LFC Requester:	RubyAnn Esquibel

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to **billanalysis@dfa.nm.gov**
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

1.28.25

Bill Number: SB62

Check all that apply:
Original X Correction __
Amendment __ Substitute __

Sponsor: Elizabeth "Liz" Stefanics & Elizabeth "Liz" Thomson

Short Title: Pharmacy Benefit Managers Fees

Agency Name and Code Number: New Mexico Retiree Health Care Authority - 34300

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$543	$21,425	$23,202	$45,170	Recurring	NMRHCA Benefits Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

SECTION III: NARRATIVE

BILL SUMMARY
Synopsis: The Bill proposes amending the Pharmacy Benefits Manager Regulation Act (Section 59A-61-1 NMSA 1978) to enhance transparency, restrict the types of fees that pharmacy benefits managers (PBMs) can collect to a "bona fide service fee" and regulate operations of PBMs.

FISCAL IMPLICATIONS
The Bill introduces definitions for "bona fide service fee" and "conflict of interest," specifying that PBMs may only collect fees that are flat dollar amounts, consistent with fair market value, and directly related to pharmacy benefits management services. Any remuneration beyond these bona fide service fees is considered a conflict of interest. PBM vendors and affiliated pharmacies would have to cease receiving any form of remuneration that is not a flat fee that meets the definition of a "bona fide service fee."

- As it is currently written, it is unclear how this SB62 will affect rebates. Rebates are currently based upon negotiations between the manufacturers and PBM and are typically dependent on formulary, drug mix, and utilization. Currently, NMRHCA's contract with the vendor notes that 100% of rebates are passed through to the plan, which serves to reduce overall pharmacy plan costs. If rebates are impacted and hence determined to conflict with the fixed dollar amount language in this Bill, this would benefit the manufacturers, who would no longer have to pay this fee at the expense of the plan. The PBM would not be impacted. A second potential impact is on members. With the passage of SB51 effective 1/1/2024, point of sale (POS) rebates would no longer be applied to offset member cost sharing if rebates are deemed in conflict with SB62. The estimated impact on NMRHCA members is included in the SaveOnRx cost impact provided at this time
- Drug reimbursement would likely have to be structured so that the ingredient cost reimbursement was a pure pass-through of the acquisition cost, with a dispensing fee or similar transaction fee serving as the pharmacy's only compensation.
- Manufacturer Administrative Fees (MAF) paid by the Pharmaceutical Research and Manufacturers of America (PhRMA) and passed through to clients are at risk. These payments are indexed to drug prices and are not "flat" fees. If the superintendent interprets these payments from PhRMA to PBMs as PBM "remuneration," it may create a conflict of interest and allow the superintendent to revoke the PBM's license.
- Similar to MAF, drug rebate dollars paid by PhRMA and passed through to clients are at risk. A significant concern is that under the proposed Bill, PhRMA might retain all contracted discounts. <u>There is no obligation for manufacturers to voluntarily reduce the list price, which could be a considerable "win" for PhRMA</u>.
- This Bill would likely eliminate the cost savings programs SaveOnRx and Smart90 currently in place. SaveOnRx and Smart90 programs reduce both member and plan costs. These programs provide cost-sharing assistance and reduce plan costs via negotiations that a vendor has with manufacturers or network pharmacies. Essentially, the manufacturers offer PBMs financial incentives to place their medications (mostly specialty) on the formulary. Assumed total costs provided will impact NMRHCA (including member costs).
- NMRHCA would encounter initial costs associated with conforming to new pharmacy benefits management regulations. These costs might include updating contracts with PBMs and ensuring that practices align with the new requirements, requiring the agency to

renegotiate contracts for the remaining allowed time. When this takes effect, there will be a little over one year left of a possible four-year contract with PBM to align with the new regulations. This would be outside the procurement process and would require a reevaluation of existing relationships and possibly a shift in partnership toward more compliant and favorable PBMs.

- There are potential impacts on the clinical program, Safeguard. Those amounts are being estimated by NMRHCA, benefits consultant, and with PBM data. Projected estimated cost implications for pre-Medicare plans, based on NMRHCA's PBM contract, are projected for FY26 and FY27 as follows:
  - 8% trend to project estimated cost implications associated with SaveOn, Smart90/Narrow Network/Mail Parity
  - 8.5% trend to project estimated cost implications associated with rebates.
  - 4% trend on administrative fees
  - 9% trend to project estimated cost implications associated with Manufacturer Administrative Fees (MAF)

The chart below shows the various projected cost components using the above assumptions. Rebate estimates were projected based on calendar year 2024 rebates. The cost implications noted below were determined only for the NMRHCA Commercial members (pre-Medicare retirees), given that EGWP and Medicare plans are dictated by Federal rules (Centers for Medicare and Medicaid Services). In addition to the total plan costs to NMRHCA, we have also highlighted the potential cost implications to plan members with the elimination of the SaveOnRx and Smart90 programs, along with impacts on Narrow Network and Mail Parity.

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

* The potential member impacts are included in NMRHCA amounts above.

- This analysis assumes that the current transparent pricing model would be acceptable under this Bill. If the implication of this Bill is to move to a NADAC pricing model, potential additional costs of approximately $1,000,000 would be added along with other implications. This cost implication is only for the commercial (non-Medicare) membership. NMRHCA would need to then re-submit their analysis and append their review
to incorporate additional costs and implications. (Cost estimates for the NADAC pricing model are based on claims data from August 2023 – July 2024.)

SIGNIFICANT ISSUES

- Regulatory Interpretation is unclear; however, it grants the superintendent of insurance the power to revoke licenses if PBMs fail to comply with the act's provisions, reinforcing accountability
- This Bill would allow for more transparency of fees between the pharmacy managers and the agency.
- If a license is revoked for one state entity, it appears to apply to all entities, and each one will need to find a substitute PBM. Note that PBMs are procured through IBAC, a consortium of State entities.
- If a PBM receives remuneration other than a bona fide service fee but in another state, it is unclear whether a conflict of interest would exist in NM.
- If PBM does not wish to continue services under the new requirements, this could potentially affect the agencies' abilities to provide prescription services, as the process typically takes over a year: an RFP and the implementation of a new vendor. IBAC is preparing to release this year a Request for Proposals for a contract effective date of July 1, 2026.

PERFORMANCE IMPLICATIONS

This Bill would likely eliminate the cost-savings programs SaveOnRx and Smart90 currently in place and may reduce access to pharmacies, mail-order services, and disease management programs associated with PBM or its affiliates. It is unclear how a "bona fide service fee" is determined or who is the authority for conducting this analysis. Fair market value may be a subjective term depending on factors such as local costs for rural areas. If a PBM is allowed to conclude its affairs after its license is revoked, the time period for this action is not specified. New PBM contracts would need to be executed to comply with this legislation.

ADMINISTRATIVE IMPLICATIONS

It is unclear whether this would impact Medicare regulated plans.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

If the license of a pharmacy benefits manager is revoked, it is unclear how these services will be provided to the state and how the substituted vendor will be selected.

OTHER SUBSTANTIVE ISSUES

The impact on members would be cost increases with specific prescriptions at point of sale and premiums, including the agencies' portion of the subsidy. If a PBM receives remuneration other than a bona fide service fee in another state, it is unclear whether a conflict of interest would exist in New Mexico. Limiting PBM fees might restrict access to pharmacies and other services. The definition of "bona fide service fee" is unclear, and assessing "fair market value" could be subjective. With approximately 80% of claims being administered by CVS, ESI, and Optum, they would dictate the market and "Fair Market Value." There's also no defined time frame for PBMs to wind down operations if their licenses are revoked.

ALTERNATIVES

Different structures and models could be used to evaluate through the competitive request for proposals process for the agency and IBAC. The agencies can outline some of the elements stated to change the current model and move to more transparent models.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current PBM fees for services will be billed as in prior years, and the agency would go through a competitive request for proposal process with other IBAC entities for pharmacy benefit management services.

AMENDMENTS

None.