

1 HOUSE BILL 129

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Kelly K. Fajardo

5
6
7
8
9
10 AN ACT

11 RELATING TO INSURANCE; AMENDING AND ENACTING SECTIONS OF THE
12 PHARMACY BENEFITS MANAGER REGULATION ACT TO PROVIDE FOR
13 INCREASED TRANSPARENCY; REQUIRING CERTAIN DISCLOSURES;
14 PROVIDING FOR COST SHARING CALCULATIONS.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 59A-61-3 NMSA 1978 (being Laws 2014,
18 Chapter 14, Section 3, as amended) is amended to read:

19 "59A-61-3. LICENSURE--INITIAL APPLICATION--ANNUAL RENEWAL
20 REQUIRED--REVOCATION--TRANSPARENCY REPORTS.--

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

.218986.2

underscoring material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material] = delete~~

1 B. An initial application and a renewal application
2 for licensure as a pharmacy benefits manager shall be made on a
3 form and in a manner provided for by the superintendent, but at
4 a minimum shall require:

5 (1) the identity of the pharmacy benefits
6 manager;

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

9 (3) where applicable, the federal employer
10 identification number for the pharmacy benefits manager; and

11 (4) any other information specified in rules
12 promulgated by the superintendent.

13 C. The superintendent shall enforce and promulgate
14 rules to implement the provisions of the Pharmacy Benefits
15 Manager Regulation Act and may suspend or revoke a license
16 issued to a pharmacy benefits manager or deny an application
17 for a license or renewal of a license if:

18 (1) the pharmacy benefits manager is operating
19 in contravention of its application;

20 (2) the pharmacy benefits manager has failed
21 to continuously meet or comply with the requirements for
22 issuance or maintenance of a license; or

23 (3) the pharmacy benefits manager has failed
24 to comply with applicable state or federal laws or rules.

25 D. If the license of a pharmacy benefits manager is

.218986.2

underscored material = new
[bracketed material] = delete

1 revoked, the manager shall proceed, immediately following the
2 effective date of the order of revocation, to conclude its
3 affairs, notify each pharmacy in its network and conduct no
4 further pharmacy benefits management services in the state,
5 except as may be essential to the orderly conclusion of its
6 affairs. The superintendent may permit further operation of
7 the pharmacy benefits manager if the superintendent finds it to
8 be in the best interest of patients.

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

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

16 G. A pharmacy benefits manager shall submit an
17 annual transparency report pursuant to Section 3 of this 2021
18 act."

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

21 "59A-61-5. PHARMACY BENEFITS MANAGER CONTRACTS--CERTAIN
22 PRACTICES PROHIBITED--CERTAIN DISCLOSURES REQUIRED [UPON
23 REQUEST].--

24 A. A pharmacy benefits manager shall not require
25 that a pharmacy participate in one contract in order to

.218986.2

underscoring material = new
~~[bracketed material] = delete~~

1 participate in another contract.

2 B. A pharmacy benefits manager shall provide to a
3 pharmacy by electronic mail, facsimile or certified mail, at
4 least thirty calendar days prior to its execution, a contract
5 written in plain English.

6 C. A contract between a pharmacy benefits manager
7 and a pharmacy shall identify the industry standard
8 reimbursement practice that the pharmacy benefits manager will
9 use to determine a reimbursement amount, unless the contract is
10 modified in writing to specify another industry standard
11 practice.

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

15 E. A pharmacy benefits manager shall not:

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

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

23 (3) prohibit a pharmacy or pharmacist from:

24 (a) mailing or delivering drugs to a
25 patient as an ancillary service;

.218986.2

1 (b) providing a patient information
2 regarding the patient's total cost for pharmacist services for
3 a prescription drug; or

4 (c) discussing information regarding the
5 total cost for pharmacist services for a prescription drug or
6 from selling a more affordable alternative to the insured if a
7 more affordable alternative is available;

8 (4) require or prefer a generic drug over its
9 generic therapeutic equivalent;

10 (5) prohibit, restrict or limit disclosure of
11 information by a pharmacist or pharmacy to the superintendent;
12 or

13 (6) prohibit, restrict or limit pharmacies or
14 pharmacists from providing to state or federal government
15 officials general information for public policy purposes.

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

23 G. Within seven business days of a request by the
24 superintendent or a contracted pharmacy or pharmacist, a
25 pharmacy benefits manager or pharmacy services administrative

underscored material = new
[bracketed material] = delete

1 organization shall provide as appropriate:

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

8 H. In a time and manner required by rules

9 promulgated by the superintendent, a pharmacy benefits manager

10 shall issue to the superintendent a network adequacy report

11 describing the pharmacy benefits manager network and the

12 pharmacy benefits manager network's accessibility to insureds

13 statewide.

14 I. Pursuant to the provisions of Section 59A-4-3

15 NMSA 1978, the superintendent, or the superintendent's

16 designee, may examine the books, documents, policies,

17 procedures and records of a pharmacy benefits manager to

18 determine compliance with applicable law. The pharmacy

19 benefits manager shall pay the costs of the examination. At

20 the request of a person who provides information in response to

21 a complaint, investigation or examination, the superintendent

22 may deem the information confidential.

23 J. For each of a pharmacy benefits manager's

24 contractual or other relationships with a health benefit plan

25 or health insurance issuer, the pharmacy benefits manager shall

.218986.2

underscoring material = new
[bracketed material] = delete

1 provide the office of superintendent of insurance with the
2 health benefit plan's formulary and provide timely notification
3 of formulary changes and product exclusions. The information
4 provided pursuant to this subsection shall be made available in
5 a centralized location on the office's website in a format that
6 allows for consumer access, including links to pharmacy
7 benefits manager websites."

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

10 "[NEW MATERIAL] TRANSPARENCY REPORTS--FORMULARIES.--

11 A. On or before July 1 of each year, a pharmacy
12 benefits manager shall submit to the superintendent a
13 transparency report containing data from the prior calendar
14 year. The transparency report shall contain the following
15 information for each of the pharmacy benefits manager's
16 contractual or other relationships with a health benefit plan
17 or health insurance issuer:

18 (1) the aggregate amount dollar of all rebates
19 and other payments that the pharmacy benefits manager received
20 from all pharmaceutical manufacturers;

21 (2) the aggregate dollar amount of all
22 administrative fees that the pharmacy benefits manager
23 received;

24 (3) the aggregate dollar amount of all insurer
25 administrative fees that the pharmacy benefits manager

.218986.2

underscoring material = new
~~[bracketed material] = delete~~

1 received;

2 (4) the aggregate dollar amount of all rebates
3 that the pharmacy benefits manager received from all
4 pharmaceutical manufacturers and did not pass through to health
5 benefit plans or health insurance issuers;

6 (5) the aggregate retained rebate percentage;
7 and

8 (6) across all of the pharmacy benefits
9 manager's contractual or other relationships with all health
10 benefit plans and health insurance issuers, the highest, lowest
11 and mean aggregate retained rebate percentage.

12 B. The transparency report required pursuant to
13 Subsection A of this section shall be published in a timely
14 manner on a publicly available website; provided that such
15 information is made available in a form that does not disclose
16 the identity of a specific health benefit plan, the prices
17 charged for specific drugs or classes of drugs or the amount of
18 any rebates provided for specific drugs or classes of drugs.

19 C. A pharmacy benefits manager and its agents, an
20 insurer and its agents and the superintendent shall not publish
21 or disclose any information that would reveal the identity of a
22 specific health benefit plan, the prices charged for a specific
23 drug or class of drugs or the amount of any rebates provided
24 for a specific drug or class of drugs. Any such information
25 shall be protected from disclosure as confidential and

.218986.2

underscored material = new
~~[bracketed material]~~ = delete

1 proprietary information and shall not be regarded as a public
2 record pursuant to the Inspection of Public Records Act or the
3 Public Records Act.

4 D. Within sixty days of receipt, the superintendent
5 shall publish on the office of superintendent of insurance's
6 website transparency reports submitted pursuant to this
7 section. The superintendent shall provide a dedicated location
8 on the office of superintendent of insurance's website for
9 pharmacy benefits manager information and links.

10 E. As used in this section:

11 (1) "aggregate retained rebate percentage"
12 means the percentage calculated for each prescription drug for
13 which a pharmacy benefits manager receives rebates under a
14 particular health benefit plan expressed without disclosing any
15 identifying information regarding the health benefit plan,
16 prescription drug or therapeutic class. The percentage shall
17 be calculated by dividing the aggregate rebates that the
18 pharmacy benefits manager received during the prior calendar
19 year from a pharmaceutical manufacturer related to utilization
20 of the manufacturer's prescription drug by health benefit plan
21 enrollees that did not pass through to the health benefit plan
22 or health insurance issuer by the aggregate rebates that the
23 pharmacy benefits manager received during the prior calendar
24 year from a pharmaceutical manufacturer related to utilization
25 of the manufacturer's prescription drug by health benefit plan

.218986.2

1 enrollees;

2 (2) "health benefit plan", "plan", "benefit"
3 or "health insurance coverage" means services consisting of
4 medical care provided directly through insurance, reimbursement
5 or other means, and including items and services paid for as
6 medical care under any hospital or medical service policy or
7 certificate, hospital or medical service plan contract,
8 preferred provider organization contract or health maintenance
9 organization contract offered by a health insurance issuer;
10 provided that excepted benefits are not included as a "health
11 benefit plan";

12 (3) "health insurance issuer" means an entity
13 that offers health insurance coverage through a plan, policy or
14 certificate of insurance subject to state law that regulates
15 the business of insurance and also includes a "health
16 maintenance organization" as defined and certified pursuant to
17 the Health Maintenance Organization Law; and

18 (4) "rebates" means all rebates, discounts and
19 other price concessions, based on utilization of a prescription
20 drug and paid by the manufacturer or other party other than an
21 enrollee, directly or indirectly, to the pharmacy benefits
22 manager after the claim has been adjudicated at the pharmacy
23 and shall include a reasonable estimate of any volume-based
24 discount or other discounts."

25 SECTION 4. A new section of the Pharmacy Benefits Manager

.218986.2

underscoring material = new
[bracketed material] = delete

1 Regulation Act is enacted to read:

2 "[NEW MATERIAL] PHARMACY BENEFITS MANAGER PROVISIONS
3 RELATED TO PATIENT COST SHARING.--

4 A. An enrollee's defined cost sharing for each
5 prescription drug shall be calculated at the point of sale
6 based on a price that is reduced by an amount equal to one
7 hundred percent of all rebates received or to be received in
8 connection with the dispensing or administration of the
9 prescription drug.

10 B. Nothing in this section shall preclude an
11 insurer or pharmacy benefits manager from decreasing an
12 enrollee's defined cost sharing by an amount greater than that
13 provided for in Subsection A of this section.

14 C. When calculating an enrollee's contribution to
15 any applicable cost sharing requirement, including an
16 out-of-pocket maximum, deductible or copayment responsibility
17 to prescription drug benefits, a pharmacy benefits manager
18 shall include amounts paid by the enrollee or paid on the
19 enrollee's behalf through a third-party payment, financial
20 assistance, discount or product voucher for a prescription
21 drug. This provisions shall apply with respect to health plans
22 entered into, amended, extended or renewed on or after January
23 1, 2022.

24 D. In complying with the provisions of this
25 section, an insurer or its agents, and a pharmacy benefits

underscoring material = new
~~[bracketed material] = delete~~

1 manager or its agents, shall not publish or otherwise reveal
2 information regarding the actual amount of rebates an insurer
3 or pharmacy benefits manager receives on a product,
4 manufacturer, or pharmacy-specific basis. Any such information
5 shall be protected from disclosure as confidential and
6 proprietary information and shall not be regarded as public
7 record pursuant to the Inspection of Public Records Act or the
8 Public Records Act.

9 E. The superintendent shall promulgate rules
10 necessary to implement and carry out the provisions of this
11 section."

12 SECTION 5. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2021.

14 - 12 -

15
16
17
18
19
20
21
22
23
24
25