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FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Rep. Stefanics/Sen. Thomson	**ORIGINAL DATE**	2/5/2025
SHORT TITLE	Pharmacy Benefit Manager Fees	**BILL NUMBER**	Senate Bill 62
		ANALYST	Esquibel

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	Insurance Premium Taxes, Insurance Premium Surcharge Taxes, GRT

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSI		$195.0	$195.0	$390.0	Recurring	General Fund
NMPSIA	Up to $1,516.0	Up to $60,064.0	Up to $65,188.0	Up to $126,768.0	Recurring	NMPSIA Benefits Fund
RHCA	Up to $543.0	Up to $21,425.0	Up to $23,202.0	Up to $45,170.0	Recurring	RHCA Benefits Fund
HCA State Health Benefit Plan	Indeterminate	Indeterminate	Indeterminate	Indeterminate		

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
Department of Health (DOH)
Health Care Authority (HCA)
New Mexico Attorney General (NMAG)
New Mexico Public Schools Insurance Authority (NMPSIA)
New Mexico Retiree Health Care Authority (RHCA)
Office of Superintendent of Insurance (OSI)
University of New Mexico Health Sciences Center (UNM-HSC)

Agency Analysis was Solicited but Not Received From
Albuquerque Public Schools (APS)

SUMMARY

Synopsis of Senate Bill 62

Senate Bill 62 (SB62) would amend the Pharmacy Benefits Manager Regulation Act to restrict the types of fees that pharmacy benefits managers (PBMs) can collect and to declare certain actions by PBMs as unfair or deceptive trade practices.

Proposed Definitions

- Bona Fide Service Fee: Defined as a flat dollar amount, consistent with fair market value, and solely related to the provision of pharmacy benefits management services.
- Conflict of Interest: Defined as a situation where a PBM or its affiliate derives any remuneration other than a bona fide service fee from providing pharmacy benefits management services.

Proposed Licensure Requirements

- Licensure requirements would apply to any person who provides pharmacy benefit manager (PBM) services, in addition to those operating as a PBM within the current statute.
  The person or PBM must be licensed by the Office of Superintendent of Insurance and renew their licenses annually.
- The Superintendent of Insurance would gain the authority to enforce rules, suspend or revoke licenses, or deny applications if PBMs have a conflict of interest.
- To the extent a PBM fails to comply with the Superintendent of Insurance order to conclude pharmacy benefits manger's affairs, it would constitute an unfair or deceptive trade practice in violation of the New Mexico Unfair Practices Act.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Multiple states have implemented PBM legislation resulting in substantial cost savings (see "Other Substantive Issues").

Office of Superintendent of Insurance (OSI) Fiscal Implications

OSI reports it would incur costs related to the enforcement and administration of the new regulations, including the processing of additional licenses, renewals, and the investigation of complaints or violations. OSI would require 2 additional FTE at a projected cost of $195 thousand. Additional indeterminate costs may be incurred for legal actions and enforcement of the new rules, including potential litigation if PBMs challenge the regulations.

New Mexico Public Schools Insurance Authority (NMPSIA) Fiscal Implications

Under the provisions of the bill, NMPSIA reports a projected $7.1 million loss with an anticipated recurring annual increase of 9 percent for the loss of reimbursed fees along with added fees to the plan. NMPSIA's cost savings program Prudent Rx could be discontinued, resulting in a $3.2 million loss with an anticipated recurring annual increase of 8 percent. Rebates and point of sale rebates could be impaired, creating a $49.7 million loss in rebates with an anticipated recurring annual increase of 8.5 percent. The total anticipated impact for NMPSIA is a $60 million loss in FY26, with estimated recurring losses of 25.5 percent in subsequent years.

Preliminary Projected Cost Impact to NMPSIA Plan

	FY25	FY26	FY27
MAF and PBM Fees	$179,000	$7,120,000	$7,760,000
PrudentRx Elimination	$82,000	$3,216,000	$3,473,000
Total Projected Plan Impact	*$1,516,000*	*$60,064,000*	*$65,188,000*

Preliminary Projected Cost Impact to NMPSIA Members

	FY25	FY26	FY27
Rebate Elimination (POS)	$115,000	$4,521,000	$4,905,000
PrudentRx Elimination	$9,000	$328,000	$354,000
Total Projected Member Impact	*$124,000*	*$4,849,000*	*$5,259,000*

Retiree Health Care Authority (RHCA) Fiscal Implications

RHCA reports its rebate estimates were projected based on calendar year 2024 rebates. The cost implications noted below were determined only for the RHCA commercial members (pre-Medicare retirees), given that employer group waiver plans and Medicare plans are governed by federal rules under the Centers for Medicare and Medicaid Services. In addition to the total plan costs to RHCA, the agency also notes the potential cost implications to plan members with the elimination of the SaveOnRx and Smart90 programs, along with possible fiscal impacts to RHCA's Narrow Network and Mail Parity programs

Projected Cost Impact to NMRHCA

	FY25	FY26	FY27
SaveOnRx Program Elimination	$47,000	$1,841,000	$1,988,000
Smart90/Narrow Network/Mail Parity	$32,000	$1,248,000	$1,348,000
MAF Fees	$33,000	$1,307,000	$1,425,000
Administration Fees	$21,000	$790,000	$822,000
Rebate Elimination	$410,000	$16,239,000	$17,619,000
Total Projected Plan Impact	$543,000	$21,425,000	$23,202,000

Projected Cost Impact on NMRHCA Members *

	FY25	FY26	FY27
SaveOnRx Program Elimination	$3,000	$95,000	$103,000
Smart90/Narrow Network/Mail Parity	$5,000	$169,000	$182,000
Total Projected Member Impact	$8,000	$264,000	$285,000

Health Care Authority State Health Benefits Program Fiscal Implications

HCA reports the bill could affect fundamental changes to PBMs in New Mexico. These changes could be temporarily disruptive to state health benefit plan members regarding new formularies, mail order providers, prior authorization requirements, and other factors. The member cost impact is indeterminate dependent on how OSI would implement the provisions of the bill.

Tax Fiscal Implications

The projected costs delineated above to NMPSIA, RHCA, State Health Benefit, and Medicaid health insurance plans could result in reductions to health insurance premium taxes, health insurance premium surcharge taxes, and gross receipts taxes.

SIGNIFICANT ISSUES

The primary intended effect of this bill would be to prohibit PBMs or their affiliates from collecting a percentage of the rebates they negotiate for their health plan payor clientele.

OSI notes the bill does not directly prohibit practices such as spread pricing or rebate retention. The language as proposed may be too vague to prevent PBM's from continuing to participate in these practices, in addition to basing fees on or making fees contingent upon drug price, drug benchmark price, discounts, rebates and or fees.

NMPSIA notes the bill could impact cost-saving programs, resulting in increased out-of-pocket costs for members or additional financial obligations for NMPSIA plans, depending on the tier of medication. Implementation of the legislation could require potential IT system overhauls and infrastructure modifications to accommodate the new requirements. These costs, though presently unquantifiable, potentially represent significant liabilities for NMPSIA's members. Also, the current pricing model avoids per-claim administrative fees, but the proposed legislation provides opportunity for PBMs to impose administrative fees that could increase costs for members.

RHCA indicates the bill, as written currently, is unclear how it would affect rebates, cost savings programs, and clinical wellness programs.

PERFORMANCE IMPLICATIONS

The Attorney General's Office notes the bill would expand the purview of the Unfair Practices Act, therefore expanding the enforcement responsibilities of the Attorney General.

TECHNICAL ISSUES

The Office of Superintendent of Insurance notes the bill provides that a pharmacy benefits manager's (PBMs) failure to comply with the superintendent's order to conclude the PBM's affairs shall constitute an unfair or deceptive trade practice pursuant to the Unfair Practices Act. This new language should be changed to reference the Trade Practices and Fraud contained in Article 16 of the Insurance Code.

The Office of Superintendent of Insurance reports the term "fair market value" as stated within the definition for "bona fide service fee" is not defined and may be too vague for enforcement purposes.

The Office of Superintendent of Insurance proposes the following amendments to Section 1, amending Section 59A-61-2, adding definition for "bona fide service fee":
A. "bona fide service fee" means a fee charged by a pharmacy benefits manager that is:

1. a flat dollar amount;
~~2.~~ consistent with fair market value;
3. ~~solely related to the provision of pharmacy benefits management services;~~ shall not be directly or indirectly based on or contingent upon:
    a. drug price or drug benchmark price;
    b. the amount of discounts, rebates, fees, and or other direct or indirect remuneration with respect to prescription drugs prescribed to the participants, beneficiaries, or enrollees; or
    c. any other amount prohibited by the Superintendent.
4. solely related to the provision of pharmacy benefits management services.

The Office of Superintendent of Insurance proposes the following amendment to Section 2(D):

> D. If the license of a pharmacy benefits manager is revoked, the pharmacy benefits manager shall proceed, immediately following the effective date of the order of revocation, to conclude its affairs, notify each pharmacy in its network and conduct no further pharmacy benefits management services in the state, except as may be essential to the orderly conclusion of its affairs. The superintendent may permit further operation of the pharmacy benefits manager if the superintendent finds it to be in the best interest of patients. A pharmacy benefits manager's failure to comply with the superintendent's order to conclude the pharmacy benefits manager's affairs shall constitute an unfair or deceptive trade practice under to Section 59A-16-3 of the Insurance Code.

The Attorney General's Office reports the use of "conflict of interest," while the term is defined in the statute, may be a bit confusing and imprecise as it is a phrase used colloquially with significantly different meaning.

OTHER SUBSTANTIVE ISSUES

The Department of Health reports, according to the National Academy for State Health Policy, all 50 states have passed legislation regarding pharmacy benefits managers (PBMs). There are 30 states that have legislation requiring licensure and registration of PBMs and 16 states prohibit spread pricing, requiring the PBM to charge the same amount to the health plan as the dispensing pharmacy. An additional 35 states limit the amount a patient has to pay, and two states have legislation where the PBM has a fiduciary duty to the health plan, requiring reporting for conflicts of interest.[1]

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 requires 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 is required to provide fair and equitable pricing for any pharmacy joining its PBM.[2]

RAE/hj/hg

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[1] https://nashp.org/state-tracker/state-pharmacy-benefit-manager-legislation/#overview
[2] https://nashp.org/state-tracker/state-drug-pricing-laws-2017-2024