

1 SENATE BILL 503

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Larry R. Scott

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10 AN ACT

11 RELATING TO PHARMACIES; PROHIBITING CERTAIN PHARMACY BENEFITS
12 MANAGER PRACTICES.

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

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

17 "59A-61-2. DEFINITIONS.--As used in the Pharmacy Benefits
18 Manager Regulation Act:

19 A. "maximum allowable cost" means the maximum
20 amount that a pharmacy benefits manager will reimburse a
21 pharmacy for the cost of a generic drug;

22 B. "maximum allowable cost list" means a
23 searchable, electronic and internet-based listing of drugs used
24 by a pharmacy benefits manager setting the maximum allowable
25 cost on which reimbursement to a pharmacy or pharmacist is

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1 made;

2 C. "obsolete" means a product that is listed in
3 national drug pricing compendia but is no longer available to
4 be dispensed based on the expiration date of the last lot
5 manufactured;

6 D. "patient steering" means:

7 (1) a pharmacy benefits manager directing
8 patients to use a preferred pharmacy through mandatory mail
9 order requirements;

10 (2) a pharmacy benefits manager requiring a
11 patient to use a restricted network of pharmacies that only
12 consists of pharmacies approved by the pharmacy benefits
13 manager; or

14 (3) the use of copay differentials for
15 pharmacies contracted with the pharmacy benefits manager and
16 pharmacies that are not contracted with the pharmacy benefits
17 manager;

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

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

23 [~~F.~~] G. "pharmacy benefits management" means a
24 service provided to or conducted by a health plan as defined in
25 Section 59A-16-21.1 NMSA 1978 or health insurer that involves:

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- 1 (1) prescription drug claim administration;
2 (2) pharmacy network management;
3 (3) negotiation and administration of
4 prescription drug discounts, rebates and other benefits;
5 (4) design, administration or management of
6 prescription drug benefits;
7 (5) formulary management;
8 (6) payment of claims to pharmacies for
9 dispensing prescription drugs;
10 (7) negotiation or administration of contracts
11 relating to pharmacy operations or prescription benefits; or
12 (8) any other service determined by the
13 superintendent as specified by rule to be a pharmacy benefits
14 management activity;
- 15 [~~G.~~] H. "pharmacy benefits manager" means an entity
16 that provides pharmacy benefits management services;
- 17 [~~H.~~] I. "pharmacy benefits manager affiliate" means
18 a pharmacy or pharmacist that directly or indirectly, through
19 one or more intermediaries, owns or controls, is owned or
20 controlled by or is under common ownership or control with a
21 pharmacy benefits manager;
- 22 [~~I.~~] J. "pharmacy services administrative
23 organization" means an entity that contracts with a pharmacy or
24 pharmacist to act as the pharmacy or pharmacist's agent with
25 respect to matters involving a pharmacy benefits manager or

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1 third-party payor, including negotiating, executing or
2 administering contracts with the pharmacy benefits manager or
3 third-party payor; ~~and~~

4 K. "spread pricing" means a pharmacy benefits
5 manager reimbursing a pharmacy for a prescription and billing
6 an insurer or an employer that provides health insurance at a
7 higher price than was reimbursed for the same prescription; and

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

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

12 "59A-61-5. PHARMACY BENEFITS MANAGER CONTRACTS--CERTAIN
13 PRACTICES PROHIBITED--CERTAIN DISCLOSURES REQUIRED UPON
14 REQUEST.--

15 A. A pharmacy benefits manager shall not require
16 that a pharmacy participate in one contract in order to
17 participate in another contract.

18 B. A pharmacy benefits manager shall provide to a
19 pharmacy by electronic mail, facsimile or certified mail, at
20 least thirty calendar days prior to its execution, a contract
21 written in plain English.

22 C. A contract between a pharmacy benefits manager
23 and a pharmacy shall identify the industry standard
24 reimbursement practice that the pharmacy benefits manager will
25 use to determine a reimbursement amount, unless the contract is

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1 modified in writing to specify another industry standard
2 practice.

3 D. The provisions of the Pharmacy Benefits Manager
4 Regulation Act shall not be waived, voided or nullified by
5 contract.

6 E. A pharmacy benefits manager shall not:

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

10 (2) require pharmacy validation and
11 revalidation standards inconsistent with, more stringent than
12 or in addition to federal and state requirements for licensure
13 and operation as a pharmacy in this state;

14 (3) prohibit a pharmacy or pharmacist from:

15 (a) mailing or delivering drugs to a
16 patient as an ancillary service;

17 (b) providing a patient information
18 regarding the patient's total cost for pharmacist services for
19 a prescription drug; or

20 (c) discussing information regarding the
21 total cost for pharmacist services for a prescription drug or
22 from selling a more affordable alternative to the insured if a
23 more affordable alternative is available;

24 (4) require or prefer a generic drug over its
25 generic therapeutic equivalent;

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1 (5) prohibit, restrict or limit disclosure of
2 information by a pharmacist or pharmacy to the superintendent;
3 [~~or~~]

4 (6) prohibit, restrict or limit pharmacies or
5 pharmacists from providing to state or federal government
6 officials general information for public policy purposes;

7 (7) conduct or participate in patient
8 steering; or

9 (8) conduct or participate in spread pricing.

10 F. A pharmacy benefits manager or health benefit
11 plan shall not impose a fee on a pharmacy for scores or metrics
12 or both scores and metrics. Nothing in this subsection
13 prohibits a pharmacy benefits manager or health benefit plan
14 from offering incentives to a pharmacy based on a score or
15 metric; provided that the incentive is equally available to all
16 in-network pharmacies.

17 G. A clerical or recordkeeping error identified
18 during an audit of a pharmacy conducted by a pharmacy benefits
19 manager, such as a typographical error, scrivener's error,
20 omission or computer error, shall not, in and of itself,
21 constitute fraud or intentional misrepresentation and shall not
22 be the basis of a recoupment unless the error results in an
23 actual overpayment to the pharmacy or the wrong medication
24 being dispensed to the patient.

25 [~~G.~~] H. Within seven business days of a request by

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1 the superintendent or a contracted pharmacy or pharmacist, a
2 pharmacy benefits manager or pharmacy services administrative
3 organization shall provide as appropriate:

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

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

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