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HOUSE BILL

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

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH CARE; ENACTING THE PHARMACY BENEFIT MANAGER ACT; PROVIDING FOR LICENSURE OF PHARMACY BENEFIT MANAGERS; ESTABLISHING GUIDELINES AND NOTICE PROVISIONS FOR MAXIMUM ALLOWABLE COST FOR DRUGS AND FOR CHALLENGING MAXIMUM ALLOWABLE COST PRICING; PROVIDING FOR RULEMAKING BY THE SUPERINTENDENT OF INSURANCE.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Pharmacy Benefit Manager Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Pharmacy Benefit Manager Act:

A. "covered entity" means a person authorized pursuant to the New Mexico Insurance Code to issue or provide coverage that includes prescription drug coverage;

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1 B. "covered individual" means a member,
2 participant, enrollee, subscriber, contract holder, dependent,
3 policyholder or beneficiary of a plan, policy or contract
4 issued or provided pursuant to the New Mexico Insurance Code;

5 C. "drug" means an article:

6 (1) recognized in an official compendium;

7 (2) intended for use in the diagnosis, cure,
8 mitigation, treatment or prevention of disease in humans or
9 other animals and includes the domestic animal biological
10 products regulated under the federal Virus-Serum-Toxin Act, 37
11 Stat 832-833, 21 U.S.C. 151-158, and the biological products
12 applicable to humans regulated under Federal 58 Stat 690, as
13 amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended,
14 and 42 U.S.C. 262;

15 (3) other than food, that affects the
16 structure or any function of the human body or the bodies of
17 other animals; and

18 (4) intended for use as a component of
19 Paragraph (1), (2) or (3) of this subsection; but "drug" does
20 not include a device or a device's component parts or
21 accessories;

22 D. "formulary" means the list of prescription drugs
23 for which a covered entity will make reimbursement;

24 E. "maximum allowable cost price" means the maximum
25 reimbursement amount for a group of therapeutically and

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1 pharmaceutically equivalent multiple-source drugs that are
2 listed in the most recent edition or supplement of the United
3 States food and drug administration's *Approved Drug Products*
4 *with Therapeutic Equivalence Evaluations* publication and for
5 which not fewer than three equivalent drugs are nationally
6 available;

7 F. "office of the superintendent" means the office
8 of superintendent of insurance;

9 G. "pharmaceutically equivalent drug" means a drug,
10 when compared to another drug, that:

- 11 (1) contains the same active ingredients;
12 (2) is of the same dosage form and route of
13 administration; and
14 (3) is identical in strength or concentration;

15 H. "pharmacy benefit management services" means
16 services related to the administration or management of a
17 prescription drug benefit provided by a covered entity,
18 including:

- 19 (1) retail pharmacy network management;
20 (2) pharmacy discount card management;
21 (3) claims payment to a retail pharmacy for
22 prescription medications dispensed to covered individuals;
23 (4) formulary development and management,
24 including utilization management and quality assurance
25 programs;

- 1 (5) rebate contracting and administration;
2 (6) audit of contracted pharmacies;
3 (7) establishment of pharmacy reimbursement
4 pricing and methodology; and

- 5 (8) determination of single- and multiple-
6 source drugs;

7 I. "pharmacy benefit manager" means a person that:

- 8 (1) contracts with a retail pharmacy on behalf
9 of a covered entity to provide for the provision of pharmacy
10 services to the covered entity by the retail pharmacy; and

- 11 (2) provides pharmacy benefit management
12 services;

13 J. "pharmacy discount card" means any form of proof
14 that allows the holder to obtain a discount on a prescription
15 drug when paying for the prescription at the prescription's
16 point of sale;

17 K. "retail pharmacy" means a place of business
18 licensed pursuant to the Pharmacy Act where drugs are
19 compounded or dispensed and pharmaceutical care is provided;

20 L. "superintendent" means the superintendent of
21 insurance of the office of superintendent of insurance; and

22 M. "therapeutically equivalent drug" means a drug
23 that has the same amount of active ingredients in the same
24 dosage form as another drug and that, when administered, can be
25 expected to provide the same therapeutic effect as the other

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1 drug.

2 SECTION 3. [NEW MATERIAL] PHARMACY BENEFIT MANAGERS--
3 LICENSURE--APPLICATION--FEES--DURATION.--

4 A. A person shall not act as or hold oneself out as
5 a pharmacy benefit manager unless the person holds a current
6 license issued by the office of the superintendent.

7 B. A person seeking licensure by the office of the
8 superintendent shall submit an application to the office of the
9 superintendent in a form and in accordance with procedures that
10 conform to rules that the superintendent has promulgated. At a
11 minimum, the application shall include the following
12 information:

13 (1) a copy of the applicant's organizational
14 documents, including the applicant's articles of incorporation,
15 articles of association, partnership agreement, trust
16 agreement, bylaws or other documents applicable to the
17 applicant's organization;

18 (2) any amendment to the applicant's
19 organizational documents;

20 (3) a financial statement for each of the two
21 years preceding the date of application, including:

22 (a) projected financial statements
23 relating to the person's initial period of licensure as a
24 pharmacy benefit manager;

25 (b) a balance sheet that reflects the

1 condition of the applicant on the date that operations as a
2 pharmacy benefit manager are projected to start;

3 (c) a statement of revenue and expenses
4 indicating expected member months; and

5 (d) a cash flow statement that lists any
6 capital expenditures, purchase and sale of investments and
7 deposits with the state; and

8 (4) the names, addresses and official
9 positions of the individuals responsible for the conduct of the
10 applicant's affairs, including:

11 (a) each member of the board of
12 directors, board of trustees, executive committee or other
13 governing body or committee;

14 (b) the principal officer, if the
15 applicant is a corporation;

16 (c) each partner or member, if the
17 applicant is a partnership or association; and

18 (d) any other information that the
19 superintendent requires.

20 C. An applicant for the issuance or renewal of a
21 license pursuant to this section shall pay a fee in an amount
22 set by the superintendent.

23 D. The superintendent may assess a fee against
24 pharmacy benefit managers to cover the costs of administering
25 the regulation of pharmacy benefit managers in the state.

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1 E. The superintendent may suspend, cancel or revoke
2 a pharmacy benefit manager's license if the pharmacy benefit
3 manager has failed to comply with the provisions of the
4 Pharmacy Benefit Manager Act or with rules the superintendent
5 has adopted and promulgated pursuant to that act.

6 F. A pharmacy benefit manager license shall be
7 effective until the earlier of:

- 8 (1) one year from the date that application
- 9 for the licensure is approved or renewed, as applicable; or
- 10 (2) the date the license is suspended,
- 11 canceled or revoked.

12 SECTION 4. [NEW MATERIAL] MAXIMUM ALLOWABLE COST PRICE--
13 ESTABLISHMENT.--A pharmacy benefit manager shall:

14 A. establish a maximum allowable cost price for a
15 drug only if the drug is:

- 16 (1) a multiple-source generic drug prescribed
- 17 after expiration of its generic exclusivity period as provided
- 18 in federal law;
- 19 (2) a drug with not fewer than three "A-rated"
- 20 therapeutically equivalent drugs, as listed in the most recent
- 21 edition or supplement of the United States food and drug
- 22 administration's *Approved Drug Products with Therapeutic*
- 23 *Equivalence Evaluations*, with a significant cost difference
- 24 between the generic drug being considered and its originator
- 25 brand drug; and

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- 1 (3) not obsolete or temporarily unavailable;
- 2 B. base a maximum allowable cost price pursuant to
- 3 Subsection A of this section on comparable drug prices obtained
- 4 from multiple nationally recognized comprehensive data sources,
- 5 including wholesalers, drug file vendors and pharmaceutical
- 6 manufacturers of drugs that are nationally available and
- 7 available for purchase locally by pharmacies in the state; and
- 8 C. modify a maximum allowable cost price
- 9 established pursuant to Subsection A of this section not less
- 10 than every seven days to reflect updated information from data
- 11 sources described in Subsection B of this section.

12 SECTION 5. [NEW MATERIAL] PRICING CHALLENGE PROCESS.--

13 A. A contract between a pharmacy benefit manager

14 and a retail pharmacy shall establish a process by which a

15 retail pharmacy or its representative may challenge a maximum

16 allowable cost price established pursuant to Section 4 of the

17 Pharmacy Benefit Manager Act. The contract shall provide that

18 the pharmacy benefit manager will respond to a challenge no

19 later than the seventh business day after the date on which the

20 retail pharmacy makes the challenge.

21 B. If a retail pharmacy successfully challenges a

22 maximum allowable cost price pursuant to procedures established

23 under Subsection A of this section, the pharmacy benefit

24 manager shall make an adjustment in the drug price retroactive

25 to the date the challenge was made and make the adjustment

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1 applicable to all network pharmacy providers.

2 C. If a challenge made pursuant to Subsection A of
3 this section is not successful, the pharmacy benefit manager
4 shall:

5 (1) provide the reason that the challenge was
6 unsuccessful and notify the retail pharmacy that it may appeal
7 the challenge decision; and

8 (2) allow a retail pharmacy to appeal the
9 challenge to the office of the superintendent according to
10 rules adopted and promulgated by the superintendent.

11 SECTION 6. [NEW MATERIAL] REQUIRED DISCLOSURE AND NOTICE
12 PROVISIONS.--

13 A. A pharmacy benefit manager shall disclose in a
14 contract with a retail pharmacy the data sources from which,
15 and the methodologies pursuant to which, the pharmacy benefit
16 manager obtains pricing data used when it established a maximum
17 allowable cost price pursuant to Section 4 of the Pharmacy
18 Benefit Manager Act.

19 B. A contract between a pharmacy benefit manager
20 and a retail pharmacy shall include a provision that the
21 pharmacy benefit manager will notify the retail pharmacy or its
22 representative within seven business days of a substitution,
23 addition or deletion of a data source from which the pharmacy
24 benefit manager obtains pricing data it uses in establishing a
25 maximum allowable cost price pursuant to Section 4 of the

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1 Pharmacy Benefit Manager Act.

2 C. A pharmacy benefit manager shall notify a retail
3 pharmacy when it modifies a maximum allowable cost price on the
4 date the pharmacy benefit manager modifies the maximum
5 allowable cost price.

6 SECTION 7. [NEW MATERIAL] GENERIC REIMBURSEMENT RATE.--

7 A. In establishing its average reimbursement rate
8 for generic drugs, a pharmacy benefit manager shall:

9 (1) not base its calculation of the rate
10 solely on the amount allowed by the covered entity for generic
11 drugs; and

12 (2) base its calculation on an average of
13 prices for all generic drugs dispensed, including drugs not
14 subject to a maximum allowable cost price pursuant to Section 4
15 of the Pharmacy Benefit Manager Act.

16 B. A pharmacy benefit manager shall pay to a retail
17 pharmacy an average reimbursement rate for a generic drug based
18 on an average of the actual amount, excluding any dispensing
19 fee, that the retail pharmacy charges for the drug.

20 C. A pharmacy benefit manager shall disclose in its
21 contract with a retail pharmacy the average reimbursement rate
22 for generic drugs established pursuant to Subsection A of this
23 section and the details of how the pharmacy benefit manager
24 calculates the average reimbursement rate for generic drugs.

25 SECTION 8. [NEW MATERIAL] PROHIBITED ACTIONS--RETAIL

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1 PHARMACIES--NETWORK ADEQUACY.--A pharmacy benefit manager
2 shall:

3 A. not, without prior written agreement from the
4 retail pharmacy:

5 (1) change a term of a contract with a retail
6 pharmacy; or

7 (2) automatically enroll or disenroll a retail
8 pharmacy from a pharmacy benefit network;

9 B. not charge a transaction fee for a claim that a
10 retail pharmacy submits electronically to the pharmacy benefit
11 manager;

12 C. not require that a retail pharmacy be a member
13 of a network managed by the pharmacy benefit manager as a
14 condition for the retail pharmacy to participate in another
15 pharmacy network managed by the pharmacy benefit manager;

16 D. not exclude a retail pharmacy from participation
17 in a pharmacy network if the retail pharmacy:

18 (1) accepts the terms, conditions and
19 reimbursement rates of the pharmacy benefit manager;

20 (2) meets all applicable federal and state
21 licensure and permit requirements; and

22 (3) has not been excluded from participation
23 as a provider in any federal or state program; and

24 E. establish a pharmacy network that includes
25 sufficient retail pharmacies to ensure network adequacy in

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1 accordance with rules that the superintendent has adopted and
2 promulgated.

3 SECTION 9. [NEW MATERIAL] COVERED INDIVIDUALS--
4 RELATIONSHIPS.--A pharmacy benefit manager shall not:

5 A. require that a covered individual use a retail
6 pharmacy, mail-order pharmacy, specialty pharmacy or other
7 entity providing pharmacy services:

8 (1) in which the pharmacy benefit manager has
9 an ownership interest; or

10 (2) that has an ownership interest in the
11 pharmacy benefit manager; or

12 B. provide an incentive to a covered individual to
13 encourage that covered individual to use a retail pharmacy,
14 mail-order pharmacy, specialty pharmacy or other entity
15 providing pharmacy services:

16 (1) in which the pharmacy benefit manager has
17 an ownership interest; or

18 (2) that has an ownership interest in the
19 pharmacy benefit manager.

20 SECTION 10. [NEW MATERIAL] RULEMAKING.--The
21 superintendent shall adopt and promulgate rules to carry out
22 the provisions of the Pharmacy Benefit Manager Act.