

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
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~~four new sections to chapter 26.1-27.1 of the North
2 | Dakota Century Code, relating to pharmacy benefits managers; to amend and reenact
3 | subsection 1 of section 26.1-01-07, sections 26.1-01-07.1, 26.1-27.1-01, 26.1-27.1-02,
4 | 26.1-27.1-04, 26.1-27.1-06 and 26.1-27.1-07 of the North Dakota Century Code, relating to
5 | pharmacy benefits managers; to repeal section 26.1-27-01.1 and chapter 26.1-36.10 of the
6 | North Dakota Century Code, relating to pharmacy benefits managers and prescription drug
7 | costs; to provide a penalty; to provide a continuing appropriation; to provide a transfer; to
8 | provide an effective date; and to declare an emergency.

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

10 | **SECTION 1. AMENDMENT.** Subsection 1 of section 26.1-01-07 of the North Dakota
11 | Century Code is amended and reenacted as follows:

- 12 | 1. The commissioner shall charge and collect the following fees:
- 13 | a. For filing articles of incorporation, or copies, or amendments thereof, twenty-five
14 | dollars.
- 15 | b. For each original certificate of authority issued upon admittance and for each
16 | annual renewal thereof, one hundred dollars and for amendment to certificate of
17 | authority, or certified copy thereof, fifty dollars.
- 18 | c. For issuing an annual reciprocal exchange license, the same fees as those
19 | applicable to the issuance of a certificate of authority in subsection 2.

- 1 d. For filing an annual report of a fraternal benefit society, and issuing a license or
- 2 permit to the society, and for each renewal thereof, one hundred dollars.
- 3 e. For filing of articles of merger, or copies thereof, thirty dollars.
- 4 f. For filing an annual statement, twenty-five dollars.
- 5 g. For filing the abstract of the annual statement of an insurance company for
- 6 publication, thirty dollars.
- 7 h. For an official examination, the expenses of the examination at the rate adopted
- 8 by the department. The rates must be reasonably related to the direct and
- 9 indirect costs of the examination, including actual travel expenses, including hotel
- 10 and other living expenses, compensation of the examiner and other persons
- 11 making the examination, and necessary attendant administrative costs of the
- 12 department directly related to the examination and must be paid by the examined
- 13 insurer together with compensation upon presentation by the department to the
- 14 insurer of a detailed account of the charges and expenses after a detailed
- 15 statement has been filed by the examiner and approved by the department.
- 16 i. For issuing a certificate to a domestic insurance company showing a compliance
- 17 with the compulsory reserve provisions of this title and the maintenance of proper
- 18 security deposits and for any renewal of the certificate, twenty-five dollars.
- 19 j. For a written licensee's examination not administered by the office of the
- 20 commissioner under a contract with a testing service, the actual cost of the
- 21 examination, subject to approval of the commissioner, which must be paid to the
- 22 testing service.
- 23 k. For issuing a surplus lines insurance producer's or insurance consultant's
- 24 license, one hundred dollars. For each annual renewal of a surplus lines
- 25 insurance producer's or insurance consultant's license, twenty-five dollars.
- 26 l. For issuing an insurance producer's license, one hundred dollars.
- 27 m. For issuing a duplicate of any license or registration issued under this title, ten
- 28 dollars.
- 29 n. For each insurance company appointment and renewal of an appointment of an
- 30 insurance producer, ten dollars.

- 1 o. For each company application for admission, five hundred dollars, except
- 2 applications for admission for county mutual, fraternal benefit, and surplus lines
- 3 companies must be one hundred dollars.
- 4 p. For issuing a license and each annual renewal of a license to an insurance
- 5 premium finance company, one hundred dollars.
- 6 q. For examining or investigating an insurance premium finance company, the
- 7 actual expense and per diem incurred; but the per diem charge may not exceed
- 8 fifty dollars.
- 9 r. For issuing and each annual renewal of a license to an advisory organization, fifty
- 10 dollars.
- 11 s. For filing an individual insurance producer licensing continuation, twenty-five
- 12 dollars.
- 13 t. For services provided by the state fire marshal.
- 14 u. For the initial application fee for a pharmacy benefit manager, an amount
- 15 determined by the commissioner, which may not exceed ten thousand dollars.
- 16 For each annual renewal, an amount to be determined by the commissioner,
- 17 which may not exceed ten thousand dollars.

18 **SECTION 2. AMENDMENT.** Section 26.1-01-07.1 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **26.1-01-07.1. Insurance regulatory trust fund established - Continuing appropriation.**

- 21 1. There is ~~hereby~~ created a trust fund designated as the "insurance regulatory trust
- 22 fund". The following amounts must be deposited in the insurance regulatory trust fund:
- 23 a. All sums received under section 26.1-01-07.
- 24 b. All sums received under section 26.1-01-07.2 from the insurance regulatory trust
- 25 fund investments.
- 26 c. All retaliatory fees imposed upon persons by the insurance department as
- 27 authorized by law.
- 28 d. All administrative penalties, fines, and fees collected by the commissioner from
- 29 any person subject to this title.
- 30 e. Any other amounts provided by legislative appropriation.

1 2. The moneys ~~so~~ received and deposited in the insurance regulatory trust fund are
2 reserved for use by the insurance department to defray the expenses of the
3 department in the discharge of its administrative and regulatory powers and duties as
4 prescribed by law ~~subject to the applicable laws relating to the appropriations of state~~
5 ~~funds and to the deposit and expenditure of state moneys. The insurance department~~
6 ~~is responsible for the proper expenditure of these moneys as provided by law.~~

7 ~~3. Except as otherwise provided by law, after the fiscal year has been closed and all~~
8 ~~expenses relating to the fiscal year have been accounted for, the office of~~
9 ~~management and budget shall transfer any fund balance remaining in the insurance~~
10 ~~regulatory trust fund that exceeds one million dollars to the general fund~~and are
11 provided on a continuing basis.

12 **SECTION 3. AMENDMENT.** Section 26.1-27.1-01 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **26.1-27.1-01. Definitions.**

15 In this chapter, unless the context otherwise requires:

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

- 1 3. "De-identified information" means information from which the name, address,
2 telephone number, and other variables have been removed in accordance with
3 requirements of title 45, Code of Federal Regulations, part 164, section 512,
4 subsections (a) or (b).
- 5 4. ~~"Generic drug" means a drug that is chemically equivalent to a brand name drug for
6 which the patent has expired.~~
- 7 5. "Labeler" means a person that has been assigned a labeler code by the federal food
8 and drug administration under title 21, Code of Federal Regulations, part 207,
9 section 20, and that receives prescription drugs from a manufacturer or wholesaler
10 and repackages those drugs for later retail sale.
- 11 6.5. "Payment received by the pharmacy benefits manager" means the aggregate amount
12 of the following types of payments:
- 13 a. A rebate collected by the pharmacy benefits manager or a rebate aggregator
14 which is allocated to a covered entity, or retained by the pharmacy benefits
15 manager;
- 16 b. An administrative fee collected from the manufacturer in consideration of an
17 administrative service provided by the pharmacy benefits manager to the
18 manufacturer;
- 19 c. A pharmacy network fee, pharmacy price concessions, and any other financial
20 payment made by a pharmacy to a pharmacy benefits manager; 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 7.6. "Pharmacy benefits management" means the procurement of prescription drugs at a
26 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~~ pharmacy network management, and payment of claims
31 to a 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 ~~8-7.~~ "Pharmacy benefits manager" means a person ~~that~~who performs pharmacy benefits
4 management, ~~as a third party, under a contract or other~~ ~~financial~~financial
5 ~~arrangement with a covered entity.~~ The term ~~includes~~does not include a person ~~acting~~
6 ~~for a health benefit plan that manages or directs its own~~ pharmacy benefits manager ~~in~~
7 ~~a 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 4. 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 - Terms and fee - Application.**

- 20 1. A person may not ~~perform~~establish or ~~act~~operate as a pharmacy benefits manager in
21 this state ~~unless that person holds~~without first obtaining a certificate of
22 registration ~~license as an administrator under chapter 26.1-27.1-02~~from ~~the~~ the
23 commissioner under ~~to~~ this section. A person violating this subsection is guilty of a
24 class C felony.
- 25 2. A person applying for a pharmacy benefits manager license shall submit an application
26 to the commissioner. The commissioner shall make an application form available on its
27 website ~~that~~which includes a request for the following information:
 - 28 a. The identity, address, **electronic mail address**, and telephone number of the
29 applicant;
 - 30 b. The name, business address, **electronic mail address**, and telephone number of
31 the contact person for the applicant;

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

27 **SECTION 5. AMENDMENT.** Section 26.1-27.1-04 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **26.1-27.1-04. Prohibited practices.**

- 30 1. A pharmacy benefits manager shall comply with subsections 19-02.1-01, 19-02.1-02,
31 19-02.1-14.2, 19-02.1-16, 19-02.1-16.1, 19-02.1-16.2, 19-02.1-16.3, 19-02.1-16.4,

- 1 | ~~19-02.1-16.5, and 19-02.1-16.6 in~~ chapter 19-02.1 regarding the substitution of one-
2 | prescription drug for another.
- 3 | 2. A pharmacy benefits manager may not require a pharmacist or pharmacy to
4 | participate in one contract in order to participate in another contract. The pharmacy
5 | benefits manager may not exclude an otherwise qualified pharmacist or pharmacy
6 | from participation in a particular network if the pharmacist or pharmacy accepts the
7 | terms, conditions, and reimbursement rates of the pharmacy benefits manager's
8 | contract.
- 9 | 3. A pharmacy benefits manager shall offer pharmacy contracts that are opt-in contracts
10 | with at least thirty days to respond and signatures must be obtained from the
11 | pharmacy or ~~entities~~an entity contracting on behalf of ~~pharmacies~~the pharmacy.
- 12 | 4. A pharmacy ~~must be allowed to~~may opt-out of a pharmacy benefits managers contract
13 | by providing at least a ninety-day notice.

14 | **SECTION 6. AMENDMENT.** Section 26.1-27.1-06 of the North Dakota Century Code is
15 | amended and reenacted as follows:

16 | **26.1-27.1-06. Examination of insurer-covered entity.**

- 17 | 1. During an examination of a covered entity as provided for in chapter 26.1-03, 26.1-17,
18 | or 26.1-18.1, the commissioner shall examine any contract between the covered entity
19 | and a pharmacy benefits manager and any related record to determine if the payment
20 | received by the pharmacy benefits manager which the covered entity received ~~from~~
21 | ~~the pharmacy benefits manager~~ has been applied toward reducing the covered entity's
22 | rates or has been distributed to covered individuals.
- 23 | 2. To facilitate the examination, the covered entity shall disclose annually to the
24 | commissioner the benefits of the payment received by the pharmacy benefits manager
25 | received under any contract ~~with a pharmacy benefits manager~~ and shall describe the
26 | manner in which the payment received by the pharmacy benefits manager is applied
27 | toward reducing rates or is distributed to covered individuals.
- 28 | 3. Any information disclosed to the commissioner under this section is considered a trade
29 | secret under chapter 47-25.1. This section does not prevent the disclosure of a final
30 | order issued against a pharmacy benefits manager. Such order is an open record.

1 **SECTION 7. 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~~ to implement
5 this chapter.

6 **SECTION 8.** A new section to chapter 26.1-27.1 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Enforcement.**

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

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

18 **Administrative penalties.**

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

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

31 **Proceedings by commissioner - Service of process - Procedure.**

1 The commissioner shall serve process upon any licensee in any action or proceeding
2 instituted by the commissioner under this chapter by electronic mail to the electronic mail
3 address maintained in section 26.1-27.1-02 or by United States mail to the licensee at the
4 licensee's last-known address of record or principal place of business. Service of process under
5 this section is complete upon electronic mailing or United States mailing.

6 **SECTION 11.** A new section to chapter 26.1-27.1 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Wholesale license fee.**

9 The state board of pharmacy may deposit up to six hundred dollars of every eligible
10 wholesaler license fee and every virtual wholesaler license fee collected by the board under
11 section 43-15.3-12 to the insurance regulatory trust fund.

12 **SECTION 12. REPEAL.** Section 26.1-27-01.1 and chapter 26.1-36.10 of the North Dakota
13 Century Code are repealed.

14 **SECTION 13. EXEMPTION - FULL-TIME EQUIVALENT POSITIONS - ADJUSTMENTS.**

15 Notwithstanding any other provisions of law, the insurance commissioner may increase or
16 decrease authorized full-time equivalent positions as needed, subject to availability of funds,
17 during the biennium beginning July 1, 2025, and ending June 30, 2027, for the purpose of
18 enforcing the provisions of chapter 26.1-27.1. The insurance commissioner shall report to the
19 office of management and budget and legislative council any adjustments made pursuant to this
20 section.

21 **SECTION 14. TRANSFER - DRUG PRICING FUND TO INSURANCE REGULATORY**
22 **TRUST FUND.** On the effective date of this Act, the office of management and budget shall
23 transfer any money in the drug pricing fund to the insurance regulatory trust fund for the
24 purpose of enforcing the provision of chapter 26.1-27.1.

25 **SECTION 15. EFFECTIVE DATE.** Section 4 of this Act becomes effective January 1, 2026.

26 **SECTION 16. EMERGENCY.** This Act is declared to be an emergency measure.