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SENATE BILL

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PHARMACEUTICAL BENEFITS; AMENDING THE PHARMACY
BENEFITS MANAGER REGULATION ACT TO RESTRICT THE TYPES OF FEES
THAT PHARMACY BENEFITS MANAGERS CAN COLLECT; DECLARING CERTAIN
ACTIONS MADE BY PHARMACY BENEFITS MANAGERS AS UNFAIR OR
DECEPTIVE TRADE PRACTICES.

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

SECTION 1. Section 59A-61-2 NMSA 1978 (being Laws 2014,
Chapter 14, Section 2, as amended) is amended to read:

"59A-61-2. DEFINITIONS.--As used in the Pharmacy Benefits
Manager Regulation Act:

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; and

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1 (3) solely related to the provision of
2 pharmacy benefits management services;

3 B. "conflict of interest" means a situation in
4 which a pharmacy benefits manager or pharmacy benefits manager
5 affiliate derives any kind of remuneration, other than the
6 collection of a bona fide service fee, from providing pharmacy
7 benefits management services;

8 ~~[A.]~~ C. "maximum allowable cost" means the maximum
9 amount that a pharmacy benefits manager will reimburse a
10 pharmacy for the cost of a generic drug;

11 ~~[B.]~~ D. "maximum allowable cost list" means a
12 searchable, electronic and internet-based listing of drugs used
13 by a pharmacy benefits manager setting the maximum allowable
14 cost on which reimbursement to a pharmacy or pharmacist is
15 made;

16 ~~[C.]~~ E. "obsolete" means a product that is listed
17 in national drug pricing compendia but is no longer available
18 to be dispensed based on the expiration date of the last lot
19 manufactured;

20 ~~[D.]~~ F. "pharmacist" means an individual licensed
21 as a pharmacist by the board of pharmacy;

22 ~~[E.]~~ G. "pharmacy" means a licensed place of
23 business where drugs are compounded or dispensed and pharmacist
24 services are provided;

25 ~~[F.]~~ H. "pharmacy benefits management" means a

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1 service provided to or conducted by a health plan as defined in
2 Section 59A-16-21.1 NMSA 1978, [~~or~~] health insurer or other
3 third party that involves:

- 4 (1) prescription drug claim administration;
- 5 (2) pharmacy network management;
- 6 (3) negotiation and administration of
7 prescription drug discounts, rebates and other benefits;
- 8 (4) design, administration or management of
9 prescription drug benefits;
- 10 (5) formulary management;
- 11 (6) payment of claims to pharmacies for
12 dispensing prescription drugs;
- 13 (7) negotiation or administration of contracts
14 relating to pharmacy operations or prescription benefits; or
- 15 (8) any other service determined by the
16 superintendent as specified by rule to be a pharmacy benefits
17 management activity;

18 [~~G.~~] I. "pharmacy benefits manager" means an entity
19 that provides pharmacy benefits management services;

20 [~~H.~~] J. "pharmacy benefits manager affiliate" means
21 a pharmacy or pharmacist that directly or indirectly, through
22 one or more intermediaries, owns or controls, is owned or
23 controlled by or is under common ownership or control with a
24 pharmacy benefits manager;

25 [~~I.~~] K. "pharmacy services administrative

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1 organization" means an entity that contracts with a pharmacy or
2 pharmacist to act as the pharmacy or pharmacist's agent with
3 respect to matters involving a pharmacy benefits manager or
4 third-party payor, including negotiating, executing or
5 administering contracts with the pharmacy benefits manager or
6 third-party payor; and

7 ~~[J-]~~ L. "superintendent" means the superintendent
8 of insurance."

9 SECTION 2. Section 59A-61-3 NMSA 1978 (being Laws 2014,
10 Chapter 14, Section 3, as amended) is amended to read:

11 "59A-61-3. LICENSURE--INITIAL APPLICATION--ANNUAL RENEWAL
12 REQUIRED--REVOCATION.--

13 A. A person shall not operate as a pharmacy
14 benefits manager or provide pharmacy benefits management
15 services unless licensed by the superintendent in accordance
16 with the Pharmacy Benefits Manager Regulation Act and
17 applicable federal and state laws. A licensee shall renew the
18 licensee's pharmacy benefits manager license annually.

19 B. An initial application and a renewal application
20 for licensure as a pharmacy benefits manager shall be made on a
21 form and in a manner provided for by the superintendent, but at
22 a minimum shall require:

23 (1) the identity of the pharmacy benefits
24 manager;

25 (2) the name and business address of the

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1 contact person for the pharmacy benefits manager;

2 (3) where applicable, the federal employer
3 identification number for the pharmacy benefits manager; and

4 (4) any other information specified in rules
5 promulgated by the superintendent.

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

11 (1) the pharmacy benefits manager is operating
12 in contravention of its application;

13 (2) the pharmacy benefits manager has failed
14 to continuously meet or comply with the requirements for
15 issuance or maintenance of a license; ~~[or]~~

16 (3) the pharmacy benefits manager has a
17 conflict of interest; or

18 [~~(3)~~] (4) the pharmacy benefits manager has
19 failed to comply with applicable state or federal laws or
20 rules.

21 D. If the license of a pharmacy benefits manager is
22 revoked, the pharmacy benefits manager shall proceed,
23 immediately following the effective date of the order of
24 revocation, to conclude its affairs, notify each pharmacy in
25 its network and conduct no further pharmacy benefits management

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1 services in the state, except as may be essential to the
2 orderly conclusion of its affairs. The superintendent may
3 permit further operation of the pharmacy benefits manager if
4 the superintendent finds it to be in the best interest of
5 patients. A pharmacy benefits manager's failure to comply with
6 the superintendent's order to conclude the pharmacy benefits
7 manager's affairs shall constitute an unfair or deceptive trade
8 practice pursuant to the Unfair Practices Act.

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

13 F. Nothing in the Pharmacy Benefits Manager
14 Regulation Act shall be construed to authorize a pharmacy
15 benefits manager to transact the business of insurance."