

**FIRST ENGROSSMENT
with Conference Committee Amendments****ENGROSSED HOUSE BILL NO. 1332**

Introduced by

Representatives N. Johnson, Devlin, Keiser, Price

Senators Fischer, J. Lee

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

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

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

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

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

11 **26.1-27.1-01. Definitions.** In this chapter, unless the context otherwise requires:

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

- 1 by the covered entity. The term includes a dependent or other individual provided
2 health coverage through a policy, contract, or plan for a covered individual.
- 3 3. "De-identified information" means information from which the name, address,
4 telephone number, and other variables have been removed in accordance with
5 requirements of title 45, Code of Federal Regulations, part 164, section 512,
6 subsections (a) or (b).
- 7 4. "Generic drug" means a drug that is chemically equivalent to a brand name drug
8 for which the patent has expired.
- 9 5. "Labeler" means a person that has been assigned a labeler code by the federal
10 food and drug administration under title 21, Code of Federal Regulations, part 207,
11 section 20, and that receives prescription drugs from a manufacturer or wholesaler
12 and repackages those drugs for later retail sale.
- 13 6. "Payment received by the pharmacy benefits manager" means the aggregate
14 amount of the following types of payments:
- 15 a. A rebate collected by the pharmacy benefits manager which is allocated to a
16 covered entity;
- 17 b. An administrative fee collected from the manufacturer in consideration of an
18 administrative service provided by the pharmacy benefits manager to the
19 manufacturer;
- 20 c. A pharmacy network fee; and
- 21 d. Any other fee or amount collected by the pharmacy benefits manager from a
22 manufacturer or labeler for a drug switch program, formulary management
23 program, mail service pharmacy, educational support, data sales related to a
24 covered individual, or any other administrative function.
- 25 7. "Pharmacy benefits management" means the procurement of prescription drugs at
26 a negotiated rate for dispensation within this state to covered individuals; the
27 administration or management of prescription drug benefits provided by a covered
28 entity for the benefit of covered individuals; or the providing of any of the following
29 services with regard to the administration of the following pharmacy benefits:
- 30 a. Claims processing, retail network management, and payment of claims to a
31 pharmacy for prescription drugs dispensed to a covered individual;

- 1 b. Clinical formulary development and management services; or
2 c. Rebate contracting and administration.
- 3 8. "Pharmacy benefits manager" means a person that performs pharmacy benefits
4 management. The term includes a person acting for a pharmacy benefits manager
5 in a contractual or employment relationship in the performance of pharmacy
6 benefits management for a covered entity. The term does not include a public
7 self-funded pool or a private single-employer self-funded plan that provides
8 benefits or services directly to its beneficiaries. The term does not include a health
9 carrier licensed under title 26.1 if the health carrier is providing pharmacy benefits
10 management to its insureds.
- 11 9. "Rebate" means a retrospective reimbursement of a monetary amount by a
12 manufacturer under a manufacturer's discount program with a pharmacy benefits
13 manager for drugs dispensed to a covered individual.
- 14 10. "Utilization information" means de-identified information regarding the quantity of
15 drug prescriptions dispensed to members of a health plan during a specified time
16 period.

17 **26.1-27.1-02. Licensing.** A person may not perform or act as a pharmacy benefits
18 manager in this state unless that person holds a certificate of registration as an administrator
19 under chapter 26.1-27.

20 **26.1-27.1-03. Disclosure requirements.**

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

1 **26.1-27.1-04. Prohibited practices.**

- 2 1. A pharmacy benefits manager shall comply with chapter 19-02.1 regarding the
3 substitution of one prescription drug for another.
- 4 2. A pharmacy benefits manager may not require a pharmacist or pharmacy to
5 participate in one contract in order to participate in another contract. The
6 pharmacy benefits manager may not exclude an otherwise qualified pharmacist or
7 pharmacy from participation in a particular network if the pharmacist or pharmacy
8 accepts the terms, conditions, and reimbursement rates of the pharmacy benefits
9 manager's contract.

10 **26.1-27.1-05. Contents of pharmacy benefits management agreement -**
11 **Requirements.**

- 12 1. A pharmacy benefits manager shall offer to a covered entity options for the
13 covered entity to contract for services that must include:
- 14 a. A transaction fee without a sharing of a payment received by the pharmacy
15 benefits manager;
- 16 b. A combination of a transaction fee and a sharing of a payment received by
17 the pharmacy benefits manager; or
- 18 c. A transaction fee based on the covered entity receiving all the benefits of a
19 payment received by the pharmacy benefits manager.
- 20 2. The agreement between the pharmacy benefits manager and the covered entity
21 must include a provision allowing the covered entity to have audited the pharmacy
22 benefits manager's books, accounts, and records, including de-identified utilization
23 information, as necessary to confirm that the benefit of a payment received by the
24 pharmacy benefits manager is being shared as required by the contract.

25 **26.1-27.1-06. Examination of insurer-covered entity.**

- 26 1. During an examination of a covered entity as provided for in chapter 26.1-03,
27 26.1-17, or 26.1-18.1, the commissioner shall examine any contract between the
28 covered entity and a pharmacy benefits manager and any related record to
29 determine if the payment received by the pharmacy benefits manager which the
30 covered entity received from the pharmacy benefits manager has been applied

1 toward reducing the covered entity's rates or has been distributed to covered
2 individuals.

3 2. To facilitate the examination, the covered entity shall disclose annually to the
4 commissioner the benefits of the payment received by the pharmacy benefits
5 manager received under any contract with a pharmacy benefits manager and shall
6 describe the manner in which the payment received by the pharmacy benefits
7 manager is applied toward reducing rates or is distributed to covered individuals.

8 3. Any information disclosed to the commissioner under this section is considered a
9 trade secret under chapter 47-25.1.

10 **26.1-27.1-07. Rulemaking authority.** The commissioner shall adopt rules as
11 necessary before implementation of this chapter.

12 **SECTION 3. PHARMACY BENEFITS MANAGEMENT INDUSTRY - LEGISLATIVE**
13 **COUNCIL STUDY.** The legislative council shall study, during the 2005-06 interim, the
14 pharmacy benefits management industry, including the extent of competition in the marketplace
15 for health insurance and prescription drugs; whether protecting the confidentiality of trade
16 secret or proprietary information has a positive or negative impact on prescription drug prices;
17 the ownership interest or affiliation between insurance companies and pharmacy benefits
18 management companies and whether such relationships are good for the consumer; the impact
19 of disclosure of information regarding relationships between pharmacy benefits management
20 companies and their customers; the use of various cost-containment methods by pharmacy
21 benefits managers, including the extent to which pharmacy benefits managers promote the use
22 of generic drugs; the actual impact of the use of pharmacy benefits management techniques on
23 community pharmacies; the impact of mail service pharmacies on consumers and community
24 pharmacies; the impact of generic and brand name drugs in formulary development, drug
25 switches and mail order operations, as well as spread pricing, data sales and manufacturers
26 rebates and discounts; the price consumers actually pay for prescription drugs in North Dakota;
27 and consideration of the legality of imposing statutory restrictions on pharmacy benefits
28 managers. The legislative council shall report its findings and recommendations, together with
29 any legislation required to implement the recommendations, to the sixtieth legislative assembly.