

LFC Requester:

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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}*Date Prepared: 1/29/2025

Check all that apply:

Bill Number: SB62Original Correction Amendment Substitute Sponsor: Elizabeth "Liz" Stefanics
Elizabeth "Liz" Thomson
Pharmacy Benefit Manager FeesAgency Name and Code Office of Superintendent of
Number: Insurance - 440Person Writing Viara Ianakieva

Short Title:

Phone: 505-508-9073 Email: Viara.ianakieva**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(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		\$345	\$195	\$540	Recurring	Insurance Ops

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

- Purpose: The bill aims to 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. Key Provisions:
- **Definitions Updates** (Section 59A-61-2 NMSA 1978):
 - 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.
- **Licensure Requirements Updates** (Section 59A-61-3 NMSA 1978):
 - 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 superintendent and renew their licenses annually.
 - The superintendent 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's order to conclude pharmacy benefits manager's affairs, it would constitute an unfair or deceptive trade practice in violation of the New Mexico Unfair Practices Act.

FISCAL IMPLICATIONS

- OSI will 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 will require 2 additional FTEs, Pay Band 65 and Pay Band 75, reflected in the Appropriations section.
 - There may be additional costs associated with legal actions and enforcement of the new rules, including potential litigation if PBMs challenge the regulations. The appropriations section allocates an additional \$150, 000 for legal costs every two years.

SIGNIFICANT ISSUES

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.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

SB 62 provides that 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 pursuant to the Unfair Practices Act. This new language should be changed to reference the Trade Practices and Fraud, which is contained in Article 16 of the Insurance Code.

OTHER SUBSTANTIVE ISSUES

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.

Section 2 of SB 62 amends Section 59A-61-3(D) of the New Mexico Insurance Code provides that:

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 pursuant to the Unfair Practices Act.

Chapter 57, Article 12 NMSA 1978 is the "Unfair Practices Act." Section 57-12-15 of the Unfair Practices Act provides that the Attorney General (now Department of Justice) is responsible for enforcement of the Act. Section 59A-2-8(A)(3) provides that the Superintendent of Insurance is given the authority to "enforce those provisions of the Insurance Code that are administered by the Superintendent." Section 59A-61-3(C) of the New Mexico Insurance Code gives the authority to the Superintendent to "enforce" "provisions of the Pharmacy Benefits Manager Regulation Act." Giving the authority to the Attorney General (now Department of Justice) to enforce an order of the Superintendent is inconsistent with the statutory authority of the Superintendent to "enforce those provisions of the Insurance Code that are administered by the Superintendent."

If the failure of a pharmacy benefits manager to comply with the Superintendent's order would constitute an unfair or deceptive trade practices under Section 59A-16-3 of the Insurance Code, the Superintendent would retain the authority to seek enforcement of the Superintendent's order as provided by Article 16.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Pharmacy Benefit Managers will continue to participate in practices that likely significantly increase the cost of medications for New Mexico residents.

AMENDMENTS

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":

"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:
 - i. drug price or drug benchmark price;
 - ii. 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
 - iii. 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.