Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1332

Introduced by

Representatives N. Johnson, Devlin, Keiser, Price

Senators Fischer, J. Lee

A BILL for an Act to create and enact a new section to chapter 26.1-27 and chapter 26.1-27.1 of the North Dakota Century Code, relating to regulation of pharmacy benefits management; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-27 of the North Dakota Century Code is created and enacted as follows:

Pharmacy benefits manager. A pharmacy benefits manager, as defined under section 26.1-27.1-01, is an administrator for purposes of this chapter.

SECTION 2. Chapter 26.1-27.1 of the North Dakota Century Code is created and enacted as follows:

26.1-27.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Covered entity" means a nonprofit hospital or a medical service corporation; a health insurer; a health benefit plan; a health maintenance organization; a health program administered by the state in the capacity of provider of health coverage; or an employer, a labor union, or other entity organized in the state which provides health coverage to covered individuals who are employed or reside in the state. The term does not include a self-funded plan that is exempt from state regulation pursuant to the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.]; a plan issued for coverage for federal employees; or a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, medicare supplement, disability income, long-term care, or other limited-benefit health insurance policy or contract.
2. "Covered individual" means a member, a participant, an enrollee, a contractholder, a policyholder, or a beneficiary of a covered entity who is provided health coverage

by the covered entity. The term includes a dependent or other individual provided health coverage through a policy, contract, or plan for a covered individual.

3. "Generic drug" means a drug that is chemically equivalent to a brand name drug for which the patent has expired.

4. "Labeler" means a person that has been assigned a labeler code by the federal food and drug administration under title 21, Code of Federal Regulations, part 207, section 20, and that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale.

5. "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. Mail service pharmacy;
   b. Claims processing, retail network management, and payment of claims to a pharmacy for prescription drugs dispensed to a covered individual;
   c. Clinical formulary development and management services;
   d. Rebate contracting and administration;
   e. Certain patient compliance, therapeutic intervention, and generic substitution programs; or
   f. Disease management programs.

6. "Pharmacy benefits manager" means a person that performs pharmacy benefits management. The term includes a person acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity and includes mail service pharmacy. 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.

7. "Proprietary information" means information on pricing, costs, revenue, taxes, negotiating strategies, customers, personnel, and market share held by a private entity and used for the private entity's business purposes.

8. "Trade secret information" includes a formula, pattern, compilation, program, device, method, technique, or process that:
   a. Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons that can obtain economic value from the information's disclosure or use; and
   b. Is the subject of efforts that are reasonable under the circumstances to maintain the information's secrecy.

26.1-27.1-02. Licensing. A person may not perform or act as a pharmacy benefits manager in this state unless that person holds a certificate of registration as an administrator under chapter 26.1-27.

26.1-27.1-03. Duties. A pharmacy benefits manager has a fiduciary duty to a covered entity and shall discharge that duty within the provisions of state and federal law and in accordance with the standards of conduct applicable to a fiduciary in an enterprise of like character and similar aims. These fiduciary duties apply to all aspects of performance and require the pharmacy benefits manager to exercise good faith and fair dealing toward the covered entity.

26.1-27.1-04. Disclosure requirements.

1. A pharmacy benefits manager shall disclose to the commissioner any ownership interest or affiliation of any kind with:
   a. Any insurance company responsible for providing benefits directly or through reinsurance to any plan for which the pharmacy benefits manager provides services.
   b. Any parent company, subsidiary, or other organization that is related to the provision of pharmacy services, the provision of other prescription drug or device services, or a pharmaceutical manufacturer.
2. A pharmacy benefits manager shall notify the commissioner in writing within five business days of any material change in the pharmacy benefits manager's ownership.

26.1-27.1-05. Disclosure of information.

1. At the time and in the manner provided under this section, a pharmacy benefits manager with which the covered entity has a pharmacy benefits management services contract shall disclose to the covered entity all financial and utilization information related to services under contract, including all rebate revenues and the nature, type, and amounts of all other revenues that the pharmacy benefits manager receives from each pharmaceutical manufacturer or labeler with which the pharmacy benefits manager has a contract. The pharmacy benefits manager shall disclose in writing:
   a. The aggregate amount, and for a list of drugs to be specified in the contract, the specific amount, of all rebates and other retrospective utilization discounts received by the pharmacy benefits manager, directly or indirectly, from each pharmaceutical manufacturer or labeler which are earned in connection with the dispensing of prescription drugs to covered individuals of the health benefit plans issued by the covered entity or for which the covered entity is the designated administrator.
   b. The nature, type, and amount of all other revenue received by the pharmacy benefits manager, directly or indirectly, from each pharmaceutical manufacturer or labeler for any other products or services provided, including formulary management and drug-switch programs, educational support, claims processing, and pharmacy network fees that are charged from retail pharmacies and data sales fees, with respect to programs that the covered entity offers or provides to the covered entity's enrollees.
2. A pharmacy benefits manager shall provide the information:
   a. Annually, on a date specified in the contract.
   b. Upon request by the covered entity, within thirty days of the pharmacy benefits manager's receipt of the request. A covered entity may make a request under this subdivision no more than once each year. A request under this subdivision is in addition to the required annual report under subdivision a.
3. The contract entered between the pharmacy benefits manager and the covered entity must set forth reasonable fees, if any, to be charged for drug utilization

reports requested by the covered entity under subdivision b of subsection 2. A pharmacy benefits manager may not charge fees for the annual report under subdivision a of subsection 2.

26.1-27.1-06. Prohibited practices.

1. A pharmacy benefits manager may not request a substitution of one prescription drug for another unless:
   a. The pharmacy benefits manager requests that a lower-priced generic and therapeutically equivalent drug be substituted for a higher-priced prescribed drug; or
   b. The substitution is for medical reasons that benefit the covered individual and the pharmacy benefits manager obtains the approval of the prescribing health professional, after disclosing to the covered individual and covered entity the cost of both drugs and any benefit or payment directly or indirectly accruing to the pharmacy benefits manager as a result of the substitution.
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 solely because the pharmacist or pharmacy declined to participate in another plan or network managed by the pharmacy benefits manager.
3. When contracting with pharmacies, a pharmacy benefits manager may not discriminate on the basis of copayments or days of supply. A contract must apply the same coinsurance, copayment, and deductible to covered drug prescriptions filled by any pharmacist or pharmacy who participates in the network.
4. A pharmacy benefits manager may not mandate basic recordkeeping by any pharmacist or pharmacy which is more stringent than required by state or federal laws or regulations.

26.1-27.1-07. Confidentiality. Except for utilization information, a covered entity shall maintain as confidential and proprietary all information disclosed in response to a request under section 26.1-27.1-05, and may not use the information for any purpose or disclose the information to any person except as provided under this chapter or in the pharmacy benefits

management services contract between the parties. A covered entity that discloses confidential or proprietary information in violation of this section is subject to an action for injunctive relief and is liable for damages that are the direct and proximate result of the disclosure. A covered entity may disclose confidential or proprietary information to the commissioner. Any confidential or proprietary information obtained by the commissioner is trade secret under chapter 47-25.1.

26.1-27.1-08. Audit. A covered entity may audit the pharmacy benefits manager's books and records relating to the rebates or other information described under section 26.1-27.1-05 to the extent the information relates directly or indirectly to the covered entity's contract with the pharmacy benefits manager. The covered entity may audit the books and records as follows:

1. An audit may be conducted not more than once in each twelve-month period, upon not less than thirty business days' written notice to the pharmacy benefits manager.
2. The covered entity may select an independent firm to conduct the audit if the independent firm signs a confidentiality agreement agreeing to keep confidential all information obtained during the audit. The auditor may not use, disclose, or otherwise reveal confidential information except as permitted under the confidentiality agreement. The covered entity shall treat as confidential all information obtained as a result of the audit and may not use or disclose the confidential information except as may be permitted under the terms of the contract between the covered entity and the pharmacy benefits manager or as may be ordered by a court.
3. The audit must be conducted at the pharmacy benefits manager's place of business at which the records are located, during normal business hours, without undue interference with the pharmacy benefits manager's business activities, and in accordance with reasonable audit procedures.

26.1-27.1-09. Rulemaking authority. Rules adopted by the commissioner to implement this chapter may include:

1. Definition of terms;
2. Licensure requirements;
3. Use of prescribed forms;

4. Reporting requirements;

5. Enforcement procedures; and

6. Protection of proprietary information and trade secrets.

26.1-27.1-10. Civil remedies. A covered entity may bring a civil action to enforce this chapter or to seek civil damages for the violation of this chapter.

SECTION 3. APPLICATION. This Act applies to pharmacy benefits management services contracts in effect, entered, or renewed after July 31, 2005.