

1 SENATE BILL 415

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Bill B. O'Neill

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10 AN ACT

11 RELATING TO HEALTH CARE; AMENDING AND ENACTING SECTIONS OF THE
12 PHARMACY BENEFITS MANAGER REGULATION ACT; PROVIDING FOR RENEWAL
13 OF PHARMACY BENEFITS MANAGER LICENSURE; REQUIRING DISCLOSURE OF
14 DOCUMENTS DURING AN INVESTIGATION; PROVIDING FOR
15 CONFIDENTIALITY; PROVIDING FOR CHANGES TO THE REIMBURSEMENT
16 PROCESS; PROVIDING FOR AN APPEALS PROCESS; REQUIRING THE
17 PROVISION OF CERTAIN DOCUMENTS OR INFORMATION UPON REQUEST;
18 REQUIRING CERTAIN CONTRACTUAL PROVISIONS; LIMITING PHARMACY
19 BENEFITS MANAGER CHARGES TO THOSE ITEMIZED IN A CONTRACT;
20 CLARIFYING PROHIBITED TRADE PRACTICES AND PENALTIES.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

25 "59A-61-2. DEFINITIONS.--As used in the Pharmacy Benefits

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1 Manager Regulation Act:

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

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

25 ~~C. "medicare advantage plan" or "MA-PD" means a~~

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1 ~~prescription drug program authorized pursuant to Part C of~~
2 ~~Title 18 of the federal Medicare Prescription Drug,~~
3 ~~Improvement, and Modernization Act of 2003 that provides~~
4 ~~qualified prescription drug coverage;]~~

5 A. "clean claim" means a physically or
6 electronically submitted claim from a pharmacy or pharmacist
7 that:

8 (1) contains substantially all of the required
9 data necessary for accurate adjudication of the claim without
10 the need for additional information from outside a pharmacy
11 benefit manager's system;

12 (2) is not materially deficient or improper,
13 including lacking substantiating documentation required in a
14 written contract with the pharmacy benefits manager; and

15 (3) has no particular or unusual circumstances
16 requiring special treatment that prevent payment from being
17 made by the pharmacy benefits manager within:

18 (a) seven business days of the date of
19 receipt by the pharmacy benefits manager, if submitted
20 electronically; or

21 (b) thirty calendar days of the date of
22 receipt by the pharmacy benefits manager, if submitted
23 physically;

24 B. "maximum allowable cost" means the maximum
25 amount that a pharmacy benefits manager will reimburse a

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1 pharmacy for the cost of a generic drug;

2 C. "maximum allowable cost list" means a listing of
3 drugs used by a pharmacy benefits manager setting the maximum
4 allowable cost on which reimbursement to a pharmacy or
5 pharmacist is made;

6 D. "obsolete" means a product that is listed in
7 national drug pricing compendia but is no longer available to
8 be dispensed based on the expiration date of the last lot
9 manufactured;

10 ~~[D.]~~ E. "pharmacist" means an individual licensed
11 as a pharmacist by the board of pharmacy;

12 ~~[E.]~~ F. "pharmacy" means a licensed place of
13 business where drugs are compounded or dispensed and pharmacist
14 services are provided;

15 ~~[F.]~~ G. "pharmacy benefits management" means ~~[the~~
16 ~~service provided to a health benefit plan or health insurer,~~
17 ~~directly or through another person, including the procurement~~
18 ~~of prescription drugs to be dispensed to patients, or the~~
19 ~~administration or management of prescription drug benefits,~~
20 ~~including:~~

21 ~~(1) mail service pharmacies; and~~

22 ~~(2) claims processing, retail network~~

23 ~~management or payment of claims to pharmacies for dispensing~~
24 ~~dangerous drugs, as those drugs are defined in the New Mexico~~
25 ~~Drug, Device and Cosmetic Act] a service provided to or~~

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1 conducted by a health benefit plan or health insurer that
2 involves:

- 3 (1) prescription drug claim administration;
4 (2) benefit design and management;
5 (3) pharmacy network management;
6 (4) negotiation and administration of
7 prescription drug discounts, rebates and other benefits;
8 (5) procurement of prescription drugs to be
9 dispensed to patients;
10 (6) administration or management of
11 prescription drug benefits;
12 (7) payment of claims to pharmacies for
13 dispensing prescription drugs;
14 (8) negotiation or administration of contracts
15 relating to pharmacy operations or prescription benefits; or
16 (9) a service similar to those outlined in
17 Paragraphs (1) through (8) of this subsection and determined by
18 the superintendent to be a pharmacy benefits management
19 activity;

20 ~~[G.] H. "pharmacy benefits manager" means [a person~~
21 ~~or a wholly or partially owned or controlled subsidiary of a~~
22 ~~person that provides claims administration, benefit design and~~
23 ~~management, pharmacy network management, negotiation and~~
24 ~~administration of product discounts, rebates and other benefits~~
25 ~~accruing to the pharmacy benefits manager or other prescription~~

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1 ~~drug or device services to third parties, but "pharmacy~~
2 ~~benefits manager" does not include licensed health care~~
3 ~~facilities, pharmacies, licensed health care professionals,~~
4 ~~health insurers, unions, health maintenance organizations,~~
5 ~~medicare advantage plans or prescription drug plans when~~
6 ~~providing formulary services to their own patients, employees,~~
7 ~~members or beneficiaries;~~

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

16 I. "pharmacy benefits manager affiliate" means a
17 pharmacy or pharmacist that directly or indirectly, through one
18 or more intermediaries, owns or controls, is owned or
19 controlled by or is under common ownership or control with a
20 pharmacy benefits manager;

21 J. "pharmacy services administrative organization"
22 means an entity that contracts with a pharmacy or pharmacist to
23 act as the pharmacy or pharmacist's agent with respect to
24 matters involving a pharmacy benefits manager or third-party
25 payor, including negotiating, executing or administering

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1 contracts with the pharmacy benefits manager or third-party
2 payor; and

3 ~~[F.]~~ K. "superintendent" means the superintendent
4 of insurance."

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

7 "59A-61-3. ~~[LICENSE]~~ LICENSURE--INITIAL APPLICATION--
8 ANNUAL RENEWAL REQUIRED--REVOCATION.--

9 A. A person shall not operate as a pharmacy
10 benefits manager unless licensed by the superintendent in
11 accordance with the Pharmacy Benefits Manager Regulation Act
12 and applicable federal and state laws. A licensee shall renew
13 the licensee's pharmacy benefits manager license annually.

14 B. An initial application and a renewal application
15 for licensure as a pharmacy benefits manager shall be made on a
16 form and in a manner provided for by the superintendent, but at
17 a minimum shall require ~~[only the following information]:~~

- 18 (1) the identity of the pharmacy benefits
19 manager;
- 20 (2) the name and business address of the
21 contact person for the pharmacy benefits manager; and
- 22 (3) where applicable, the federal employer
23 identification number for the pharmacy benefits manager.

24 C. The superintendent shall enforce and promulgate
25 rules to implement the provisions of the Pharmacy Benefits

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1 Manager Regulation Act and may suspend or revoke a license
2 issued to a pharmacy benefits manager or deny an application
3 for a license or renewal of a license if:

4 (1) the pharmacy benefits manager is operating
5 materially in contravention of its application;

6 (2) the pharmacy benefits manager has failed
7 to continuously meet or [~~substantially~~] comply with the
8 requirements for issuance or maintenance of a license;

9 (3) the pharmacy benefits manager has failed
10 to [~~substantially~~] comply with applicable state or federal laws
11 or rules; or

12 (4) the pharmacy benefits manager has
13 transacted insurance in the state without authorization or has
14 transacted insurance for a product that is not issued by an
15 authorized insurer.

16 D. [~~If the license of a pharmacy benefits manager~~
17 ~~is revoked, the manager shall proceed, immediately following~~
18 ~~the effective date of the order of revocation, to wind up its~~
19 ~~affairs and conduct no further business except as may be~~
20 ~~essential to the orderly conclusion of its affairs.] It is
21 unlawful for a pharmacy benefits manager to carry on or
22 continue its business upon revocation of the pharmacy benefits
23 manager's license. Upon the effective date of the revocation
24 of its license, a pharmacy benefits manager shall immediately
25 cease performing pharmacy benefits management services and~~

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1 notify each pharmacy or pharmacist in its network. The
2 superintendent may permit further operation of the pharmacy
3 benefits manager if the superintendent finds it to be in the
4 best interest of patients [~~to obtain pharmacist services~~].

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

9 F. A pharmacy benefits manager shall comply with
10 the requirements of the Pharmacy Benefits Manager Regulation
11 Act as a condition of licensure.

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

15 SECTION 3. Section 59A-61-4 NMSA 1978 (being Laws 2014,
16 Chapter 14, Section 4) is amended to read:

17 "59A-61-4. [~~MAXIMUM ALLOWABLE COST PRICING REQUIREMENTS~~]
18 PHARMACY REIMBURSEMENT PRACTICES--APPEALS PROCESS REQUIRED.--

19 A. A pharmacy benefits manager shall use a
20 reimbursement methodology that incorporates objective and
21 verifiable standards to determine a reimbursement amount.

22 B. A pharmacy benefits manager shall reimburse a
23 pharmacy or pharmacist an amount equal to or greater than the
24 amount that the pharmacy benefits manager reimburses a pharmacy
25 benefits manager affiliate for providing the same, or

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1 equivalent, prescription or service.

2 [A-] C. A pharmacy benefits manager using maximum
3 allowable cost pricing ~~[shall:~~

4 ~~(1) to]~~ may place a drug on a maximum
5 allowable cost list ~~[ensure that the drug]~~ if the drug:

6 ~~[(a)]~~ (1) is listed as "A" or "B" rated in the
7 most recent version of the United States food and drug
8 administration's approved drug products with therapeutic
9 equivalence evaluations, also known as the "orange book" ~~[(b)]~~
10 or has an "NR" or "NA" rating or a similar rating by a
11 nationally recognized reference; and

12 ~~(e)]~~ (2) is ~~[generally]~~ available for purchase
13 without limitation by all pharmacies in the state from national
14 or regional wholesalers and is not obsolete;

15 (3) is a multiple-source generic drug
16 prescribed after expiration of its generic exclusivity period
17 as provided in federal law; and

18 (4) is a drug with not fewer than three "A" or
19 "B" rated therapeutically equivalent drugs, United States food
20 and drug administration's approved drug products with
21 therapeutic equivalence evaluations, also known as the "orange
22 book", with a significant cost difference between the drug
23 being considered and its original brand drug.

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

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1 [~~(2)~~] (1) upon a pharmacy's request, provide
2 [~~to a network~~] the pharmacy [~~provider, at the time a contract~~
3 ~~is entered into or renewed~~] with [~~the network pharmacy~~
4 ~~provider~~] the sources and methodology used to determine the
5 maximum allowable cost pricing for the maximum allowable cost
6 list specific to that provider;

7 [~~(3)~~] (2) review and update maximum allowable
8 cost price information at least once every seven business days
9 to reflect any modification of maximum allowable cost pricing;

10 [~~(4)~~] (3) establish a process approved by the
11 superintendent for eliminating products from the maximum
12 allowable cost list or modifying maximum allowable cost prices
13 in a timely manner to remain consistent with pricing changes
14 and product availability in the marketplace;

15 [~~(5)~~] ~~provide a procedure under which a network~~
16 ~~pharmacy provider may challenge a listed maximum allowable cost~~
17 ~~price for a drug and respond to a challenge not later than the~~
18 ~~fifteenth day after the date the challenge is made. If the~~
19 ~~challenge is successful, a pharmacy benefits manager using~~
20 ~~maximum allowable cost pricing shall make an adjustment in the~~
21 ~~drug price effective one day after the challenge is resolved,~~
22 ~~and make the adjustment applicable to all similarly situated~~
23 ~~network pharmacy providers, as determined by the managed care~~
24 ~~organization or pharmacy benefits manager, as appropriate. If~~
25 ~~the challenge is denied, the pharmacy benefits manager using~~

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1 ~~maximum allowable cost pricing shall provide the reason for the~~
2 ~~denial; and]~~

3 (4) provide a reasonable procedure approved by
4 the superintendent that allows a pharmacy to choose the entity
5 to which it will appeal maximum allowable costs and
6 reimbursements made under a maximum allowable cost list for a
7 specific drug or drugs. A pharmacy may appeal either:

8 (a) directly to the pharmacy benefits
9 manager; or

10 (b) through a pharmacy services
11 administrative organization;

12 (5) provide an appeals process that, at a
13 minimum, includes the following:

14 (a) a dedicated telephone number and
15 electronic mail address or website for the purpose of
16 submitting appeals;

17 (b) the ability to submit an appeal
18 directly to the pharmacy benefits manager; and

19 (c) the allowance of at least twenty-one
20 business days to file a claim after the date a pharmacy
21 receives notice of the reimbursement amount;

22 (6) grant an appeal if the pharmacy benefits
23 manager fails to respond to the appealing party in writing
24 within seven business days after the pharmacy benefits manager
25 receives the appeal;

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1 (7) if an appeal is granted, notify the
2 challenging pharmacy and its pharmacy services administrative
3 organization, if any, that the appeal is granted and make the
4 change in the maximum allowable cost effective for the
5 appealing pharmacy and for each other pharmacy in its network
6 and permit the appealing pharmacy or pharmacist to reverse and
7 bill again the claim or claims that formed the basis of the
8 appeal;

9 (8) if an appeal is denied, provide the
10 challenging pharmacy and its pharmacy services administrative
11 organization, if any, the national drug code number and
12 supplier that has the product available for purchase in New
13 Mexico at or below the maximum allowable cost; and

14 [~~(6)~~] (9) provide a process approved by the
15 superintendent for each of its network pharmacy providers to
16 readily access the maximum allowable cost list specific to that
17 provider.

18 ~~[B. A maximum allowable cost list specific to a~~
19 ~~provider and maintained by a managed care organization or~~
20 ~~pharmacy benefits manager is confidential.]~~

21 ~~G. As used in this section, "maximum allowable~~
22 ~~cost" means the maximum amount that a pharmacy benefits manager~~
23 ~~will reimburse a pharmacy for the cost of a generic drug.]~~

24 E. Pursuant to Section 59A-4-3 NMSA 1978, a
25 pharmacy benefits manager shall provide information contained

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1 in a maximum allowable cost list to the superintendent upon
2 request by the superintendent.

3 F. A claim for pharmacist services shall not be
4 retroactively denied or reduced after adjudication of the
5 claim."

6 SECTION 4. Section 59A-61-5 NMSA 1978 (being Laws 2014,
7 Chapter 14, Section 5) is amended to read:

8 "59A-61-5. PHARMACY BENEFITS MANAGER CONTRACTS--CERTAIN
9 PRACTICES PROHIBITED--CERTAIN DISCLOSURES REQUIRED UPON
10 REQUEST.--

11 A. A pharmacy benefits manager shall not require
12 that a pharmacy participate in one contract in order to
13 participate in another contract.

14 B. ~~Each~~ A pharmacy benefits manager shall provide
15 to ~~[the pharmacies]~~ a pharmacy by electronic mail, facsimile or
16 certified mail, at least thirty calendar days prior to its
17 execution, a contract written in plain English.

18 C. A contract between a pharmacy benefits manager
19 and a pharmacy shall ~~[provide specific time limits for the~~
20 ~~pharmacy benefits manager to pay the pharmacy for services~~
21 ~~rendered]~~:

22 (1) provide that the pharmacy benefits manager
23 will pay the pharmacy for services rendered within:

24 (a) seven business days of receipt of a
25 clean claim submitted electronically; and

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1 (b) thirty calendar days of receipt of a
2 clean claim submitted physically;

3 (2) provide that upon revocation of the
4 pharmacy benefits manager's license, the contract shall
5 terminate; and

6 (3) specify the reimbursement methodology that
7 the pharmacy benefits manager will use, and the pharmacy
8 benefits manager shall use the specified methodology unless or
9 until the contract is modified in writing to specify another
10 methodology.

11 D. The provisions of the Pharmacy Benefits Manager
12 Regulation Act shall not be waived, voided or nullified by
13 contract.

14 E. A pharmacy benefits manager shall not:

15 (1) cause or knowingly permit the use of any
16 advertisement, promotion, solicitation, representation,
17 proposal or offer that is untrue, deceptive or misleading;

18 (2) require pharmacy accreditation standards
19 or recertification requirements inconsistent with, more
20 stringent than or in addition to federal and state requirements
21 for licensure and operation as a pharmacy in this state;

22 (3) prohibit a pharmacy or pharmacist from:
23 (a) mailing or delivering drugs to a
24 patient;

25 (b) dispensing a drug that the pharmacy

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1 or pharmacist is otherwise allowed to dispense under the
2 pharmacy's or pharmacist's license as permitted by state and
3 federal law;

4 (c) providing a patient information
5 regarding the patient's total cost for pharmacist services for
6 a prescription drug; or

7 (d) discussing information regarding the
8 total cost for pharmacist services for a prescription drug or
9 from selling a more affordable alternative to the insured if a
10 more affordable alternative is available;

11 (4) require or prefer a generic drug over its
12 generic therapeutic equivalent; or

13 (5) prohibit, restrict or limit disclosure of
14 information by a pharmacist or pharmacy to the superintendent,
15 law enforcement or state or federal governmental officials
16 investigating or examining a complaint or conducting a review
17 of a pharmacy benefits manager's compliance with requirements
18 pursuant to the Pharmacy Benefits Manager Regulation Act.

19 F. A pharmacy benefits manager or health benefit
20 plan shall not impose a fee on a pharmacy for scores or metrics
21 or both scores and metrics. Nothing in this subsection
22 prohibits a pharmacy benefits manager or health benefit plan
23 from offering incentives to a pharmacy based on a score or
24 metric; provided that the incentive is equally available to all
25 in-network pharmacies.

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1 G. Within seven business days of a request by the
2 superintendent or a contracted pharmacy or pharmacist, a
3 pharmacy benefits manager or pharmacy services administrative
4 organization shall provide:

- 5 (1) a contract;
- 6 (2) an agreement;
- 7 (3) a claim appeal document;
- 8 (4) a disputed claim transaction document or
9 price list; or
- 10 (5) any other information specified by law.

11 H. In a time and manner required by rules
12 promulgated by the superintendent, a pharmacy benefits manager
13 shall issue to the superintendent a network adequacy report
14 describing the pharmacy benefits manager network and the
15 pharmacy benefits manager network's accessibility to insureds
16 statewide.

17 I. Pursuant to the provisions of Section 59A-4-3
18 NMSA 1978, the superintendent, or the superintendent's
19 designee, may examine the books, documents, policies,
20 procedures and records of a pharmacy benefits manager to
21 determine compliance with applicable law. The pharmacy
22 benefits manager shall pay the costs of the examination. At
23 the request of a person who provides information in response to
24 a complaint, investigation or examination, the superintendent
25 may deem the information confidential."

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1 SECTION 5. Section 59A-61-6 NMSA 1978 (being Laws 2014,
2 Chapter 14, Section 6) is amended to read:

3 "59A-61-6. AUDIT--PHARMACY BENEFITS MANAGER.--A pharmacy
4 benefits manager, whether licensed pursuant to the Pharmacy
5 Benefits Manager Regulation Act or exempt from licensure
6 pursuant to that act, shall be subject to Section 61-11-18.2
7 NMSA 1978. A pharmacy benefits manager shall not reduce or
8 eliminate payment on an adjudicated claim except as permitted
9 by Section 61-11-18.2 NMSA 1978."

10 SECTION 6. Section 59A-61-7 NMSA 1978 (being Laws 2017,
11 Chapter 16, Section 2) is amended to read:

12 "59A-61-7. PHARMACY BENEFITS MANAGERS--PROHIBITED
13 PHARMACY FEES.--

14 A. A pharmacy benefits manager shall not charge a
15 pharmacist or pharmacy a fee related to the adjudication of a
16 claim, including:

17 ~~[A.]~~ (1) the receipt and processing of a
18 pharmacy claim;

19 ~~[B.]~~ (2) the development or management of a
20 claim processing or adjudication network; or

21 ~~[C.]~~ (3) participation in a claim processing
22 or claim adjudication network.

23 B. A pharmacy benefits manager shall not charge a
24 pharmacist or pharmacy a fee for a service unless the fee for
25 service is itemized in the pharmacy benefits management

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1 contract."

2 SECTION 7. A new section of the Pharmacy Benefits Manager
3 Regulation Act is enacted to read:

4 "[NEW MATERIAL] UNFAIR TRADE PRACTICES AND FRAUD
5 PROHIBITED.--Pursuant to the provisions of Chapter 59A, Article
6 16 NMSA 1978, no pharmacy benefits manager shall engage in a
7 practice defined or prohibited as, or determined to be:

- 8 A. an unfair method of competition; or
- 9 B. an unfair, deceptive or fraudulent act or
10 practice."

11 SECTION 8. A new section of the Pharmacy Benefits Manager
12 Regulation Act is enacted to read:

13 "[NEW MATERIAL] REGISTRATION OF PHARMACY SERVICES
14 ADMINISTRATIVE ORGANIZATIONS REQUIRED.--A pharmacy services
15 administrative organization shall register with the
16 superintendent on a form and in a time frame and method of
17 submission specified by the superintendent."

18 SECTION 9. A new section of the Pharmacy Benefits Manager
19 Regulation Act is enacted to read:

20 "[NEW MATERIAL] PENALTIES.--Pharmacy benefits managers and
21 pharmacy services administrative organizations are subject to
22 penalties, pursuant to Section 59A-1-18 NMSA 1978, for
23 violating the Pharmacy Benefits Manager Regulation Act."

24 SECTION 10. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2019.

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