Policy, all 50 states have passed legislation regarding pharmacy benefits managers. There are 30 states that have legislation requiring licensure and registration of PBMs and 16 prohibit spread pricing, requiring the PBM to charge the same amount to the health plan as the dispensing pharmacy. 35 limit cost sharing, limiting the amount a patient has to pay, and 2 states have legislation where

the PBM has a fiduciary duty to the health plan, requiring reporting for conflicts of interest. https://nashp.org/state-tracker/state-pharmacy-benefit-manager-legislation/#overview

Since 2017, there have been 186 state laws passed regarding prescription drug pricing in all 50 states. Alaska has legislation for fair pricing and reporting of any conflicts of interest. Indiana has legislation requiring PBMs to disclose any received remuneration from a drug manufacturer. California, Idaho, Indiana, Iowa, Massachusetts, New Jersey, Utah, Virginia, and West Virginia have legislation that require PBMs to disclose all fees required of the PBM. Virginia includes legislation requiring a daily civil penalty for failure to report. Pennsylvania and Maryland have legislation that prevents a PBM from keeping any remuneration fees owed to the payer. Texas has a PBM governed by the Texas Pharmaceutical Initiative that has to provide fair and equitable pricing for any pharmacy joining its PBM. https://nashp.org/state-tracker/state-drug-pricing-laws-2017-2024/

The NM Office of Superintendent of Insurance oversees PBMs and their licensing.
Price transparency by PBMs was introduced in Congress by the Pharmacy Benefit Manager Transparency Act of 2023.

According to the Pharmaceutical Research and Manufacturers of America, a study performed by Nephron Research, an independent healthcare equity research provider, shows PBMs demand fees double what they were five years prior. Nephron's data from 2018 to 2022 regarding compensation from biopharmaceutical manufacturers show the following:

- The share of PBM profits from fees charged to manufacturers, pharmacies, health insurers, and employers increased by more than 300% over the last decade.
- Fees that PBMs charge biopharmaceutical companies doubled in the commercial market over the last five years, growing from $3.8 billion in 2018 to $7.6 billion in 2022.
- PBMs predominantly tie fees to the price of medicines, which survey respondents perceive as a barrier to lower list prices.
- Rebates and fees received by PBMs account for 42% of every dollar spent on brand medicines in the commercial market.
  https://phrma.org/Blog/New-analysis-shows-PBMs-use-fees-as-a-profit-center

The Medicaid program could be affected by this bill. According to the California Department of Justice (DOJ), investigators found that between January 2017 and December 2018, California Health & Wellness and Health Net, two managed care plans servicing Medi-Cal, reported inflated figures for the costs they incurred in providing prescription drugs to patients. Centene, an insurance carrier, leveraged advantages in its PBM contracts to save its managed care plans $2.70 per prescription drug claim over the two-year period. The California DOJ alleges that Centene and its PBM failed to disclose or pass on these discounted fees to Medi-Cal, which inflated fees and drug costs reported to California. It resulted in over a $215 million settlement back to California's Medi-Cal program.
https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-215-million-settlement-against-healthcare

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

  ☒ Yes ☐ No

  Reimbursement for any services requiring claims paid by PBMs. Pharmacy reimbursements enable NMDOH to ensure clients whose insurance is billed have access to lifesaving medication. Additionally, the reimbursement rates generate revenue that allows NMDOH to fund additional safety-net services statewide.

- Is this proposal related to the NMDOH Strategic Plan? ☐ Yes ☒ No

  ☐ **Goal 1**: We expand equitable access to services for all New Mexicans

  ☐ **Goal 2**: We ensure safety in New Mexico healthcare environments

  ☐ **Goal 3**: We improve health status for all New Mexicans

  ☐ **Goal 4**: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

  ☐ Yes ☐ No ☒ N/A

- If there is an appropriation, is it included in the LFC Budget Request?

  ☐ Yes ☐ No ☒ N/A

- Does this bill have a fiscal impact on NMDOH? ☒ Yes ☐ No

Any reimbursements by PBMs for claims paid to NMDOH could be affected, including those at facilities, public health office, and the contract pharmacy for the Ryan White program.

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? ☐ Yes ☒ No

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None

6. TECHNICAL ISSUES

Are there technical issues with the bill? ☐ Yes ☒ No

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? ☐ Yes ☒ No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? ☐ Yes ☒ No

- Does this bill conflict with federal grant requirements or associated regulations?
  ☐ Yes ☒ No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? ☒ Yes ☐ No

  The Federal Trade Commission has filed a pending lawsuit against three large PBMs, CVS Health's Caremark, Cigna's Express Scripts, and UnitedHealth's Optum Rx, regarding inflation of insulin prices (https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices.) The PBMs have countersued the Federal Trade Commission stating the regulator was unconstitutional.

8. DISPARITIES ISSUES

- Price Benefits Managers, insurance carriers, pharmacies, and patients who have insurance would be affected if excess fees continue with PBM billing.
- This would not affect the uninsured but could affect ultimate reimbursement rates for pharmacies and cost for insurance carriers, and the end user.

9. HEALTH IMPACT(S)

- Insurance carriers, including Medicaid and Medicare, and pharmacies would be impacted by the legislation against PBMs to keep standardized service fees, avoiding conflicts of interests, and having PBMs and their affiliates conclude services once deemed so by the superintendent of insurance. Unnecessary increases in fees can result in excessive costs in procurement, reimbursement for a pharmacy, clinic or hospital, sustainability and are ultimately passed down to the end user which can prevent the end user from acquiring medication.

10. ALTERNATIVES

Federal legislation could assist in standardizing set fees for PBMs based on their services, regardless of the price of the medicine.
Savings could be given to the end user, so they are not paying more than the insurance carrier is paying.
Limitations and full disclosure of rebates from drug manufacturers to PBMs.
Regulation of PBMs by the National Association of Insurance Commissioner's (NAIC) Pharmacy Benefit Manager Regulatory Issues (B) Subgroup and Regulatory Framework (B) Task Force to regulate PBMs.

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If SB62 is not enacted, the Pharmacy Benefits Managers Regulation Act will not be amended to restrict the types of fees a PBM can collect and will not allow the superintendent of insurance to declare certain actions made by PBMs are unfair or deceptive trade practices.

12. AMENDMENTS

None