



Complaints Against Pharmacy Benefit Managers (PBMs)

Why should I submit a complaint?

Pharmacy Benefit Managers (PBMs) operating in the state of New Mexico are regulated under the Pharmacy Benefit Manager Regulation Act, Sections 59A-61-1 – 59A-61-6, NMSA 1978. It is the responsibility of all pharmacies that maintain a business relationship with any PBM in New Mexico to ensure compliance and fulfillment of stated obligations. This effort serves to ensure and maintain fair and equitable treatment of pharmacies across the state.

How do I submit a complaint?

Official complaint forms can be found online at the website of the New Mexico Office of Superintendent of Insurance at: <http://www.osi.state.nm.us/ProducerLicensing/docs/Pharmacy%20Benefits%20Form%202016.pdf>

The form can be printed and mailed to: **ATTN: Andy Romero, P.O. Box 1689, Santa Fe, NM 87504-1689**

What are valid complaints?

Complaints made against a PBM must be enforceable under current regulations. NM House Bill 126 proposed several requirements for PBMs that now compose the Pharmacy Benefits Manager Regulation Act, NMSA 1978, Section 59A-61

Complaints may only be made if a PBM has committed one or more of the following violations:

A. PBM failed to obtain licensure with the OSI (NM HB 126 Section 3.A / Section 59A-61-3, NMSA 1978)
B. PBM did not ensure that a drug placed on a MAC list is listed “A” or “B” rated in the “orange book” to its therapeutic equivalent(s) (NM HB 126 Section 4.A(1)(a) / Section 59A-61-4, NMSA 1978)
C. PBM did not ensure that a drug placed on a MAC list is generally available for purchase in the state and is not obsolete (NM HB 126 Section 4.A(1)(c) / Section 59A-61-4, NMSA 1978)
D. PBM failed to provide network pharmacy provider the sources used to determine the MAC pricing for the MAC list specific to that provider upon entering or renewing a contract (NM HB 126 Section 4.A(2) / Section 59A-61-4, NMSA 1978)
E. PBM failed to review and update MAC price information at least once every seven business days to reflect any modification to MAC pricing (NM HB 126 Section 4.A(3) / Section 59A-61-4, NMSA 1978)
F. PBM did not establish a process for eliminating products from a MAC list or modifying a MAC list in a timely manner to remain consistent with price changes and availability in the marketplace (NM HB 126 Section 4.A(4) / Section 59A-61-4, NMSA 1978)
G. PBM did not provide a procedure under which a network pharmacy provider may challenge a MAC price for a drug (NM HB 126 Section 4.A(5) / Section 59A-61-4, NMSA 1978)
H. PBM did not respond to a challenged MAC price within 15 days from the date the challenge was made (NM HB 126 Section 4.A(5) / Section 59A-61-4, NMSA 1978)
I. PBM did not make an adjustment in the drug price effective one day after a successful challenge is resolved, applicable to all similarly situated network pharmacy providers (NM HB 126 Section 4.A(5) / Section 59A-61-4, NMSA 1978)
J. PBM did not provide a reason for denial for an unsuccessful MAC price challenge (NM HB 126 Section 4.A(5) / Section 59A-61-4, NMSA 1978)
K. PBM did not provide a process for a network pharmacy provider to readily access the MAC list specific to that provider (NM HB 126 Section 4.A(6) / Section 59A-61-4, NMSA 1978)
L. PBM required that pharmacy participate in one contract in order to participate in another (NM HB 126 Section 5.A / Section 59A-61-5, NMSA 1978)
M. PBM did not provide a contract written in plain English to pharmacy provider at least thirty days prior to its execution (NM HB 126 Section 5.B / Section 59A-61-5, NMSA 1978)
N. PBM failed to comply with Section 61-11-18.2 NMSA 1978 regarding an audit (NM HB 126 Section 6 / Section 59A-61-5, NMSA 1978 and Section 61-11-18.2 NMSA 1978)

What information will I need to file a complaint?

Reference the above section to determine the type of complaint and see the corresponding section below to identify suggested details and information to provide in the complaint. The following list should be used as a *guide* to including relevant information, but *is not comprehensive*. Include *ALL* pertinent details where applicable, even if not suggested below.

<p>Include the following information on the official OSI PBM Complaint Form under “License – See Section 59A-61-3, NMSA 1978” for the “Type of Issue”</p>
<p>A. PBM licensing, include...</p> <ul style="list-style-type: none"> • Date license status was checked • Method used to determine license status • Other relevant information or documentation
<p>Include the following information on the official OSI PBM Complaint Form under “Maximum Allowable Cost (MAC) – See Section 59A-61-4, NMSA 1978” for the “Type of Issue”</p>
<p>B. MAC applied to non-equivalent drug, include...</p> <ul style="list-style-type: none"> • Drug name/strength and NDC • Non-equivalent drug name/strength provided on MAC list and NDC • Resource used to determine equivalence (provide a copy of the text or link) • Other relevant information or documentation
<p>C. Drug from MAC list availability, include...</p> <ul style="list-style-type: none"> • Drug name/strength from MAC list provided by PBM <ul style="list-style-type: none"> ◦ Listed MAC price ◦ NDC, if applicable • Wholesalers checked for specific product and date(s) checked • Lowest cost, available, equivalent product <ul style="list-style-type: none"> ◦ Acquisition cost ◦ NDC, if applicable • Other relevant information or documentation
<p>D. Lack of provision for source of MAC price determination, include...</p> <ul style="list-style-type: none"> • Date of request for source on MAC determination • Method of request • Response to request • Date of response or state if a response was not provided • Other relevant information or documentation
<p>E. Failure to review and update MAC price list every 7 days, include...</p> <ul style="list-style-type: none"> • Date provided for most recent MAC price list update • Date of MAC price list review • Days since last update • Drug name(s)/strength(s) affected <ul style="list-style-type: none"> ◦ Listed MAC price on most recent list ◦ Current MAC price or cost of drug • Other relevant information or documentation
<p>F. Failure to establish a process for eliminating or modifying MAC prices in a timely manner</p> <ul style="list-style-type: none"> • Provide any relevant examples of outdated products or prices on provided MAC list(s).
<p>G. Procedures for MAC challenges not established</p> <ul style="list-style-type: none"> • Provide details challenges experienced attempting to challenge a MAC price. A PBM should be able to clearly provide a pharmacy with a method to challenge a MAC price.
<p>H. Failure to respond to MAC challenge within 15 days, include...</p> <ul style="list-style-type: none"> • Drug name/strength challenged <ul style="list-style-type: none"> ◦ Listed MAC price ◦ NDC, if applicable • Date of initial MAC challenge • Method of Challenge (e.g. via wholesale or direct to PBM) <i>provide a copy of the challenge</i> • Response to challenge • Date of Response • Days to response • Other relevant information or documentation

<p>I. Failure to adjust a MAC price after successful challenge, include...</p> <ul style="list-style-type: none"> • Drug name/strength challenged <ul style="list-style-type: none"> ○ Original MAC price ○ NDC, if applicable • Date of challenge • Date challenge accepted • Current MAC price or reimbursement based on MAC price <ul style="list-style-type: none"> ○ Date ○ State whether the MAC price has been adjusted based on a current price review or adjudicated claim(s).
<p>J. Provision of reason for denial on unsuccessful MAC challenge, include...</p> <ul style="list-style-type: none"> • Drug name/strength challenged <ul style="list-style-type: none"> ○ Original MAC price ○ NDC, if applicable • Date of challenge • Date of denial • State whether a reason for denial was provided. If yes, provide other reason for complaint.
<p>K. Access to provider MAC list, include...</p> <ul style="list-style-type: none"> • Date of request to access MAC list: • Method of request: • Response from PBM:
<p>Include the following information on the official OSI PBM Complaint Form under “Contract – See Section 59A-61-5, NMSA 1978” for the “Type of Issue”</p>
<p>L. Required participation in one contract for participation in another, include...</p> <ul style="list-style-type: none"> • Provide details on contract stipulations that state the pharmacy must participate in one contract to participate in a different contract. • Provide a copy of the language or contract itself if possible.
<p>M. Provision of written contract in plain English within 30 days, include...</p> <ul style="list-style-type: none"> • Date contract requested • Method of request (phone, email, etc.) • Date contract provided or executed • Days to response
<p>Include the following information on the official OSI PBM Complaint Form under “Audit – See Section 59A-61-6, NMSA 1978” for the “Type of Issue”</p>
<p>N. Failure to comply with Section 61-11-18.2, NMSA 1978 regarding an audit</p> <ul style="list-style-type: none"> • Provide details on audit procedures and relevant violations as outlined in Section 61-11-18.2, NMSA 1978.

Am I allowed to share complaint information with other pharmacists/pharmacies?

MAC price challenges and complaints filed against PBMs are considered confidential matters between the pharmacy provider and the PBM. Details on challenges or complaints may not be shared with other pharmacies, providers, patients, or entities and doing so is likely a contractual violation.

Where can I find additional information?

- NM HB 126
<https://nmlegis.gov/Legislation/Legislation?chamber=H&legType=B&legNo=126&year=14>
- Pharmacy Benefit Manager Act
<http://www.nmpharmacy.org/Resources/Documents/59A%20ARTICLE%2061.pdf>
- Office of Superintendent of Insurance
<http://www.osi.state.nm.us/>