

PHARMACY BENEFIT MANAGERS

AMENDMENTS TO PBM REGULATION ACT

Amendments to the Pharmacy Benefit Managers Regulation Act, Section 59A-61-1, *et seq.*, NMSA 1978, will go into effect July 1, 2019. Some of the amendments are highlighted below:

Licensure

- Licensing provisions provide for the annual renewal of license and promulgation of rules governing licensure by the SOI. 59A-61-3
- PSAOs are required to register with the SOI. 59A-61-8

Reimbursement

- Requires objective and verifiable sources for drug pricing. 59A-61-4(A)
- Prohibits a PBM from paying a pharmacy less than it pays an affiliate. 59A-61-4(B)
- Requires a PBM to disclose the derivative sources for formulating its MAC pricing for a particular provider upon request. 59A-61-4(D)(1)
- Allows for a pharmacy to appeal reimbursement disputes directly to PBM or through its PSAO. 59A-61-4(D)(4)
- Allows for a pharmacy to file an appeal of a PBM's reimbursement rate appeals to be taken 21 business days after a pharmacy receives its reimbursement list. 59A-61-4(D)(5)(c)
- If an appeal is successful, allows the pharmacy and similarly situated network pharmacies to resubmit claim at updated MAC price. 59A-61-4(D)(7) and (10)
- If a PBM does not respond to an appeal on MAC list reimbursement pricing within 14 business days it is granted by default. 59A-61-4(6)
- Requires PBM to provide access to the MAC list to the superintendent and all network pharmacies. 59A-61-4(D)(11)

Contracts

- Prohibits gag orders on pharmacists informing patients about lower cost options. 59A-61-5(E)(3)
- Prohibits recoupment resulting from low sales of certain drugs or non-compliance by patients (scores and metrics or both). 59A-61-5(F)
- Requires a PBM to provide specific documentation to a pharmacy or the superintendent within 7 days upon request. 59A-61-5(G)
- Prohibits PBMs from charging a fee for a service unless it is itemized in a contract between a PBM and a pharmacy. 59A-61-7(B)

General

- A PBM shall submit a network adequacy report. 59A-61-5(H)
- Allows the superintendent to examine PBM records to determine compliance. 59A-61-5(I)

Audit

- Requires a PBM to be subject to Section 61-11-18.2 NMSA 1978. (See below.)

AMENDMENT TO 61-11-18.2: AUDITS OF PHARMACIES

Amendments to Section 61-11-18.2 NMSA 1978 went into effect on June 14, 2019. Some of the updates include:

- Provides a minimum of two weeks' notice to pharmacy of on-site audit 61-11-18.2(A)(1)
- Allows at least 21 business days for a pharmacy to respond to a preliminary audit report to address discrepancies 61-11-18.2(A)(7)
- Maximum of two year audit period from date of claim submitted or adjudicated 61-11-18.2(A)(8)
- Scheduling prohibition of audit initiation during first five days of the month 61-11-18.2(A)(9)
- Prohibits extrapolation in calculating recoupments or penalties 61-11-18.2(A)(11)
- Prohibits compensation to an auditing entity based on recoupments or penalties 61-11-18.2(A)(12)
- Prohibits charging pharmacies a fee for conducting an on-site or desk audit unless there is a finding of actual fraud 61-11-18.2(A)(13)
- Allows a pharmacy to correct a clerical or recordkeeping error and resubmit the claim 61-11-18.2(A)(14)
- Prohibits requiring valid prescription standards that are more stringent than federal or state requirements 61-11-18.2(A)(15)
- Prohibits recoupment for prescriptions on commercially available package sizes exceeding entity's maximum days' supply requirement 61-11-18.2(A)(18)
- Prohibits recoupment for prescription refills on commercially available package sizes exceeding entity's maximum days' supply requirement 61-11-18.2(A)(19)
- Prohibits recoupment on uncollected co-pays with documentation of pharmacy's reasonable attempt to collect 61-11-18.2(A)(20)
- Prohibits recoupments until final conclusion of audit 61-11-18.2(B)
- Defines entity for applicability purposes 61-11-18.2(F)(1)
- Defines extrapolation 61-11-18.2(F)(2)

To access the PBM Regulation Act, click [here](#)

To access Auditing of Pharmacy Records statute, click [here](#)

To file a complaint against a PBM with the Office of Superintendent of Insurance, click [here](#)