

HOUSE BILL NO. 1584

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 two new sections to chapter 26.1-27.1 of the North Dakota
2 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 of the North Dakota
4 Century Code, relating to pharmacy benefits managers; to provide a penalty; and to declare an
5 emergency.

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

7 **SECTION 1. AMENDMENT.** Section 26.1-27.1-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **26.1-27.1-01. Definitions.**

10 In this chapter, unless the context otherwise requires:

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

1 the covered entity. The term includes a dependent or other individual provided health
2 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 for~~
8 ~~which the patent has expired.~~

9 5. "Labeler" means a person that has been assigned a labeler code by the federal food
10 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 ~~6-5.~~ "Payment received by the pharmacy benefits manager" means the aggregate amount
14 of the following types of payments:

15 a. A rebate collected by the pharmacy benefits manager or a rebate aggregator
16 which is allocated to a covered entity, or retained by the pharmacy benefits
17 manager;

18 b. An administrative fee collected from the manufacturer in consideration of an
19 administrative service provided by the pharmacy benefits manager to the
20 manufacturer;

21 c. A pharmacy network fee; pharmacy price concessions, and any other financial
22 payment made by a pharmacy to a pharmacy benefits manager; and

23 d. Any other fee or amount collected by the pharmacy benefits manager from a
24 manufacturer or labeler for a drug switch program, formulary management
25 program, mail service pharmacy, educational support, data sales related to a
26 covered individual, or any other administrative function.

27 ~~7-6.~~ "Pharmacy benefits management" means the procurement of prescription drugs at a
28 negotiated rate for dispensation within this state to covered individuals; the
29 administration or management of prescription drug benefits provided by a covered
30 entity for the benefit of covered individuals; or the providing of any of the following
31 services with regard to the administration of the following pharmacy benefits:

- 1 a. Claims processing, ~~retail~~pharmacy network management, and payment of claims
- 2 to a pharmacy for prescription drugs dispensed to a covered individual;
- 3 b. Clinical formulary development and management services; or
- 4 c. Rebate contracting and administration.

5 ~~8-7.~~ "Pharmacy benefits manager" means a person that performs pharmacy benefits
6 management. The term includes a person acting for a pharmacy benefits manager in a
7 contractual or employment relationship in the performance of pharmacy benefits
8 management for a covered entity. ~~The term does not include a public self-funded pool~~
9 ~~or a private single employer self-funded plan that provides benefits or services directly~~
10 ~~to its beneficiaries. The term does not include a health carrier licensed under title 26.1-~~
11 ~~if the health carrier is providing pharmacy benefits management to its insureds.~~

12 ~~9-8.~~ "Rebate" means a retrospective reimbursement of a monetary amount by a
13 manufacturer under a manufacturer's discount program with a pharmacy benefits
14 manager for drugs dispensed to a covered individual.

15 ~~10-9.~~ "Utilization information" means de-identified information regarding the quantity of drug
16 prescriptions dispensed to members of a health plan during a specified time period.

17 **SECTION 2. AMENDMENT.** Section 26.1-27.1-02 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **26.1-27.1-02. Licensing.**

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

22 **SECTION 3. AMENDMENT.** Section 26.1-27.1-04 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **26.1-27.1-04. Prohibited practices.**

- 25 1. A pharmacy benefits manager shall comply with chapter 19-02.1 ~~regarding the~~
26 ~~substitution of one prescription drug for another.~~
- 27 2. A pharmacy benefits manager may not require a pharmacist or pharmacy to
28 participate in one contract in order to participate in another contract. The pharmacy
29 benefits manager may not exclude an otherwise qualified pharmacist or pharmacy
30 from participation in a particular network if the pharmacist or pharmacy accepts the

1 terms, conditions, and reimbursement rates of the pharmacy benefits manager's
2 contract.

3 3. A pharmacy benefits manager shall offer pharmacy contracts that are opt-in contracts
4 with at least thirty days to respond and signatures must be obtained from the
5 pharmacy or entities contracting on behalf of pharmacies.

6 4. A pharmacy must be allowed to opt-out of a pharmacy benefits managers contract by
7 providing at least a ninety-day notice.

8 **SECTION 4. AMENDMENT.** Section 26.1-27.1-06 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **26.1-27.1-06. Examination of insurer-covered entity.**

11 1. During an examination of a covered entity as provided for in chapter 26.1-03, 26.1-17,
12 or 26.1-18.1, the commissioner shall examine any contract between the covered entity
13 and a pharmacy benefits manager and any related record to determine if the payment
14 received by the pharmacy benefits manager which the covered entity received from
15 the pharmacy benefits manager has been applied toward reducing the covered entity's
16 rates or has been distributed to covered individuals.

17 2. To facilitate the examination, the covered entity shall disclose annually to the
18 commissioner the benefits of the payment received by the pharmacy benefits manager
19 received under any contract with a pharmacy benefits manager and shall describe the
20 manner in which the payment received by the pharmacy benefits manager is applied
21 toward reducing rates or is distributed to covered individuals.

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

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

27 **26.1-27.1-07. Rulemaking authority.**

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

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

1 **Enforcement.**

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

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

11 **Administrative penalties.**

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

21 **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.