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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Maximum allowable cost lists for pharmaceuticals - Pharmacy benefits managers - Penalty.

1. For the purposes of this section:
   a. "Maximum allowable cost price" means a maximum reimbursement amount for a group of therapeutically equivalent and pharmaceutically equivalent multiple source generic drugs.
   b. "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.
2. With respect to each contract between a pharmacy benefits manager and a pharmacy, each pharmacy benefits manager shall:
   a. Provide to the pharmacy, at the beginning of each calendar year, the market-based sources utilized to determine the maximum allowable cost pricing of the pharmacy benefits manager, update that pricing information at least every seven calendar days, and establish a reasonable process for the prompt notification of the pricing updates to network pharmacies.
   b. Disclose the market-based sources utilized for setting maximum allowable cost price rates on each maximum allowable cost price list included under the contract and identify each network or pharmacy provider to which each list applies. A pharmacy benefits manager shall make the list of the maximum allowable costs

available to a contracted pharmacy in a format that is readily accessible and usable to the contracted pharmacy.

c. Ensure maximum allowable cost prices are not set below market-based sources available for purchase without limitations by pharmacy providers.

d. Provide a reasonable administrative appeals procedure to allow a dispensing pharmacy provider to contest a listed maximum allowable price rate. The pharmacy benefits manager shall respond to a provider that has contested a maximum allowable price rate through the procedure within seven calendar days. If an update to the maximum allowable price rate is warranted, the pharmacy benefits manager shall make the change retroactive based on the date of the pharmacy provider's invoice and make the adjustment effective for all pharmacy providers in the network.

3. A pharmacy benefits manager may not place a prescription drug on a maximum allowable price list unless:

a. The drug has at least three nationally available, therapeutically equivalent, multiple source generic drugs with a significant cost difference;

b. The drug is listed as therapeutically equivalent and pharmaceutically equivalent or "A" rated in the United States food and drug administration's most recent version of the "Orange Book"; and

c. The drug is available for purchase without limitations by all pharmacies in the state from national or regional wholesalers and not obsolete or temporarily unavailable.

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

5. This section does not apply to state medicaid programs.

6. A pharmacy benefits manager that violates this section is guilty of a class B misdemeanor.