TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 30 PHARMACY BENEFITS MANAGERS

13.10.30.1 ISSUING AGENCY: Office of Superintendent of Insurance ("OSI").
[13.10.30.1 NMAC – N, 3/1/2021]

13.10.30.2 SCOPE: This rule applies to every pharmacy benefits manager ("PBM") and health insurance carrier subject to the jurisdiction of the office of superintendent of insurance.
[13.10.30.2 NMAC – N, 3/1/2021]

13.10.30.3 STATUTORY AUTHORITY: Section 59A-2-9 NMSA 1978 and Subsection C of Section 59A-61-3 NMSA 1978.
[13.10.30.3 NMAC – N, 3/1/2021]

13.10.30.4 DURATION: Permanent.
[13.10.30.4 NMAC – N, 3/1/2021]

13.10.30.5 EFFECTIVE DATE: March 1, 2021, unless a later date is cited at the end of a section.
[13.10.30.5 NMAC – N, 3/1/2021]

13.10.30.6 OBJECTIVE: The purpose of this rule is to carry out the requirements of Chapter 59A, Article 61 NMSA 1978 relating to the regulation of PBMs.
[13.10.30.6 NMAC – N, 3/1/2021]

13.10.30.7 DEFINITIONS: For purposes of this rule and the Pharmacy Benefits Manager Regulation Act:

A. "Clean claim" has the definition found in Paragraph (1) of Subsection A of Section 59A-16-21.1 NMSA 1978.

B. "Formulary" is a list of prescription drugs that has been developed by a health insurance carrier or its designee that the carrier or its designee references in determining applicable coverage and benefit levels.

C. "Health insurance carrier" or **"carrier"** has the definition found in Paragraph (2) of Subsection C of Section 59A-16-21.1 NMSA 1978.

D. "Health benefits plan" or **"health plan"** has the definition found in Paragraph (1) of Subsection C of Section 59A-16-21.1 NMSA 1978.

E. "NCPDP" means the national council for prescription drug program.

F. "NDC" means national drug code.

G. "Participating provider" is a pharmacy that, under an express contract with a health insurance carrier, or with its contractor or subcontractor, has agreed to provide pharmacy services to covered persons with an expectation of receiving payment directly or indirectly from the carrier, subject to any cost-sharing required by a plan.

H. "Prescription drug claim administration" is administrative services performed in connection with the processing, adjudicating and auditing of claims relating to pharmacy services.

I. "Similarly situated" refers to a participating provider whose PBM contract is subject to the same reimbursement for a claim as a pharmacy whose appeal was granted.
[13.10.30.7 NMAC – N, 3/1/2021]

13.10.30.8 REQUIREMENTS FOR LICENSURE:

A. On or before March 1, 2021, a PBM operating in New Mexico shall apply for a license on a form prescribed by the superintendent. Each application for a license shall be verified by an officer or authorized representative of the applicant. The application shall describe or provide:

(1) The non-refundable filing fee prescribed by Paragraph (1) of Subsection AA of Section 59A-6-1 NMSA 1978 for filing an application for a license.

(2) The name of the legal entity, federal employer identification number ("FEIN"), business address, phone number and state of residency.

(3) The name, business address, phone number and e-mail address of a contact person designated by the PBM to respond to complaints.

(4) The name, business address, phone number and e-mail address of a contact person designated by the PBM to respond to inquiries by the superintendent.

(5) Proof of corporate status.

(6) For each partner or corporate officer, and each member of the board of directors, if applicable, the applicant shall provide a background investigation report through a vendor approved by OSI.

(7) A statement of whether the applicant has:

(a) been refused a registration, license or certification to act as or provide the services of a PBM or third-party administrator; or

(b) had any registration, license or certification denied, suspended, revoked or non-renewed for any reason by any state or federal entity; and

(c) if either (a) or (b) apply, the PBM shall separately attach the details of each such action, including the date, nature and disposition of the action.

(8) A statement of whether the applicant ever had a business relationship terminated for any alleged fraudulent or illegal activities in connection with the administration of a pharmacy benefits plan and a description of each termination.

(9) The application shall be signed on behalf of the PBM by an officer or partner duly authorized by the PBM.

(10) Any other information that is deemed necessary by the superintendent in evaluating the application to evidence compliance with Chapter 59A, Article 61 NMSA 1978 or the requirements of rules promulgated by the superintendent.

(11) An applicant who believes its submission contains confidential information shall so inform OSI staff and request express confidential treatment of the filing before submission. The superintendent shall determine whether proffered information shall be deemed confidential. Any submission made without an express determination of confidentiality, or after the superintendent rejects a request for confidential treatment, shall be deemed a public record.

B. Review and approval process for initial licensure. Within thirty days of receipt of an application pursuant to Subsection A of this section, the superintendent will review the application and:

(1) if the application is incomplete, notify the applicant in writing that additional information is needed, and allow the applicant thirty days to cure any deficiency in the application.

(2) approve the application and issue a PBM license to the applicant if the superintendent determines that the applicant meets the requirements for licensure; or

(3) deny the application if the superintendent determines that the applicant does not meet the requirements for licensure

C. Content and scope of license.

(1) Content. A license issued by the superintendent under this rule will state the name and business address of the PBM; the capacity of the licensee to act as a PBM in New Mexico; the effective and expiration dates of the license and such other information as the superintendent deems pertinent.

(2) Scope. A license issued under this regulation entitles the PBM to act for one or more authorized insurance carriers, plans or persons that self-insure without being required to obtain a separate license with respect to each insurance carrier, plan or person that self-insures.

D. License renewal. An application for renewal shall be submitted by March 1 of each year. A renewal application shall include the non-refundable fee for annual continuation of a license required by Paragraph (2) of Subsection AA of Section 59A-6-1 NMSA 1978, as well as updates to any items required by the initial application for licensure. For disapprovals or denials of a renewal licensure by the superintendent, the superintendent will provide written notice to the applicant that the licensure renewal was denied and state the reason or basis for the denial.

E. Corrective action plan. In lieu of a denial for initial licensure or renewal application, the superintendent may require the PBM to submit a corrective action plan to cure or correct deficiencies in its application.

[13.10.30.8 – N, 3/1/2021]

13.10.30.9 PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION ("PSAO") REGISTRATION:

A. Registration required. A PSAO currently operating in this state shall register with the superintendent on or before March 1, 2021. A PSAO that intends to operate in this state shall register with the superintendent at least 30 days prior to initiating operations.

B. A PSAO's registration application shall include:

(1) Full business name of PSAO;

(2) Name, business address, phone number and e-mail address for primary contact;

(3) Name, business address, phone number and e-mail address for contact designated to handle complaints; and

(4) Federal Employer Identification Number (FEIN).

[13.10.30.9 – N, 3/1/2021]

13.10.30.10 OSI COMPLAINT PROCESS:

A. Complaints by a pharmacy against a PBM.

(1) A pharmacy may file a complaint with the superintendent for an alleged violation of the pharmacy benefits regulation act.

(2) A complaint by a pharmacy against a PBM shall be in writing on a form provided by the superintendent.

(3) A pharmacy shall submit a complaint within six months from the date the pharmacy knew or should have known of the alleged violation.

(4) A complaint may allege multiple violations against a single PBM.

(5) A pharmacy may provide supporting documentation.

(6) The superintendent will transmit any complaints to the e-mail contact designated by the PBM to receive complaints.

(7) The superintendent will specify the documentation necessary to address the complaint.

B. Response by a PBM to a complaint.

(1) A PBM shall have seven business days from receipt of the complaint to respond in writing.

(2) The superintendent may request additional documentation. The PBM shall provide any additional documentation in writing within seven business days from the date of the superintendent's request.

(3) The superintendent may grant a PBM's request for an extension of time.

(4) The superintendent will send a copy of all submissions received in connection to a complaint to the opposing party.

(5) All documentation received in connection to a complaint is confidential.

C. Enforcement Proceedings:

(1) If the superintendent makes a finding of probable cause that a violation occurred, the superintendent may issue a notice of contemplated action.

(2) A notice of contemplated action may set a hearing pursuant to Chapter 59A, Article 4 NMSA 1978.

(3) At the superintendent's discretion, the superintendent may approve a stipulated agreement to resolve any violation.

(4) For good cause shown, the superintendent may grant a variance from these procedures, if doing so would be in the public interest.

D. Prohibited practices. Repeated violations established through substantiated complaints may be considered willful and intentional individually or in the aggregate, or both, and may be penalized pursuant to Subsection B of Section 59A-1-18 NMSA 1978.

[13.10.30.10 NMAC – N, 3/1/2021]

13.10.30.11 PAYMENT OF CLAIMS: Claims for reimbursement by a pharmacy are subject to Section 59A-16-21.1 NMSA 1978.

[13.10.30.11 NMAC – N, 3/1/2021]

13.10.30.12 MAXIMUM ALLOWABLE COST ("MAC") APPEALS:

A. Submission of appeal. A pharmacy may submit a MAC appeal, within 21 business days after a pharmacy receives notice of the reimbursement amount, through a PSAO or directly to the PBM.

B. Appeals mechanism. A PBM shall provide a mechanism for submitting MAC appeals, including the dedicated phone number pursuant to Paragraph (5) of Subsection D of Section 59A-61-4 NMSA 1978. The phone number shall be manned at a minimum during the hours of 8:00 a.m. to 5:00 p.m., mountain time. Information about MAC appeals mechanisms shall be prominently displayed in any contract or manual provided by a PBM to a pharmacy.

C. Appeal instructions on website. The PBM's website shall prominently display instructions for submitting a MAC appeal and instructions for seeking assistance in navigating the website.

D. Response to appeal. The PBM's response to a MAC appeal shall include:

(1) the source or sources used, including NDC and name of supplier, to determine pricing for the maximum allowable cost list specific to that provider and how it was applied to the maximum allowable cost (MAC) price at issue;

(2) the date of the last MAC list update for the drug which is the subject of the MAC appeal;

(3) documentation evidencing that the drug was available for purchase by a pharmacy in New Mexico at the MAC price from a national or regional wholesaler at the time of claim submission; and

(4) any other information the PBM deems relevant to the MAC appeal.

E. Nonresponse to appeal. The MAC appeal shall be deemed granted if the PBM does not respond within 14 business days pursuant to Paragraph (6) of Subsection D of Section 59A-61-4 NMSA 1978.

F. Notice of granting appeal. If a MAC appeal is granted or deemed granted, a PBM shall:

(1) within one day, notify by email the challenging pharmacy and any similarly situated network pharmacy and their PSAO(s) that a MAC appeal was granted, the NDC of the drug, the MAC price challenged and the updated MAC price; and

(2) permit the appealing pharmacy and any similarly situated pharmacy to resubmit the claim at the updated price.

G. Request for MAC list. A PBM shall provide a MAC list to a pharmacy or the superintendent within seven business days upon request.

[13.10.30.12 NMAC – N, 3/1/2021]

13.10.30.13 SUBMISSION OF A MAC APPEAL:

A. Information demonstrating completion. A MAC appeal submission by a pharmacy or a PSAO to a PBM for an appeal shall consist of:

(1) fill date;
(2) BIN number (six digits);
(3) NCPDP (seven digits);
(4) Rx number (seven digits);
(5) NDC 11 (11 digits);
(6) drug name;
(7) drug strength;
(8) purchase price of drug (whole dollar with two decimal places);
(9) total reimbursement (whole dollar with two decimal places);
(10) reason for review;
(11) any information required by contract; and
(12) notes (optional).

B. No additional information required. A MAC appeal shall be deemed a complete, clean claim if it contains the information contained in Subsection A of this section. A PBM shall not require or request additional information in order to process the appeal.

[13.10.30.13 NMAC – N, 3/1/2021]

13.10.30.14 SEARCHABLE ONLINE DATABASE OF DRUG PRICES:

A. Update timeframe. A PBM shall update its MAC list at least once every seven days pursuant to Paragraph (2) of Subsection D of Section 59A-61-4 NMSA 1978.

B. Searchable online database required. A PBM shall establish a searchable online database that will allow a network pharmacy to search MAC list prices for a particular drug. The PBM's provider manual shall include instructions for accessing the price list on their website. The provider manual shall be transmitted to a newly joined pharmacy within 10 business days from the date of execution of a contract with the PBM. A PBM shall provide an updated version of its provider manual within 30 days of any revisions to all network pharmacies.

C. Search requirements. The database shall be searchable by NDC or drug name, and date of fill for a specific network plan.

D. Drug information. The information provided for the drug shall contain:

(1) NDC;

(2) NDC description;

(3) MAC list price; and

(4) effective date.

E. Instructions required. The provider manual shall contain instructions for searching the MAC list and contain instructions for requesting the sources used to establish the MAC price. A network pharmacy may request the sources through a PBM's website, e-mail, facsimile or letter. The PBM shall respond with each derivative source within ten business days from the date of the request.

F. Website requirements. The PBM's website shall contain a prominent link to request the sources used to establish the MAC price.

G. Accessibility. All network pharmacies and, upon request, the superintendent shall have access to the database to determine compliance with these rules or to resolve a dispute.

[13.10.30.14 NMAC – N, 3/1/2021]

13.10.30.15 HISTORICAL MAC LIST DATABASE:

A. Searchable list of drugs. Beginning March 1, 2021, a PBM shall maintain an online, searchable database containing all MAC list pricing. The database shall be searchable by these criteria:

(1) NDC number;

(2) drug name;

(3) date of fill;

(4) specific health plan; and

(5) removal data.

B. Reason for removal. When a drug is removed from the MAC database, the database shall indicate the reason for its removal.

C. Obsolete drugs. The database shall include obsolete drugs. If a drug is removed because it is obsolete, the database shall indicate the date it became obsolete.

D. List dated. The database shall specifically indicate the date a drug price was updated and posted to the website.

E. Provider manual requirement. A PBM's provider manual shall contain instructions for accessing the list of drugs removed from its MAC list.

F. Accessibility. All network pharmacies and, upon request, the superintendent shall have access to the database to determine compliance with these rules or to resolve a dispute.

G. Legacy data. Data shall remain in the database and be searchable for at least five years.

[13.10.30.15 NMAC – N, 3/1/2021]

13.10.30.16 ANNUAL REPORT BY PBM:

A. Annual report required. A pharmacy benefits manager applying for license renewal shall submit the required annual report and fees, including the annual continuation fee, as set forth in Section 59A-6-1 NMSA 1978. Failure to comply with these requirements shall result in cancellation of the license. Instructions for completing the annual report, which is due on or before March 1, are available on the OSI website.

B. Confidentiality. The annual report shall be deemed confidential pursuant to Subsection B of Section 59A-2-12 NMSA 1978. Notwithstanding this confidential treatment, the superintendent may publish aggregate data culled from confidential reports.

[13.10.30.16 NMAC – N, 3/1/2021]

13.10.30.17 RETALIATION: A PBM shall not retaliate against a pharmacy for invoking its rights under these rules or the Pharmacy Benefits Manager Regulation Act. Selecting a pharmacy that has filed a complaint with the superintendent for audit at a rate disproportionately higher than for other network pharmacies may be considered retaliation.

[13.10.30.17 NMAC – N, 3/1/2021]

13.10.30.18 AUDIT:

A. Examination. The superintendent may examine a PBM for compliance with the requirements of the Pharmacy Benefits Manager Regulation Act pursuant to Chapter 59A, Article 4, NMSA 1978.

B. Audit compliance. The superintendent may also examine the audits of pharmacies conducted by PBMs to determine whether they are in compliance with Section 61-11-18.2 NMSA 1978.

[13.10.30.18 NMAC – N, 3/1/2021]

13.10.30.19 COMPENSATION:

A. Use of an unlicensed PBM prohibited. A health insurance carrier doing business in this state shall not pay, directly or indirectly, any compensation or fee or any further consideration of value to any PBM for PBM services within this state, unless the PBM is duly licensed to transact such business in New Mexico.

B. Claims payment by unlicensed PBM. The prohibition contained in the preceding paragraph does not prevent the payment of claims to pharmacies solely because a PBM does not hold a valid license.

[13.10.30.19 NMAC – N, 3/1/2021]

13.10.30.20 RESPONSIBILITIES OF THE HEALTH INSURANCE CARRIER:

A. Oversight required. If a health insurance carrier utilizes the services of a PBM, the carrier shall ensure an adequate pharmaceutical network, timely and fair claims payment to pharmacies, appropriate appeals procedures, lack of retaliation against pharmacies and appropriate formulary development and tier structures. Assignment of the responsibilities of the carrier to a PBM as to any of these matters shall be set forth in the written agreement between the PBM and the carrier.

B. Program administration. The ultimate responsibility for competent administration of a health insurance carrier's programs lies with the carrier.

C. Records maintenance. A health insurance carrier shall maintain for a minimum of five years reviews conducted of the operations of its PBM(s). A carrier shall produce such records at the superintendent's request.

[13.10.30.21 NMAC – N, 3/1/2021]

13.10.30.21 MAINTENANCE OF INFORMATION: Every PBM shall maintain at its principal administrative office for the duration of the written agreement referred to in Section 59A-12A-4 NMSA 1978 and five years thereafter adequate books and records of all transactions between it, health insurance carriers and pharmacies. Such books and records shall be maintained in accordance with prudent standards of insurance record keeping. The superintendent shall have access to such books and records for the purpose of examination, audit and inspection. Any trade secrets contained therein shall be deemed confidential, except that the superintendent may use such information in any proceedings instituted against the PBM. The health insurance carrier shall retain the right to continuing access to such books and records to permit the carrier to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurance carrier and the PBM regarding the proprietary rights of the parties in such books and records.

[13.10.30.21 NMAC – N, 3/1/2021]

13.10.30.22 DISCRIMINATION PROHIBITED: A health insurance carrier and its representatives shall ensure that a health benefits plan issued in this state does not contain provisions that are discriminatory against individuals on the basis of health status; medical condition, including both physical and mental illnesses; claims experience; receipt of health care; medical history; genetic information; evidence of insurability, including acts arising out of domestic violence; disability; gender; national origin; sexual orientation or any other health-status-related factor that the superintendent specifies. Gender neutral language shall be used in a policy, plan or written communication.

[13.10.30.22 NMAC – N, 3/1/2021]

13.10.30.23 HEARING RIGHTS: Any person aggrieved by any action, threatened action, or failure to act by the superintendent shall have the same right to a hearing before the superintendent with respect thereto as provided for in general under Chapter 59A, Article 4 NMSA 1978 and the implementing rules.

[13.10.30.23 NMAC – N, 3/1/2021]

13.10.30.24 RULE NONCOMPLIANCE: Failure to comply with any provision of these rules is a violation of the Insurance Code and punishable pursuant to Subsection B of Section 59A-1-18 NMSA 1978.

[13.10.30.24 NMAC – N, 3/1/2021]

History of 13.10.30 NMAC: [RESERVED]