

HOUSE HEALTH, GOVERNMENT AND INDIAN AFFAIRS COMMITTEE
SUBSTITUTE FOR HOUSE BILL 126

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

AN ACT

RELATING TO HEALTH CARE; ENACTING THE PHARMACY BENEFITS MANAGER
REGULATION ACT; PROVIDING PENALTIES; AMENDING AND ENACTING
SECTIONS OF THE NEW MEXICO INSURANCE CODE; REQUIRING LICENSURE
OF PHARMACY BENEFITS MANAGERS; ESTABLISHING GUIDELINES AND
NOTICE PROVISIONS FOR MAXIMUM ALLOWABLE COST FOR DRUGS AND FOR
CHALLENGING MAXIMUM ALLOWABLE COST PRICING.

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

SECTION 1. A new section of the New Mexico Insurance Code
is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this
act may be cited as the "Pharmacy Benefits Manager Regulation
Act"."

SECTION 2. A new section of the New Mexico Insurance Code
is enacted to read:

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underscoring material = new
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1 "[NEW MATERIAL] DEFINITIONS.--As used in the Pharmacy
2 Benefits Manager Regulation Act:

3 A. "covered entity" means a nonprofit hospital or
4 medical service corporation, health insurer, health benefit
5 plan or health maintenance organization; a health program
6 administered by the state as a provider of health coverage; any
7 type of group health care coverage, including any form of self-
8 insurance offered, issued or renewed pursuant to the Health
9 Care Purchasing Act; or an employer, labor union or other group
10 of persons organized in the state that provides health coverage
11 to covered individuals who are employed or reside in the state.
12 "Covered entity" does not include a self-funded plan that is
13 exempt from state regulation pursuant to the federal Employee
14 Retirement Income Security Act of 1974; a plan issued for
15 coverage for federal employees; or a health plan that provides
16 coverage only for accidental injury, specified disease,
17 hospital indemnity, medicare supplement, disability income,
18 long-term care or other limited benefit health insurance
19 policies and contracts;

20 B. "covered individual" means a member,
21 participant, enrollee, contract holder, policy holder or
22 beneficiary of a covered entity who is provided health coverage
23 by the covered entity and includes a dependent or other person
24 provided health coverage through a policy, contract or plan for
25 a covered individual;

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1 C. "medicare advantage plan" or "MA-PD" means a
2 prescription drug program authorized pursuant to Part C of
3 Title 18 of the federal Medicare Prescription Drug,
4 Improvement, and Modernization Act of 2003 that provides
5 qualified prescription drug coverage;

6 D. "pharmacist" means an individual licensed as a
7 pharmacist by the board of pharmacy;

8 E. "pharmacy" means a licensed place of business
9 where drugs are compounded or dispensed and pharmacist services
10 are provided;

11 F. "pharmacy benefits management" means the service
12 provided to a health benefit plan or health insurer, directly
13 or through another person, including the procurement of
14 prescription drugs to be dispensed to patients, or the
15 administration or management of prescription drug benefits,
16 including:

17 (1) mail service pharmacies; and

18 (2) claims processing, retail network
19 management or payment of claims to pharmacies for dispensing
20 dangerous drugs, as those drugs are defined in the New Mexico
21 Drug, Device and Cosmetic Act;

22 G. "pharmacy benefits manager" means a person or a
23 wholly or partially owned or controlled subsidiary of a person
24 that provides claims administration, benefit design and
25 management, pharmacy network management, negotiation and

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1 administration of product discounts, rebates and other benefits
2 accruing to the pharmacy benefits manager or other prescription
3 drug or device services to third parties, but "pharmacy
4 benefits manager" does not include licensed health care
5 facilities, pharmacies, licensed health care professionals,
6 health insurers, unions, health maintenance organizations,
7 medicare advantage plans or prescription drug plans when
8 providing formulary services to their own patients, employees,
9 members or beneficiaries;

10 H. "prescription drug plan" or "PDP" means
11 prescription drug coverage that is offered pursuant to a
12 policy, contract or plan that has been approved as specified in
13 42 CFR Part 423 and that is offered by a prescription drug plan
14 sponsor that has a contract with the federal centers for
15 medicare and medicaid services of the United States department
16 of health and human services; and

17 I. "superintendent" means the superintendent of
18 insurance."

19 SECTION 3. A new section of the New Mexico Insurance Code
20 is enacted to read:

21 "[NEW MATERIAL] LICENSE.--

22 A. A person shall not operate as a pharmacy
23 benefits manager unless licensed by the superintendent in
24 accordance with the Pharmacy Benefits Manager Regulation Act
25 and applicable federal and state laws.

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1 B. An application for licensure as a pharmacy
2 benefits manager shall require only the following information:

3 (1) the identity of the pharmacy benefits
4 manager;

5 (2) the name and business address of the
6 contact person for the pharmacy benefits manager; and

7 (3) where applicable, the federal employer
8 identification number for the pharmacy benefits manager.

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

13 (1) the pharmacy benefits manager is operating
14 materially in contravention of its application or other
15 information submitted as a part of its application for a
16 license or renewal of its license;

17 (2) the pharmacy benefits manager has failed
18 to continuously meet or substantially comply with the
19 requirements for issuance of a license;

20 (3) the continued operation of the pharmacy
21 benefits manager adversely affects the public health and
22 safety;

23 (4) the pharmacy benefits manager has failed
24 to substantially comply with applicable state or federal laws
25 or rules; or

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1 (5) the pharmacy benefits manager has
2 transacted insurance in the state without authorization or has
3 transacted insurance for a product that is not issued by an
4 authorized insurer.

5 D. If the license of a pharmacy benefits manager is
6 revoked, the manager shall proceed, immediately following the
7 effective date of the order of revocation, to wind up its
8 affairs and conduct no further business except as may be
9 essential to the orderly conclusion of its affairs. The
10 superintendent may permit further operation of the pharmacy
11 benefits manager if the superintendent finds it to be in the
12 best interest of patients to obtain pharmacist services.

13 E. The Pharmacy Benefits Manager Regulation Act
14 does not apply to a person that is a licensed health care
15 facility, pharmacy, licensed health care professional, health
16 insurer, union, health maintenance organization, medicare
17 advantage plan or prescription drug plan when that person is
18 providing formulary services to its own patients, employees,
19 members or beneficiaries."

20 SECTION 4. A new section of the New Mexico Insurance Code
21 is enacted to read:

22 "[NEW MATERIAL] MAXIMUM ALLOWABLE COST PRICING
23 REQUIREMENTS.--

24 A. A pharmacy benefits manager using maximum
25 allowable cost pricing shall:

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1 (1) to place a drug on a maximum allowable
2 cost list, ensure that the drug:

3 (a) is listed as "A" or "B" rated in the
4 most recent version of the United States food and drug
5 administration's approved drug products with therapeutic
6 equivalence evaluations, also known as the "orange book";

7 (b) has an "NR" or "NA" rating or a
8 similar rating by a nationally recognized reference; and

9 (c) is generally available for purchase
10 by pharmacies in the state from national or regional
11 wholesalers and is not obsolete;

12 (2) provide to a network pharmacy provider, at
13 the time a contract is entered into or renewed with the network
14 pharmacy provider, the sources used to determine the maximum
15 allowable cost pricing for the maximum allowable cost list
16 specific to that provider;

17 (3) review and update maximum allowable cost
18 price information at least once every seven days to reflect any
19 modification of maximum allowable cost pricing;

20 (4) in formulating the maximum allowable cost
21 price for a drug, use only the price of the drug and use only
22 the drugs listed as therapeutically equivalent in the most
23 recent version of the United States food and drug
24 administration's approved drug products with therapeutic
25 equivalence evaluations, also known as the "orange book";

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1 (5) establish a process for eliminating
2 products from the maximum allowable cost list or modifying
3 maximum allowable cost prices in a timely manner to remain
4 consistent with pricing changes and product availability in the
5 marketplace;

6 (6) provide a procedure under which a network
7 pharmacy provider may challenge a listed maximum allowable cost
8 price for a drug and respond to a challenge not later than the
9 fifteenth day after the date the challenge is made. If the
10 challenge is successful, a pharmacy benefits manager using
11 maximum allowable cost pricing shall make an adjustment in the
12 drug price effective one day after the challenge is resolved,
13 and make the adjustment applicable to all similarly situated
14 network pharmacy providers, as determined by the managed care
15 organization or pharmacy benefits manager, as appropriate. If
16 the challenge is denied, the pharmacy benefits manager using
17 maximum allowable cost pricing shall provide the reason for the
18 denial; and

19 (7) provide a process for each of its network
20 pharmacy providers to readily access the maximum allowable cost
21 list specific to that provider.

22 B. A maximum allowable cost list specific to a
23 provider and maintained by a managed care organization or
24 pharmacy benefits manager is confidential.

25 C. As used in this section, "maximum allowable

1 cost" means the maximum amount that a pharmacy benefits manager
2 will reimburse a pharmacy for the cost of a drug."

3 SECTION 5. A new section of the New Mexico Insurance Code
4 is enacted to read:

5 "[NEW MATERIAL] PHARMACY BENEFITS MANAGER CONTRACTS.--

6 A. A pharmacy benefits manager shall not require
7 that a pharmacy participate in one contract in order to
8 participate in another contract.

9 B. Each pharmacy benefits manager shall provide to
10 the pharmacies, at least thirty days prior to its execution, a
11 contract written in plain English.

12 C. A contract between a pharmacy benefits manager
13 and a pharmacy shall provide specific time limits for the
14 pharmacy benefits manager to pay the pharmacy for services
15 rendered.

16 D. A pharmacy shall not be held responsible for
17 acts or omissions of a pharmacy benefits manager. A pharmacy
18 benefits manager shall not be held responsible for the acts or
19 omissions of a pharmacy."

20 SECTION 6. A new section of the New Mexico Insurance Code
21 is enacted to read:

22 "[NEW MATERIAL] CONSUMER CONTACT LIMITED.--A pharmacy
23 benefits manager, unless authorized by the terms of its
24 contract with a covered entity, shall not contact a covered
25 individual without express written permission of the covered

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1 entity."

2 SECTION 7. A new section of the New Mexico Insurance Code
3 is enacted to read:

4 "[NEW MATERIAL] AUDIT--PHARMACY BENEFITS MANAGER.--

5 A. A pharmacy benefits manager, whether licensed
6 pursuant to the Pharmacy Benefits Manager Regulation Act or
7 exempt from licensure pursuant to that act, shall be subject to
8 Section 61-11-18.2 NMSA 1978 to the same extent and in the same
9 manner as a pharmacy.

10 B. The covered entity may have the pharmacy
11 benefits manager's books and records audited for items specific
12 to the covered entity only to verify a pharmacy benefits
13 manager's performance in accordance with the terms of the
14 contract between the parties. If the parties have not
15 expressly provided for audit rights, the covered entity may
16 have such books and records audited as follows:

17 (1) audits may be conducted no more frequently
18 than once in each twelve-month period upon not less than sixty
19 business days' written notice to the pharmacy benefits manager
20 or thirty days from receipt of a detailed scope of work
21 document, complete claims sample and a signed confidentiality
22 agreement, if applicable;

23 (2) the covered entity and pharmacy benefits
24 manager shall select a mutually agreed-upon independent firm to
25 conduct such audit, and the independent firm shall sign a

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1 confidentiality agreement with the covered entity and the
 2 pharmacy benefits manager ensuring that all information
 3 obtained during the audit will be kept confidential and that
 4 the auditing firm shall not use, disclose or otherwise reveal
 5 any such information in any manner or form to any person except
 6 as otherwise permitted under the confidentiality agreement; the
 7 covered entity shall treat all information obtained as a result
 8 of the audit as confidential and shall not use or disclose such
 9 information except as may be otherwise permitted under the
 10 terms of the contract between the covered entity and the
 11 pharmacy benefits manager or if ordered by a court of competent
 12 jurisdiction for good cause shown; and

13 (3) the audit shall be conducted at the
 14 pharmacy benefits manager's office where such records are
 15 located, during normal business hours, without undue
 16 interference with the pharmacy benefits manager's business
 17 activities and in accordance with generally accepted accounting
 18 principles and audit standards."

19 **SECTION 8.** A new section of the New Mexico Insurance Code
 20 is enacted to read:

21 "[NEW MATERIAL] REMEDY.--A covered entity may bring a
 22 civil action to enforce the provisions of the Pharmacy Benefits
 23 Manager Regulation Act or to seek civil damages for the
 24 violation of its provisions, except where parties have agreed
 25 by contract to alternative dispute resolution."

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1 SECTION 9. Section 59A-6-1 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 101, as amended) is amended to read:

3 "59A-6-1. FEE SCHEDULE.--The superintendent shall collect
4 the following fees:

5 A. insurer's certificate of authority -

6 (1) filing application for certificate of
7 authority, and issuance of certificate of authority, if issued,
8 including filing of all charter documents, financial
9 statements, service of process, power of attorney, examination
10 reports and other documents included with and part of the
11 application \$1,000.00

12 (2) annual continuation of certificate of
13 authority, per kind of insurance 200.00

14 (3) reinstatement of certificate of authority
15 (Section 59A-5-23 NMSA 1978) 150.00

16 (4) amendment to certificate of
17 authority 200.00

18 B. charter documents - filing amendment to any
19 charter document (as defined in Section 59A-5-3
20 NMSA 1978) 10.00

21 C. annual statement of insurer, filing . . 200.00

22 D. service of process, acceptance by superintendent
23 and issuance of certificate of service, where issued . . 10.00

24 E. agents' licenses and appointments -

25 (1) filing application for original agent

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1	license and issuance of license, if issued	30.00
2	(2) appointment of agent -	
3	(a) filing appointment, per kind of	
4	insurance, each insurer	20.00
5	(b) annual continuation of appointment,	
6	each insurer	20.00
7	(3) variable annuity agent's license -	
8	(a) filing application for license and	
9	issuance of license, if issued	30.00
10	(b) annual continuation of	
11	appointment	20.00
12	(4) temporary license -	
13	(a) as to life and health insurance or	
14	both	30.00
15	(b) as to property insurance . . .	30.00
16	(c) as to casualty/surety	
17	insurance	30.00
18	(d) as to vehicle insurance . . .	30.00
19	F. agency license and affiliations -	
20	(1) filing application for original agency	
21	business entity license and issuance of license, if	
22	issued	30.00
23	(2) filing of individual affiliation, per kind	
24	of insurance	20.00
25	(3) annual continuation of individual	

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1 affiliation 20.00

2 G. solicitor license -

3 (1) filing application for original license
4 and issuance of license, if issued 30.00

5 (2) annual continuation of appointment, per
6 kind of insurance 20.00

7 H. broker license -

8 (1) filing application for license and
9 issuance of original license, if issued 30.00

10 (2) annual continuation of
11 license 30.00

12 I. insurance vending machine license -

13 (1) filing application for original license
14 and issuance of license, if issued, each machine 25.00

15 (2) annual continuation of license, each
16 machine 25.00

17 J. examination for license, application for
18 examination conducted directly by superintendent, each grouping
19 of kinds of insurance to be covered by the examination as
20 provided by the superintendent's rules, and payable as to each
21 instance of examination 50.00

22 K. surplus lines insurer - filing application for
23 qualification as eligible surplus lines
24 insurer 1,000.00

25 L. surplus lines broker license -

underscored material = new
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1 (1) filing application for original license
2 and issuance of license, if issued 100.00

3 (2) annual continuation of
4 license 100.00

5 M. surplus lines broker license and affiliations -

6 (1) filing application for original surplus
7 lines brokerage business entity license and issuance of
8 license, if issued 100.00

9 (2) filing of individual affiliation per kind
10 of insurance 20.00

11 (3) annual continuation of individual
12 affiliation 20.00

13 N. adjuster license -

14 (1) filing application for original license
15 and issuance of license, if issued 30.00

16 (2) annual continuation of
17 license 30.00

18 O. insurance consultant license -

19 (1) filing application for original license
20 and issuance of license, if issued 50.00

21 (2) application examination 10.00

22 (3) biennial continuation of license . 100.00

23 P. viatical settlements license -

24 (1) providers -

25 (a) filing application for original

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1	license and issuance of license, if issued	1,000.00
2	(b) annual continuation of	
3	license	200.00
4	(2) brokers -	
5	(a) filing application for original	
6	license and issuance of license, if issued	100.00
7	(b) annual continuation of	
8	license	100.00
9	(3) brokerages -	
10	(a) filing application for original	
11	license and issuance of license, if issued	100.00
12	(b) annual continuation of	
13	license	20.00
14	(c) filing of individual affiliation,	
15	per kind of insurance	20.00
16	(d) annual continuation of individual	
17	affiliation	20.00
18	Q. rating organization or rating advisory	
19	organization license -	
20	(1) filing application for license and	
21	issuance of license, if issued	100.00
22	(2) annual continuation of	
23	license	100.00
24	R. nonprofit health care plans -	
25	(1) filing application for preliminary permit	

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1 and issuance of permit, if issued 100.00

2 (2) certificate of authority, application,
3 issuance, continuation, reinstatement, charter documents - same
4 as for insurers

5 (3) annual statement, filing 200.00

6 (4) agents and solicitors -

7 (a) filing application for original
8 license and issuance of license, if issued 30.00

9 (b) examination for license conducted
10 directly by superintendent, each instance of
11 examination 50.00

12 (c) annual continuation of
13 appointment 20.00

14 S. prepaid dental plans -

15 (1) certificate of authority, application,
16 issuance, continuation, reinstatement, charter documents - same
17 as for insurers

18 (2) annual report, filing 200.00

19 (3) agents and solicitors -

20 (a) filing application for original
21 license and issuance of license, if issued 30.00

22 (b) examination for license conducted
23 directly by superintendent, each instance of
24 examination 50.00

25 (c) annual continuation of

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1 license 20.00

2 T. prearranged funeral insurance - application for
3 certificate of authority, issuance, continuation,
4 reinstatement, charter documents, filing annual statement,
5 licensing of sales representatives - same as for insurers

6 U. premium finance companies -

7 (1) filing application for original license
8 and issuance of license, if issued 100.00

9 (2) annual renewal of license 100.00

10 V. motor clubs -

11 (1) certificate of authority -

12 (a) filing application for original
13 certificate of authority and issuance of certificate of
14 authority, if issued 200.00

15 (b) annual continuation of certificate
16 of authority 100.00

17 (2) sales representatives -

18 (a) filing application for registration
19 or license and issuance of registration or license, if issued,
20 each representative 20.00

21 (b) annual continuation of registration
22 or license, each representative 20.00

23 W. bail bondsmen -

24 (1) filing application for original license as
25 bail bondsman or solicitor, and issuance of license, if

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1	issued	30.00
2	(2) examination for license conducted directly	
3	by superintendent, each instance of	
4	examination	50.00
5	(3) annual continuation of	
6	appointment	20.00
7	X. securities salesperson license -	
8	(1) filing application for license and	
9	issuance of license, if issued	25.00
10	(2) annual renewal of license	25.00
11	Y. required filing of forms or rates - by all lines	
12	of business other than property or casualty -	
13	(1) rates	50.00
14	(2) major form - each new policy and each	
15	package submission, which can include multiple policy forms,	
16	application forms, rider forms, endorsement forms or amendment	
17	forms	30.00
18	(3) incidental forms and rates - forms filed	
19	for informational purposes; riders, applications, endorsements	
20	and amendments filed individually; rate service organization	
21	reference filings; rates filed for informational	
22	purposes	15.00
23	Z. health maintenance organizations -	
24	(1) filing an application for a certificate of	
25	authority	1,000.00

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1	(2) annual continuation of certificate of	
2	authority	200.00
3	(3) filing each annual report	200.00
4	(4) filing an amendment to organizational	
5	documents requiring approval	200.00
6	(5) filing informational	
7	amendments	50.00
8	(6) agents and solicitors -	
9	(a) filing application for original	
10	license and issuance of license, if issued	30.00
11	(b) examination for license, each	
12	instance of examination	50.00
13	(c) annual continuation of	
14	appointment	20.00
15	AA. purchasing groups and foreign risk retention	
16	groups -	
17	(1) original registration	500.00
18	(2) annual continuation of	
19	registration	200.00
20	(3) agent or broker fees - same as for	
21	authorized insurers	
22	BB. third party administrators -	
23	(1) filing application for original individual	
24	insurance administrator license	30.00
25	(2) filing application for original officer,	

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1	manager or partner insurance administrator	
2	license	30.00
3	(3) annual continuation or renewal of	
4	license	30.00
5	(4) examination for license conducted directly	
6	by the superintendent, each examination	75.00
7	(5) filing of annual report	50.00
8	CC. miscellaneous fees -	
9	(1) duplicate license	30.00
10	(2) name change	30.00
11	(3) for each signature and seal of	
12	superintendent affixed to any instrument	10.00
13	<u>DD. pharmacy benefits managers -</u>	
14	<u>(1) filing an application for a</u>	
15	<u>license</u>	<u>1,000.00</u>
16	<u>(2) annual continuation of license, each year</u>	
17	<u>continued</u>	<u>500.00</u>
18	<u>(3) filing each annual report</u>	<u>200.00</u>
19	<u>(4) filing an amendment to organizational</u>	
20	<u>documents requiring approval</u>	<u>200.00</u>
21	<u>(5) filing informational amendments</u>	<u>100.00</u>
22	<u>(6) agents -</u>	
23	<u>(a) filing application for original</u>	
24	<u>license and issuance of license, if issued</u>	<u>100.00</u>
25	<u>(b) annual continuation of</u>	

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1 license 100.00.

2 An insurer shall be subject to additional fees or charges,
3 termed retaliatory or reciprocal requirements, whenever form or
4 rate-filing fees in excess of those imposed by state law are
5 charged to insurers in New Mexico doing business in another
6 state or whenever a condition precedent to the right to issue
7 policies in another state is imposed by the laws of that state
8 over and above the conditions imposed upon insurers by the laws
9 of New Mexico; in those cases, the same form or rate-filing
10 fees may be imposed upon an insurer from another state
11 transacting or applying to transact business in New Mexico so
12 long as the higher fees remain in force in the other state. If
13 an insurer does not comply with the additional retaliatory or
14 reciprocal requirement charges imposed under this subsection,
15 the superintendent may refuse to grant or may withdraw approval
16 of the tendered form or rate filing.

17 All fees are earned when paid and are not refundable."

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