

STATE OF NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE



SUPERINTENDENT OF INSURANCE

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BULLETIN 2026-011

SEPTEMBER 30, 2026

TO: HEALTH INSURANCE, HEALTH PLAN INSURERS, PHARMACY BENEFITS MANAGER COMPANIES AND OTHER REGULATED INSURERS OR ENTITIES THAT FILE RECORDS REQUIRED BY THE OFFICE OF SUPERINTENDENT OF INSURANCE (OSI)

RE: REQUESTING CONFIDENTIALITY OF A RECORD SUBMITTED TO OSI

This Bulletin 2026-011 replaces former Bulletin 2024-018, which expires on October 1, 2026. Also, this Bulletin replaces a portion of the "Confidentiality Requests" paragraph on page 3 of Bulletin 2025-011¹ as expressly discussed below.

In accordance with the Insurance Code and to align with OSI's mission to regulate the business of insurance, health insurance & health plan companies and Pharmacy Benefits Manager (PBM) companies are required to file with OSI certain documents using the SERFF² electronic filing system. Also from time to time, OSI may require regulated insurers or entities engaged in the business of insurance to provide certain records to OSI via email attachments or by using a DropBox system. This Bulletin is a guide to be used by regulated entities that seek a legal confidentiality determination of a record that is required to be filed with OSI.

BACKGROUND

Under the Inspection of Public Records Act,³ an OSI record is subject to public inspection, unless the record is deemed confidential by the Superintendent. Under NMSA 1978, §59A-2-12 (A), the Superintendent is required to preserve in permanent form records relating to the operation of OSI

¹ Note that Bulletin 2025-011 did not follow the proper naming convention for OSI Bulletins and was assigned an errant number "2025-0011" (with an extra zero). For purposes of this Bulletin, Bulletin 2025-0011 and Bulletin 2025-011 are interchangeable and are construed as meaning the same Bulletin. The proper name should have been Bulletin 2025-011.

² SERFF is an acronym for the "System for Electronic Rates & Form Filings" web-based platform that was created by NAIC for insurance companies to submit policy rates, rules, and forms to state regulators including OSI.

³ "IPRA," found at NMSA 1978, §§14-2-1 through 14-2-12 (2025).

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and §59A-2-12 (B) requires that those records be open to public inspection. However, IPRA provides exceptions to public inspection. If a record is a trade secret [see NMSA 1978, §14-2-1 (F)]⁴ or if other law provides confidentiality for a record, the record is excepted from public inspection [see NMSA 1978, §14-2-1 (N) "[e]very person has a right to inspect public records of this state except:... (N) as otherwise provided by law."].

The Insurance Code itself contains "otherwise provided by law" provisions regarding record confidentiality. Pursuant to NMSA 1978, §59A-2-12(B), the Superintendent has the authority to deem and classify a filed record as confidential and not subject to public inspection while confidentiality exists, unless otherwise required by the Insurance Code or by a court order. Under NMSA 1978, §59A-18-13.2 (G), upon request by a regulated insurer, the Superintendent may exempt from disclosure to the public any part of a filing that the Superintendent determines to contain proprietary information and that would harm competition if disclosed. Pursuant to NMSA 1978, §59A-46-26, HMO⁵ filings and reports that contain trade secrets, or quality assurance, commercial, or financial information that is privileged or confidential (other than material appearing in the financial statement portion of a filed annual report) are exempt from public disclosure under the law. Certain OSI administrative rules also may provide confidentiality protection.

CONFIDENTIALITY DETERMINATIONS

OSI recognizes that regulated insurers may consider certain filed records to be confidential. To process confidentiality determination requests, this Bulletin provides the confidentiality determination process. Upon an OSI determination that confidentiality may be approved based on the facts and the law, the confidential record is not subject to public inspection or disclosure at or through OSI.

The first step in the process is to complete a Form titled "Confidentiality Determination and OSI Determination Notice" (the Form). OSI's website contains the most recent version of this Form. The posted version of the Form must be used instead of previous versions. Regulated insurers should always check the OSI website for the current version of the Form, because the Form may be modified by OSI from time to time.

After the Form is signed by the Filer of the insurer and signed by the Declarant of the "Justification Declaration" in support of the confidentiality determination request, the Form must be emailed to OSI at the <confidentiality.requests@osi.nm.gov> email address.

The confidentiality determination email "box" is attended by Office of General Counsel Paralegal Staff. The box is also accessible to certain authorized employees in the Life and Health Division. After received by email, Paralegal Staff provides the request to the OSI Reviewer, who is an

⁴ In IPRA, §14-2-6 (I) states that the exception for public disclosure for trade secrets incorporates the definition of trade secrets contained in the Uniform Trade Secrets Act at NMSA 1978, §57 3A 2(D). When evaluating a claim that material may be a trade secret, OSI applies this legal definition.

⁵ "HMO" is an abbreviation for "Health Maintenance Organization." See NMSA 1978, §59A-46-34 (D).

attorney in the Office of General Counsel. Paralegal Staff are the gatekeepers of the confidentiality determination request Forms, which are logged for purposes of accountability and efficient handling. In this way, OSI receives, documents and tracks confidentiality determination requests.

Once the request has been provided to the OSI Reviewer, the OSI Reviewer will apply the law of confidentiality to a specific record that has been claimed as containing confidential material. A regulated insurer must identify a sufficient factual and legal foundation as to why the record should be treated as confidential.

For SERFF-filed records, the Form requires the Filer to identify verbatim the exact name of the file (or record) which has been uploaded and marked as confidential in SERFF. A record marked as confidential in SERFF is inaccessible to members of the public through SERFF. For records submitted to OSI through email as attachments or via a DropBox system, the Filer must identify with sufficient detail the name of the record in OSI's possession and must follow the same redaction instructions described below for SERFF records.

Two versions of the record must be provided and uploaded to SERFF: (1) the redacted record that is blacked out obscuring the material claimed to be confidential and (2) the original version of the record that is not redacted. Using these two versions of the record, the OSI Reviewer is able to compare the versions to understand a confidentiality claim and then is able to review the law of confidentiality. Then, the OSI Reviewer makes a legal confidentiality determination, which is then inserted into the Form. The determination on the Form is provided to the requestor by the Office of General Counsel.

On a granular level, the Form parses out "File No." (formerly called "Index No." on old forms) and the associated "File Name" items. Each Form has space to handle up to five record requests per Form. Use as many Forms as necessary if more than five records are involved.

Note for SERFF-filed records: The SERFF term and setting of "confidential" in SERFF does not mean that the record has yet been determined by OSI to actually qualify as being legally confidential. Do not confuse SERFF's use of the marker "confidential" in its settings with the process that is used by OSI to actually make a confidentiality determination. After the OSI Reviewer confidentiality determination has been issued in writing on a Form, the insurer has the responsibility to follow the guidance in the determination regarding the confidential status of records that must be uploaded in SERFF, which might entail removing confidential markers in SERFF.

For each "File No." item, the Filer must insert a brief description in the place provided on the Form citing to the legal authority the insurer asserts will support the specific confidentiality request. More lengthy reasoning should not be placed in this brief description area of the Form. More detailed legal authority should be provided on the separate page of the Form called the "Justification Declaration."

Using the disclosed legal authority and the justification declaration from the insurer, the OSI

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Reviewer makes a legal confidentiality determination regarding the specifically-identified record and provides that determination in writing on the Form, which is then sent to the requesting insurer.

HEALTH INSURER RATE FILINGS

For rate materials provided by health insurance and health plan insurer companies during the rate review process, insurer must follow the instructions issued in the Life and Health Division's most recent "Confidentiality Guidance - Rate Filings" document, which is posted on the OSI website. This document may be updated from time to time under the direction and approval of the Life and Health Division Director. In addition to the confidentiality determination process described in this Bulletin, the specific instructions and timelines contained in that Life and Health Division's guidance document must be followed.

PBM COMPANY CONFIDENTIALITY REQUESTS

PBM Companies are regulated by OSI under the Pharmacy Benefits Manager Regulation Act⁶ At the time of writing this Bulletin, OSI rules that apply to PBM Companies are found in Title 13, Chapter 10, Part 30 of the NM Administrative Code. Should the OSI rules be amended in the future, any guidance pertaining to PBM Company confidentiality determination requests must follow any rule amendments promulgated by the Superintendent. A separate bulletin may be issued at an appropriate time in the future to replace this portion of this instant Bulletin.

Currently, 13.10.30.8(A)(13) NMAC provides that confidentiality requests may be made by a PBM applicant during the initial license application phase. Then after a license has been issued, under 13.10.30.17(A), NMAC a PBM record received by OSI in response to a specific OSI request is deemed as confidential, meaning that those records are not subject to public inspection through OSI. However, the record actually must be provided to OSI before the protection of that rule can be invoked. If the records is filed in SERFF, the PBM Company is responsible for setting the SERFF "confidentiality" marker for these records.

The following replaces the "Confidentiality Requests" section on page 3 of Bulletin 2025-011:

As expressed by 13.10.30.8(A)(13) NMAC, a PBM may request confidentiality for a record contained in a PBM application. Also, confidentiality requests for records in licensing annual reporting and compliance reporting, including SERFF filings, objections, or responses to objections or emailed or DropBox records provided to OSI at its request, must adhere to the process contained OSI's most recent Bulletin pertaining to confidentiality determination requests of filed records. Note: Although compliance reporting records filed in SERFF are not publicly accessible, records may be subject to an IPRA public records request unless the record is deemed confidential.

⁶ Found in the Insurance Code at NMSA 1978, §59A-61-1 *et seq.*

PBM Companies must send confidentiality requests to:
<confidentiality.requests@osi.nm.gov>.

A PBM Company must identify a sufficient factual and legal foundation as to why the record should be treated as confidential. Among other laws, legal authorities may include 13.10.30.8(A)(13) ["confidentiality requests by an applicant are governed by [this Bulletin] or any superseding bulletin or rule"], 13.10.30.17(A), 13.10.30.18(C) and 13.10.30.21 NMAC.

For instance, 13.10.30.17(A) NMAC provides that any PBM data filed with OSI that was specifically requested by OSI is deemed confidential unless disclosure is required for reasons expressly provided in that rule. However, data actually must be filed with OSI before this confidentiality rule can be invoked.

Rule 13.10.30.18 (B) NMAC requires a PBM to file certain information regarding its pharmacy and therapeutics (P&T) committee. Rule 13.10.30.18 (C) NMAC grants confidentiality to P&T minutes provided to OSI. However, minutes actually must be filed with OSI before this confidentiality rule can be invoked.

Rule 13.10.30.21 provides that every PBM must maintain at its principal administrative office for the duration of the written agreement referred to in NMSA 1978, §59A-12A-4 and five years thereafter adequate books and records of all contracts and transactions. Although these types of records are not filed in SERFF, a PBM may request that certain of these types of records be deemed confidential following the process contained in the most recent Bulletin pertaining to confidentiality determination requests.

Bulletin 2025-011 provides that PBMs are required to file compliance reporting records in SERFF as Supporting Documents. This instant Bulletin does not change that requirement and Bulletin 2025-011 must be followed.

OTHER CONSIDERATIONS

OSI is committed to New Mexico sunshine policies favoring the broadest possible public access to government records. However, OSI will not routinely grant requests for confidential treatment of filed records without a sufficient legal foundation.

1. Thirty-day determinations

Except for the review timing disclosed in the "Confidentiality Guidance - Rate Filings" document referenced above, OSI endeavors to advise a requesting insurer about the outcome of its confidentiality determination requests within thirty (30) days. An insurer must exercise good planning and foresight when submitting a confidentiality determination request, allowing for at least thirty (30) days before any deadline the insurer may face. Expedited confidentiality determinations will not be routinely allowed but may be performed on a case-by-case basis at the

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discretion of OSI under unforeseeable circumstances or instances of pressing concern.

2. OSI determinations are not binding on the courts.

OSI confidentiality determinations do not bind the courts. Because a court could conclude that information considered confidential by OSI is either a public record or discoverable evidence in connection with a judicial proceeding, OSI makes no express or implied representation or warranty in connection with how a confidentiality determination may be made in the courts.

3. Readability.

Space is limited on the Form. If possible, do not use fonts smaller than 10 points. Please use page attachments if needed.

4. Recommendations for successful completion of the Form.

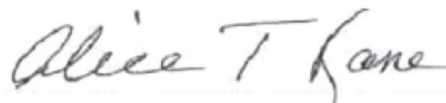
Justification Declarations must be closely tailored to the exact material sought to be deemed confidential. For instance, for a trade secret determination, the insurer must identify and provide the information described in the trade secrets statute. Broad, conclusory justifications that a record is a trade secret, is proprietary, or would harm competition if released, without more, will not support a confidentiality determination. Confidentiality requests must sufficiently explain why the record should be treated as confidential. For instance, fact-specific detail must be provided explaining how the record, if disclosed to the public, will result in an economic value loss or would harm competition. Frivolous, unexplained confidentiality requests will be denied.

5. Records submitted to OSI as email attachments or by using a DropBox system.

From time to time, OSI may require regulated insurers or entities engaged in the business of insurance to provide certain records to OSI as attachments to email or by using a DropBox system to provide records. If a regulated insurer or entity considers a record to be confidential, the confidentiality determination process established in this Bulletin must be utilized for such requests.

Questions concerning the information in this Bulletin may be emailed to david.black@osi.nm.gov.

ISSUED this 30 day of September, 2026.



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