



HB 1584 NEUTRAL TESTIMONY

John Arnold, Deputy Commissioner

Senate Industry and Business Committee

March 31, 2025

Good afternoon, Chairman Barta and members of the Senate Industry and Business committee.

My name is John Arnold, Deputy Insurance Commissioner, and I'd like to thank you for hearing our Department's neutral testimony for House Bill 1584.

When considering what action to take in regulating Pharmacy Benefit Managers (PBMs), I urge the committee to first consider the goal of the regulation. Is the regulation intended to protect consumers, or is it intended to protect pharmacists? I am not suggesting that one of these goals is superior to the other, but the answer to the question should guide the regulatory discussion.

If the goal is to protect consumers, namely through the reduction in prescription drug prices, I am compelled to inform you that the experience of the handful of states that have been leaders in PBM regulation have not seen this goal come to fruition. This isn't to say that some form of regulation may be successful in attaining that goal, but we haven't yet seen what that regulation looks like. So, if the goal is to lower prescription drug prices, I would encourage your consideration to resist the urge to act and further explore possible avenues to do this.

If, however, the goal is to protect pharmacists and pharmacies, this type of regulation may be beneficial. Some of the states that have been early adopters of PBM regulation have seen pharmacists and pharmacies receive increased payment from PBMs. But again, consumers have not seen the direct benefit of this sort of regulation.

I believe that the answer to the question of what the goal of the regulation is vital because it should then inform which entity would be appropriate for implementing the regulation. The Insurance Department is first and foremost a consumer protection agency. We regulate the insurance industry from the perspective of safeguarding promises made to North Dakota's insurance consumers. While PBMs certainly interact with insurance companies, it is important to remember that they are neither insurance companies nor insurance producers. They are currently license as a third-party administrator, however that is to allow them to provide insurance companies with administrative services, not to pool and underwrite risk.

If the goal of the regulation is to protect pharmacists, then I would suggest that an entity that is more familiar with pharmacists, pharmacies, and the pharmaceutical industry may be the better fit. Given that, it may be appropriate for the legislature to consider whether it may be appropriate to evolve the Board of Pharmacy, perhaps to the extent of making it a state agency to alleviate conflicts of interest concerns that may arise from that entity regulating to the benefit of the members of the board, into a body that could license, regulate, and enforce PBMs.

Unfortunately, as I have already indicated, if the goal is to reduce costs for consumers I do not have a suggestion to offer the committee.

As drafted, HB 1584 requires the regulation of PBMs to include full compliance with chapter 19-02.1, the North Dakota Food, Drug, and Cosmetic Act. The Department of Health and Human Services already has enforcement authority for this chapter, including partial PBM regulation found in sections 16.1, 16.2, 16.3, and 16.5.

As drafted on page 6, lines 12-14, HB 1584 recognizes that three entities (the Insurance Commissioner, the Board of Pharmacy, and the Department of Health and Human Services) all currently have some touchpoint with PBMs. I respect the effort to utilize existing state resources rather than adding FTEs but relying on joint exercise of common powers agreements has two notable flaws. First, a lack of leadership. As drafted, the Insurance Commissioner is responsible for the implementation of HB 1584, however the Commissioner has no authority over the staff of the Department of Health and Human Services or the Board of Pharmacy. The Commissioner cannot address prioritization of work, scheduling, or performance issues in those agencies as it relates to duties of this bill. Second, the experience of other states has shown that the volume of work that such regulation requires dedicated and specialized staff. States that have passed PBM regulation laws without dedicated staff have had to add those staff in the subsequent legislative session.

I've testified in the past that the necessary resources rely less on the population of the state, and more on the population of PBMs, which is roughly even across the country. While our lower population than many states may well correlate with fewer prescriptions being filled, the number of complaints is less important than the grouping of the complaints by PBM and by type are likely uniform.

For example, I recently attended a conference and the Insurance Commissioner from Kentucky mentioned that in January alone her office received over 3,000 complaints. Given that North Dakota's population is approximately 17% of Kentucky's population, we could anticipate well over 500 complaints a month. Having staff sort the complaints is perhaps the only portion of the process that depends on population. One or two individuals may be able to process that volume of incoming complaints. Once sorted, we would envision needing a pharmacist and one or two attorneys to review the complaints and interact with PBMs. Additionally, we would anticipate the need for a company analyst and a fraud analyst. Irrespective of whether the Insurance Department fulfills this regulatory need or some other entity, we suggest that effective regulation requires five to seven dedicated staff. This is not an endeavor that can be spread between the existing staff of three separate entities.

Lastly, there is the Rutledge issue. I stand before you today not to imply that I have an opinion on the authority granted by Rutledge, nor to propose that the threat of a lawsuit should impact your decision as legislators, but just to suggest that since the courts seem to still be in the process of determining the full impact of the Rutledge ruling, we believe that it is prudent to amend the bill to state that the Attorney General is responsible for any litigation that may arise from the implementation of HB 1584. This is critical because we are a special funded agency and are

required to pay the Attorney General for legal services, if this law passes, and if this law ultimately gets challenged in court, we would then need to approach the Emergency Commission to seek funding for said lawsuit. In our opinion it would be easier to clearly define that the adjudication of this law up to the Attorney General.

Before completing my testimony, I would like to suggest the proposed amendment that I have included with my testimony. When your sister committee in the House was considering HB 1584 we had the opportunity to collaborate with the committee and added additional language to Section 2 pertaining to the licensure of PBMs. Unfortunately, this was the most work on the bill for which the impending crossover deadlines allowed. Since then, the Department has continued to work on HB 1584 to propose what we believe would be needed to successfully implement PBM regulation.

Please know that the sponsors of this legislation fully understand the resource requirements associated with its implementation. When the bill was heard in the House, the sponsors explicitly acknowledged those needs and assured us that the conversation around resources would take place in the Senate. In keeping with that commitment, we used the time during crossover to prepare for this very discussion. That's why we're here today. This is not a new or untested concept—either in North Dakota or in our neighboring states—and we have a strong understanding of the resources necessary to implement these changes effectively.

To that end, the amendment we are proposing reflects what we believe is necessary to carry out this legislation in a meaningful and responsible way. We recognize that it comes with a cost, and while the full impact is still evolving, the amendment provides the flexibility we need to respond to future regulatory demands that may arise from this body's actions.

Let me be clear: our appropriations request will be significant. However, instead of asking directly for the 7 to 8 full-time employees (FTEs) we believe will ultimately be necessary to regulate this new area of insurance, we've chosen a different approach. Our amendment asks for built-in flexibility—giving the department the ability to hire when needed, adapt to this evolving space, and manage implementation of a new PBM Division in a fiscally responsible way.

Before I walk through the specifics of the amendment, I must emphasize one crucial point: regulatory authority without the resources to support it will create unrealistic expectations—among pharmacies, consumers, and even policymakers. I can foresee a situation in which this body passes enhanced regulatory guidelines for a space where we currently have limited or no authority, but fails to provide the necessary support. The result would be frustration when the expected outcomes don't materialize—not due to lack of will, but lack of capacity.

With that understanding in place, I'll now walk you through the details of our fiscal amendment.

On page 1, Section 1 is being suggested following the passage of HB 1123, which was signed by the Governor on March 17. HB 1123 created uniformity with how fees charged by the

Commissioner are listed in code, and so we suggest this to meet that standard. The corresponding removal can be found on page 4.

On page 1, lines 19-20 we suggest re removal of “an employer” to strengthen potential challenges to the law under ERISA.

Page 3, line 13 corrects a misspelling.

Page 4 lines 4 and 6 corrects the oversight of not including an email address when drafting the original amendment in the House.

Page 4, lines 15-21 edits are being suggested in conjunction with the edits on page 1, Section 1 as a result of the passage of HB 1123.

Page 5, lines 4-6 enumerate the sections of the North Dakota Food, Drug, and Cosmetic Act with which PBMs must comply.

Page 6/7, Section 9 established the service of process procedure necessary to take administrative action against a regulated entity.

Page 7, Section 10 establishes the Attorney General as being responsible for the expenses of any challenges to the law.

Page 7, Section 11 establishes that the funds received from the Board of Pharmacy for the current prescription drug price disclosure program be deposited into the Insurance Regulatory Trust Fund.

Page 8, lines 5-13 establishes a continuing appropriation for the Insurance Regulatory Trust Fund.

Page 8, Section 13 repeals a section of code stating that PBMs are third party administrators.

Page 8, Section 14 repeals the prescription drug price transparency program.

Page 8, Section 15 grants the Commissioner authority to increase or decrease full time equivalent positions subject to the availability of funds for the upcoming biennium to implement the regulatory program.

Page 8, Section 16 transfers the funds from the current prescription drug price disclosure program to the Insurance Regulatory Trust Fund.

Page 8, Section 17 creates a January 1, 2026, effective date for what would now be Section 3 of the bill. This is due to the annual nature of the license being created.

Thank you, Chairman Barta and members of the committee. I am happy to try to answer any questions that you may have.

**PROPOSED AMENDMENTS TO
ENGROSSED HOUSE BILL NO. 1584****FIRST ENGROSSMENT**

Introduced by

Representatives Kasper, Koppelman, Lefor, Steiner, Vigesaa, Warrey

Senators Barta, Boehm, Boschee, Hogue, Klein

1 A BILL for an Act to create and enact four new sections to chapter 26.1-27.1 of the North
 2 Dakota Century Code, relating to pharmacy benefits managers; to amend and reenact sections
 3 26.1-27.1-01, 26.1-27.1-02, 26.1-27.1-04, 26.1-27.1-06 ~~and~~ , 26.1-27.1-07 , and 26.1-36.10-06,
 4 of the North Dakota Century Code, relating to pharmacy benefits managers; to repeal section
 5 26.1-27-01.1 and chapter 26.1-36.10; to provide a penalty; to provide a continuing
 6 appropriation, to provide a transfer; to provide an effective date; and to declare an emergency.

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

8 **SECTION 1. AMENDMENT.** One new subdivision to subsection one of section 26.1-01-07 of
 9 the North Dakota Century Code is created and enacted as follows:

10 For the initial application fee for a pharmacy benefit manager, an amount determined by the
 11 commissioner, which may not exceed ten thousand dollars. For each annual renewal, an
 12 amount to be determined by the commissioner, which may not exceed ten thousand dollars.

13 **SECTION ~~1.2~~ AMENDMENT.** Section 26.1-27.1-01 of the North Dakota Century Code is
 14 amended and reenacted as follows:

15 **26.1-27.1-01. Definitions.**

16 In this chapter, unless the context otherwise requires:

17 1. "Covered entity" means a nonprofit hospital or a medical service corporation; a health insurer;
 18 a health benefit plan; a health maintenance organization; a health program
 19 administered by the state in the capacity of provider of health coverage; or ~~an~~
 20 ~~employer;~~ a labor union, or other entity organized in the state which provides health
 21 coverage to covered individuals who are employed or reside in the state. The term
 22 does not include ~~a self-funded plan that is exempt from state regulation pursuant to~~

- 1 ~~the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829;~~
2 ~~29 U.S.C. 1001 et seq.];~~ a plan issued for coverage for federal employees; or a health
3 plan that provides coverage only for accidental injury, specified disease, hospital
4 indemnity, Medicare supplement, disability income, longterm care, or
5 other ~~-limitedbenefit-~~ health insurance ~~policy~~policies or ~~contract~~contracts that do not
6 include prescription drug coverage.
- 7 2. "Covered individual" means a member, a participant, an enrollee, a contractholder, a
8 policyholder, or a beneficiary of a covered entity who is provided health coverage by
9 the covered entity. The term includes a dependent or other individual provided health
10 coverage through a policy, contract, or plan for a covered individual.
- 11 3. "De-identified information" means information from which the name, address,
12 telephone number, and other variables have been removed in accordance with
13 requirements of title 45, Code of Federal Regulations, part 164, section 512,
14 subsections (a) or (b).
- 15 4. ~~"Generic drug" means a drug that is chemically equivalent to a brand name drug for~~
16 ~~which the patent has expired.~~
- 17 ~~5.~~ "Labeler" means a person that has been assigned a labeler code by the federal food
18 and drug administration under title 21, Code of Federal Regulations, part 207,
19 section 20, and that receives prescription drugs from a manufacturer or wholesaler
20 and repackages those drugs for later retail sale.
- 21 ~~6.5.~~ "Payment received by the pharmacy benefits manager" means the aggregate amount
22 of the following types of payments:
- 23 a. A rebate collected by the pharmacy benefits manager or a rebate aggregator
24 which is allocated to a covered entity, or retained by the pharmacy benefits
25 manager;
- 26 b. An administrative fee collected from the manufacturer in consideration of an
27 administrative service provided by the pharmacy benefits manager to the
28 manufacturer;
- 29 c. A pharmacy network fee; pharmacy price concessions, and any other financial
30 payment made by a pharmacy to a pharmacy benefits manager; and
- 31 d. Any other fee or amount collected by the pharmacy benefits manager from a
32 manufacturer or labeler for a drug switch program, formulary management

program, mail service pharmacy, educational support, data sales related to a covered individual, or any other administrative function.

- ~~7-6.~~ "Pharmacy benefits management" means the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals; the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals; or the providing of any of the following services with regard to the administration of the following pharmacy benefits:
- a. Claims processing, ~~retail~~pharmacy network management, and payment of claims to a pharmacy for prescription drugs dispensed to a covered individual;
 - b. Clinical formulary development and management services; or
 - c. Rebate contracting and administration.

~~8-7.~~ "Pharmacy benefits manager" means a person ~~that~~who performs pharmacy benefits management, as a third party, under a contract or other financial financial arrangement with a covered entity. The term ~~includes~~does not include a person acting for a health benefit plan that manages or directs its own pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity. The term does not include a public self-funded pool or a private single employer self-funded plan that provides benefits or services directly to its beneficiaries. The term does not include a health carrier licensed under title 26.1 if the health carrier is providing pharmacy benefits management to its insureds.

~~9-8.~~ "Rebate" means a retrospective reimbursement of a monetary amount by a manufacturer under a manufacturer's discount program with a pharmacy benefits manager for drugs dispensed to a covered individual.

~~40-9.~~ "Utilization information" means de-identified information regarding the quantity of drug prescriptions dispensed to members of a health plan during a specified time period.

SECTION 2.3. AMENDMENT. Section 26.1-27.1-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-02. Licensing - Terms and fee - Application.

1. A person may not ~~perform~~establish or ~~act~~operate as a pharmacy benefits manager in this state ~~unless that person holds~~without first obtaining a certificate of registration~~license~~ as an administrator under chapter 26.1-27~~from the commissioner~~ under to this section. A person violating this subsection is guilty of a class C felony.

- 1 2. A person applying for a pharmacy benefits manager license shall submit an application
2 to the commissioner. The commissioner shall make an application form available on its
3 website that includes a request for the following information:
 - 4 a. The identity, address, ~~electronic mail address~~, and telephone number of the
5 applicant;
 - 6 b. The name, business address, ~~electronic mail address~~, and telephone number of
7 the contact person for the applicant;
 - 8 c. If applicable, the federal employer identification number for the applicant; and
 - 9 d. Any other information the commissioner considers necessary and appropriate to
10 establish the qualifications to receive a license as a pharmacy benefits manager
11 to complete the licensure process.
- 12 3. The term of licensure is one year from April thirtieth through March thirty-first.
- 13 4. The pharmacy benefits manager shall pay an annual renewal fee no later than April
14 thirtieth.
- 15 5. ~~The commissioner shall determine the amount of the initial application fee, which may~~
16 ~~not exceed two hundred fifty dollars. The commissioner shall determine the amount of~~
17 ~~the renewal application fee for the registration, which may not exceed one hundred~~
18 ~~dollars.~~ The applicant shall submit the fee with ~~an~~the initial application ~~and~~or renewal
19 application for ~~registration~~licensure. The initial application fee ~~is~~and renewal fee are
20 nonrefundable. ~~The commissioner shall return a renewal application fee if the renewal~~
21 ~~of registration is not granted.~~
- 22 6. Each application for a license, and subsequent renewal for a license, must be
23 accompanied by evidence of financial responsibility in an amount of one million
24 dollars.
- 25 7. Upon receipt of a completed application, evidence of financial responsibility, and fee,
26 the commissioner shall review each applicant and issue a license if the applicant is
27 qualified in accordance with the provisions of this section and the rules promulgated
28 by the commissioner under this section. The commissioner may require additional
29 information or submissions from an applicant and may obtain any documents or
30 information reasonably necessary to verify the information contained in the application.
- 31 8. The license may be in paper or electronic form. The license is nontransferable, and
32 must prominently list the expiration date.

SECTION 3.4. AMENDMENT. Section 26.1-27.1-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-04. Prohibited practices.

1. A pharmacy benefits manager shall comply with subsections 19-02.1-01, 19-02.1-02, 19-02.1-14.2, 19-02.1-16, 19-02.1-16.1, 19-02.1-16.2, 19-02.1-16.3, 19-02.1-16.4, 19-02.1-16.5, and 19-02.1-16.6 in chapter 19-02.1 regarding the substitution of one prescription drug for another.
2. A pharmacy benefits manager may not require a pharmacist or pharmacy to participate in one contract in order to participate in another contract. The pharmacy benefits manager may not exclude an otherwise qualified pharmacist or pharmacy from participation in a particular network if the pharmacist or pharmacy accepts the terms, conditions, and reimbursement rates of the pharmacy benefits manager's contract.
3. A pharmacy benefits manager shall offer pharmacy contracts that are opt-in contracts with at least thirty days to respond and signatures must be obtained from the pharmacy or entities contracting on behalf of pharmacies.
4. A pharmacy must be allowed to opt-out of a pharmacy benefits managers contract by providing at least a ninety-day notice.

SECTION 4.5. AMENDMENT. Section 26.1-27.1-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.106. Examination of insurer- covered- entity.

1. During an examination of a covered entity as provided for in chapter 26.1-03, 26.1-17, or 26.1-18.1, the commissioner shall examine any contract between the covered entity and a pharmacy benefits manager and any related record to determine if the payment received by the pharmacy benefits manager which the covered entity received from the pharmacy benefits manager has been applied toward reducing the covered entity's rates or has been distributed to covered individuals.
2. To facilitate the examination, the covered entity shall disclose annually to the commissioner the benefits of the payment received by the pharmacy benefits manager received under any contract with a pharmacy benefits manager and shall describe the manner in which the payment received by the pharmacy benefits manager is applied toward reducing rates or is distributed to covered individuals.

3. Any information disclosed to the commissioner under this section is considered a trade secret under chapter 47-25.1. This section does not prevent the disclosure of a final order issued against a pharmacy benefits manager. Such order is an open record.

SECTION 5-6. AMENDMENT. Section 26.1-27.1-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-07. Rulemaking authority.

The commissioner shall adopt rules as necessary ~~before~~for implementation of this chapter.

SECTION 6-7. A new section to chapter 26.1-27.1 of the North Dakota Century Code is created and enacted as follows:

Enforcement.

1. All powers granted to the commissioner under title 26.1 and chapter 28-32 are available in enforcing chapter 26.1-27.1, including subpoena power.
2. This section does not limit the attorney general from investigating and prosecuting violations of the law.
3. This section does not prohibit the commissioner, state board of pharmacy, or department of health and human services from collaborating through joint exercise of common powers agreements.

SECTION 7-8. A new section to chapter 26.1-27.1 of the North Dakota Century Code is created and enacted as follows:

Administrative penalties.

1. A pharmacy benefits manager found to be in violation of this chapter or any rules adopted under this chapter is subject to:
 - a. A monetary penalty of up to ten thousand dollars per violation;
 - b. Suspension or revocation of license; and
 - c. A civil penalty of up to fifty thousand dollars for a second or subsequent violation.
2. The commissioner may require a pharmacy benefits manager to provide restitution to affected covered entities or individuals for losses incurred as a result of the violation.
3. A pharmacy benefits manager subject to penalties under this section is entitled to a hearing conducted in accordance with chapter 28-32.

SECTION 9. A new section to chapter 26.1--27.1 of the North Dakota Century Code is created and enacted as follows:

Proceedings by commissioner - Service of process - Procedure.

The commissioner shall serve process upon any licensee in any action or proceeding instituted by the commissioner under this chapter by electronic mail to the electronic mail address maintained in section 26.1-27.1-02 or by United States mail to the licensee at the licensee's last-known address of record or principal place of business. Service of process under this section is complete upon electronic mailing or United States mailing.

SECTION 10. A new section to chapter 26.1--27.1 of the North Dakota Century Code is created and enacted as follows:

Attorney General.

The attorney general shall appear, represent, and defend against all lawsuits, actions, or proceedings brought against the state or commissioner in the commissioner's official capacity. If the attorney general determines that the attorney general or an assistant attorney general is unable to defend the commissioner, the attorney general shall contract a special assistant attorney general to represent the commissioner. The attorney general shall be responsible for all costs under this section.

SECTION 11. A new section to chapter 26.1-27.1 of the North Dakota Century Code is created and enacted as follows:

Wholesale License Fee.

The State Board of Pharmacy shall deposit up to six hundred dollars of every wholesaler license fee and every virtual wholesaler license fee collected by the board under section 43-15.3-12 to the insurance regulatory trust fund.

SECTION ~~10~~.12. AMENDMENT – Continuing appropriation. Section 26.1-01-07.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-07.1. Insurance regulatory trust fund established.

1. There is hereby created a trust fund designated "insurance regulatory trust fund". The following amounts must be deposited in the insurance regulatory trust fund:

- a. All sums received under section 26.1-01-07.
- b. All sums received under section 26.1-01-07.2 from the insurance regulatory trust fund investments.
- c. All retaliatory fees imposed upon persons by the insurance department as authorized by law.
- d. All administrative penalties, fines, and fees collected by the commissioner from any person subject to this title.

1 e. Any other amounts provided by legislative appropriation.

2 2. The moneys so received and deposited in the insurance regulatory trust fund are
3 reserved for use by the insurance department to defray the expenses of the
4 department in the discharge of its administrative and regulatory powers and duties as
5 prescribed by law ~~subject to the applicable laws relating to the appropriations of state funds and~~
6 ~~to the deposit and expenditure of state moneys. The insurance department is responsible for~~
7 ~~the proper expenditure of these moneys as provided by law.~~ and are provided on a continuing
8 appropriation basis.

9 ~~3. Except as otherwise provided by law, after the fiscal year has been closed and all~~
10 ~~expenses relating to the fiscal year have been accounted for, the office of~~
11 ~~management and budget shall transfer any fund balance remaining in the insurance~~
12 ~~regulatory trust fund that exceeds one million five hundred thousand dollars to the~~
13 ~~general fund.~~

14 **SECTION 13. REPEAL.** Section 26.1-27-01.1 of the North Dakota Century Code is
15 repealed.

16 **SECTION 14. REPEAL.** Chapter 26.1-36.10 of the North Dakota Century Code is repealed.

17 **SECTION 15. TRANSFER - EXEMPTION - FULL-TIME EQUIVALENT POSITIONS.**

18 **ADJUSTMENTS.** Notwithstanding any other provisions of law, the insurance commissioner may
19 increase or decrease authorized full-time equivalent positions as needed, subject to availability
20 of funds, during the biennium beginning July 1, 2025, and ending June 30, 2027. The insurance
21 commissioner shall report to the office of management and budget and legislative council any
22 adjustments made pursuant to this section.

23 **SECTION 16. TRANSFER – DRUG PRICING FUND TO INSURANCE REGULATORY**

24 **TRUST FUND.** The office of management and budget shall transfer any balance in the drug
25 pricing fund on the effective date of this Act to the insurance regulatory trust fund.

26 **SECTION 17. EFFECTIVE DATE.** Section 3 of this Act becomes effective January 1,
27 2026.

28 **SECTION ~~8.~~ 18. EMERGENCY.** This Act is declared to be an emergency measure.