

Sixty-third
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1363

Introduced by

Representatives Keiser, N. Johnson, Kasper, Pollert, Weisz, Mock, M. Nelson

Senators Klein, J. Lee, Heckaman

1 A BILL for an Act to create and enact a new section to chapter 19-02.1 of the North Dakota
2 Century Code, relating to maximum allowable cost lists for pharmaceuticals; and to provide a
3 penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 19-02.1 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Maximum allowable cost lists for pharmaceuticals - Pharmacy benefits managers -**

8 **Penalty.**

9 1. For the purposes of this section:

10 a. "Determination" means a decision that settles and ends a controversy or the
11 resolution of a question through appeal.

12 b. "Maximum allowable cost price" means a maximum reimbursement amount for a
13 group of therapeutically equivalent and pharmaceutically equivalent multiple
14 source ~~generic~~ drugs.

15 ~~b.c.~~ "Multiple source drug" means a therapeutically equivalent drug that is available
16 from at least two manufacturers.

17 d. "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.

18 2. With respect to each contract between a pharmacy benefits manager and a pharmacy,
19 each pharmacy benefits manager shall:

20 a. Provide to the pharmacy, at the beginning of each ~~calendar year~~ contract and
21 contract renewal, the ~~market-based~~ sources utilized to determine the maximum
22 allowable cost pricing of the pharmacy benefits manager, ~~update that pricing~~
23 information.

- 1 b. Update any maximum allowable cost price list at least every seven
2 calendarbusiness days, and establish a reasonable process for theprovide
3 prompt notification of the pricing updateschanges to network pharmacies.
- 4 b.c. Disclose the market-based-sources utilized for setting maximum allowable cost
5 price rates on each maximum allowable cost price list included under the contract
6 and identify each network or pharmacy provider to which eachmaximum
7 allowable cost price list that applies to the contracted pharmacy. A pharmacy
8 benefits manager shall make the list of the maximum allowable costs available to
9 a contracted pharmacy in a format that is readily accessible and usable to the
10 contracted pharmacy.
- 11 e.d. Ensure maximum allowable cost prices are not set below market-based-sources
12 available for purchase without limitations by pharmacy providersutilized by the
13 pharmacy benefits manager.
- 14 d.e. Provide a reasonable administrative appeals procedure to allow a dispensing
15 pharmacy provider to contest a listed maximum allowable price rate. The
16 pharmacy benefits manager shall respondprovide a determination to a provider
17 that has contested a maximum allowable price rate through the procedure-within
18 seven calendarbusiness days. If an update to the maximum allowable price rate
19 for an appealed drug is warranted, the pharmacy benefits manager shall make
20 the change retroactive-based on the date of the pharmacy provider's-
21 invoicedetermination and make the adjustment effective for all similarly situated
22 pharmacy providers in this state within the network.
- 23 f. Ensure dispensing fees are not included in the calculation of maximum allowable
24 cost price reimbursement to pharmacy providers.
- 25 3. A pharmacy benefits manager may not place a prescription drug on a maximum
26 allowable price list unless:
- 27 a. The drug has at least threetwo nationally available, therapeutically equivalent,
28 multiple source generic-drugs with a significant cost differenceor a generic drug is
29 available only from one manufacturer;

- 1 b. The drug is listed as therapeutically equivalent and pharmaceutically equivalent
2 or "A" or "B" rated in the United States food and drug administration's most
3 recent version of the "Orange Book" or the drug is "Z" rated; and
4 c. The drug is generally available for purchase without limitations by all pharmacies
5 in the state from national or regional wholesalers and not obsolete or temporarily
6 unavailable.

- 7 4. ~~A pharmacy benefits manager shall disclose to a plan sponsor whether the pharmacy~~
8 ~~benefits manager is using the identical maximum allowable price list with respect to~~
9 ~~billing the plan sponsor as the pharmacy benefits manager uses when reimbursing all~~
10 ~~network pharmacies. If multiple maximum allowable price lists are used, the pharmacy~~
11 ~~benefits manager shall disclose to the plan sponsor any differences between the~~
12 ~~amount paid to any pharmacy and the amount charged to the plan sponsor.~~

- 13 5. ~~This section does not apply to state medicaid programs.~~

- 14 6.5. A pharmacy benefits manager that violates this section is guilty of a class B
15 misdemeanor.