

LFC Requester:	Clark, Jon
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1/22/14
Bill No: HB126-305 Jan 22

Sponsor: Rep. Espinoza **Reviewing** Attorney General's Office
Short "Pharmacy Benefit Manager **Person Writing** Andrea Buzzard
Title: Act" **Phone:** 827-6039 **Email** abuzzard@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

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(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis: HB 126 would enact the “Pharmacy Benefit Manager Act.” As defined by the Act, “pharmacy benefit management services” are those services that are related to the administration of a prescription drug benefit provided by a “covered entity,” meaning those persons authorized pursuant to the Insurance Code to provide prescription drug coverage. A “pharmacy benefit manager” is a person who contracts with a retail pharmacy on behalf of a covered entity to provide for the provision of pharmacy services to the entity by the retail pharmacy and who provides pharmacy benefit management services. § 2.

A person must be licensed by the Office of the Superintendent of Insurance in order to act as a pharmacy benefit manager. Various financial and organizational documents are required in order to obtain licensure. § 3.

The Superintendent may assess fees against pharmacy benefit managers to cover the costs of administering the regulation of pharmacy benefit managers. § 3.

The Superintendent may suspend or revoke a pharmacy benefit manager’s license if the manager fails to comply with the Act or rules of the Superintendent. § 3.

A pharmacy benefit manager must establish a maximum allowable cost price for a drug only if the drug is a multiple-source generic drug, has not fewer than three A-rated equivalent drugs and is not obsolete or temporarily unavailable. § 4.

The term “maximum allowable cost price” is defined as the “maximum reimbursement amount for a group of therapeutically and pharmaceutically equivalent multiple-source drugs that are listed in the most recent edition or supplement of the US Food and Drug Administration’s *Approved Drug Products with Therapeutic Equivalence Evaluations* publication and for which not fewer than three equivalent drugs are nationally available.” § 2.

A pharmacy benefit manager must base a maximum allowable cost price on comparable drug prices obtained from nationally recognized data sources. § 4.

A pharmacy benefit manager must modify a maximum allowable cost price not less than every seven days to reflect updated information. § 4.

A contract between a pharmacy benefit manager and a retail pharmacy must establish a process by which a retail pharmacy may challenge a maximum allowable cost price. If a challenge is successful, the manager must make an adjustment in the price. If the challenge is unsuccessful, the retail pharmacy may appeal to the Office of Superintendent. § 5.

A pharmacy benefit manager must disclose in a contract with the retail pharmacy the data sources and methodologies used to establish a maximum allowable cost. § 6.

A pharmacy benefit manager must pay to a retail pharmacy an average reimbursement rate for a generic drug based on an average of the actual amount, excluding any dispensing fee that the retail pharmacy charges for the drug. § 7.

In establishing its average reimbursement rate for generic drugs, a pharmacy benefit manager must not base its calculation of the rate solely on the amount allowed by the covered entity for drugs and must base its calculation on an average of prices for all generic drugs dispensed, including drugs not subject to a maximum allowable cost price. § 7.

A pharmacy benefit manager must disclose in its contract with a retail pharmacy the average reimbursement rate for generic drugs established and the details of how the pharmacy benefit manager calculates the average reimbursement rate for generic drugs. § 7.

A pharmacy benefit manager must not, without prior written agreement from the retail pharmacy, change a term of a contract with a retail pharmacy or automatically enroll or disenroll a retail pharmacy from the network or charge a fee for a claim submitted electronically to the manager. The manager must not require that a retail pharmacy be a member of a network managed by the manager as a condition for the retail pharmacy to participate in another network managed by the manager. The manager must not exclude a retail pharmacy from participation in the network if the pharmacy accepts the terms and reimbursement rates of the manager, meets all applicable federal and state licensure and permit requirements and has not been excluded from participation as a provider in any federal or state program. The manager must establish a network that includes sufficient retail pharmacies to ensure network adequacy in accordance with the Superintendent's rules. § 8.

A manager must not require that a covered individual use a retail pharmacy, mail-order pharmacy or other entity providing pharmacy services in which the manager has an ownership interest or that has an ownership interest in the manager. A manager must not provide an incentive to a covered individual to encourage that individual to use a retail pharmacy, mail-order pharmacy, specialty pharmacy or other entity providing pharmacy services in which the manager has an ownership interest or that has an ownership interest in the manager. § 9.

The Superintendent must adopt rules to carry out the provision of the Act. § 10.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL: N/A

SIGNIFICANT LEGAL ISSUES: None.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL: N/A

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL: N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION: N/A

TECHNICAL ISSUES OR DRAFTING ERROR: None.

OTHER SUBSTANTIVE LEGAL ISSUES: None.

ALTERNATIVES TO ENACTING THIS BILL: None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL: Retention of existing law.

AMENDMENTS NEEDED TO IMPROVE THIS BILL: None.