

FIRST ENGROSSMENT

ENGROSSED 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.

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

- 1 entity for the benefit of covered individuals; or the providing of any of the following
2 services with regard to the administration of the following pharmacy benefits:
3 a. Claims processing, ~~retail~~pharmacy network management, and payment of claims
4 to a pharmacy for prescription drugs dispensed to a covered individual;
5 b. Clinical formulary development and management services; or
6 c. Rebate contracting and administration.

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

16 ~~9-8.~~ "Rebate" means a retrospective reimbursement of a monetary amount by a
17 manufacturer under a manufacturer's discount program with a pharmacy benefits
18 manager for drugs dispensed to a covered individual.

19 ~~10-9.~~ "Utilization information" means de-identified information regarding the quantity of drug
20 prescriptions dispensed to members of a health plan during a specified time period.

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

23 **26.1-27.1-02. Licensing - Terms and fee - Application.**

- 24 1. A person may not ~~perform~~establish or ~~act~~operate as a pharmacy benefits manager in
25 this state ~~unless that person holds~~without first obtaining a certificate of
26 registration license as an administrator under chapter 26.1-27 from the the
27 commissioner under to this section. A person violating this subsection is guilty of a
28 class C felony.
29 2. A person applying for a pharmacy benefits manager license shall submit an application
30 to the commissioner. The commissioner shall make an application form available on its
31 website that includes a request for the following information:

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

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

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 pharmacy
6 benefits manager may not exclude an otherwise qualified pharmacist or pharmacy
7 from participation in a particular network if the pharmacist or pharmacy accepts the
8 terms, conditions, and reimbursement rates of the pharmacy benefits manager's
9 contract.

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

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

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

17 **26.1-27.1-06. Examination of insurer-covered entity.**

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

24 2. To facilitate the examination, the covered entity shall disclose annually to the
25 commissioner the benefits of the payment received by the pharmacy benefits manager
26 received under any contract with a pharmacy benefits manager and shall describe the
27 manner in which the payment received by the pharmacy benefits manager is applied
28 toward reducing rates or is distributed to covered individuals.

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

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

3 **26.1-27.1-07. Rulemaking authority.**

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

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

7 **Enforcement.**

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

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

17 **Administrative penalties.**

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

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