

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

In place of the amendments (25.1281.02003) adopted by the Senate, Engrossed House Bill No. 1584 is amended by amendment (25.1281.02005) as follows:

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 and a pharmacy benefit
3 manager enforcement fund; to amend and reenact subsection 1 of section 26.1-01-07, sections
4 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
5 Century Code, relating to pharmacy benefits managers; to repeal section 26.1-27-01.1 and
6 chapter 26.1-36.10 of the North Dakota Century Code, relating to pharmacy benefits managers
7 and prescription drug costs; to provide a penalty; to provide an appropriation; to provide for a
8 transfer; to provide an effective date; to provide an expiration date; and to declare an
9 emergency.

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

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

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

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

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

SECTION 2. AMENDMENT. Section 26.1-27.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Covered entity" means a nonprofit hospital or a medical service corporation; a health insurer; a health benefit plan; a health maintenance organization; a health program administered by the state in the capacity of provider of health coverage; or ~~an employer,~~ a labor union, or other entity organized in the state which provides health coverage to covered individuals who are employed or reside in the state. The term does not include ~~a self-funded plan that is exempt from state regulation pursuant to the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.];~~ a plan issued for coverage for federal employees; or a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care, or other

1 limited-benefit health insurance ~~policy~~policies or ~~contract~~contracts that do not include
2 prescription drug coverage.

3 2. "Covered individual" means a member, a participant, an enrollee, a contractholder, a
4 policyholder, or a beneficiary of a covered entity who is provided health coverage by
5 the covered entity. The term includes a dependent or other individual provided health
6 coverage through a policy, contract, or plan for a covered individual.

7 3. "De-identified information" means information from which the name, address,
8 telephone number, and other variables have been removed in accordance with
9 requirements of title 45, Code of Federal Regulations, part 164, section 512,
10 subsections (a) or (b).

11 4. ~~"Generic drug" means a drug that is chemically equivalent to a brand name drug for~~
12 ~~which the patent has expired.~~

13 5. "Labeler" means a person that has been assigned a labeler code by the federal food
14 and drug administration under title 21, Code of Federal Regulations, part 207,
15 section 20, and that receives prescription drugs from a manufacturer or wholesaler
16 and repackages those drugs for later retail sale.

17 6.5. "Payment received by the pharmacy benefits manager" means the aggregate amount
18 of the following types of payments:

19 a. A rebate collected by the pharmacy benefits manager or a rebate aggregator
20 which is allocated to a covered entity, or retained by the pharmacy benefits
21 manager;

22 b. An administrative fee collected from the manufacturer in consideration of an
23 administrative service provided by the pharmacy benefits manager to the
24 manufacturer;

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

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

7.6. "Pharmacy benefits management" means the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals; the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals; or the providing of any of the following services with regard to the administration of the following pharmacy benefits:

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

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

9.8. "Rebate" means a retrospective reimbursement of a monetary amount by a manufacturer under a manufacturer's discount program with a pharmacy benefits manager for drugs dispensed to a covered individual.

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

SECTION 3. AMENDMENT. Section 26.1-27.1-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A person may not ~~perform~~establish or ~~act~~operate as a pharmacy benefits manager in this state ~~unless that person holds~~without first obtaining a certificate of registration~~license~~ as an administrator under chapter 26.1-27.1-02~~from the the~~ commissioner under ~~to~~ this section. A person violating this subsection is guilty of a class C felony.

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

- 1 8. The license may be in paper or electronic form. The license is nontransferable, and
2 must prominently list the expiration date.

3 **SECTION 4. AMENDMENT.** Section 26.1-27.1-04 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **26.1-27.1-04. Prohibited practices.**

- 6 1. A pharmacy benefits manager shall comply with sections 19-02.1-01, 19-02.1-02,
7 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,
8 19-02.1-16.5, and 19-02.1-16.6 in chapter 19-02.1 ~~regarding the substitution of one~~
9 ~~prescription drug for another.~~
- 10 2. A pharmacy benefits manager may not require a pharmacist or pharmacy to
11 participate in one contract in order to participate in another contract. The pharmacy
12 benefits manager may not exclude an otherwise qualified pharmacist or pharmacy
13 from participation in a particular network if the pharmacist or pharmacy accepts the
14 terms, conditions, and reimbursement rates of the pharmacy benefits manager's
15 contract.
- 16 3. A pharmacy benefits manager shall offer pharmacy contracts that are opt-in contracts
17 with at least thirty days to respond and signatures must be obtained from the
18 pharmacy or ~~entities~~an entity contracting on behalf of ~~pharmacies~~the pharmacy.
- 19 4. A pharmacy ~~must be allowed to~~may opt-out of a pharmacy benefits managers contract
20 by providing at least a ninety-day notice.

21 **SECTION 5. AMENDMENT.** Section 26.1-27.1-06 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **26.1-27.1-06. Examination of insurer-covered entity.**

- 24 1. During an examination of a covered entity as provided for in chapter 26.1-03, 26.1-17,
25 or 26.1-18.1, the commissioner shall examine any contract between the covered entity
26 and a pharmacy benefits manager and any related record to determine if the payment
27 received by the pharmacy benefits manager which the covered entity received ~~from-~~
28 ~~the pharmacy benefits manager~~ has been applied toward reducing the covered entity's
29 rates or has been distributed to covered individuals.
- 30 2. To facilitate the examination, the covered entity shall disclose annually to the
31 commissioner the benefits of the payment received by the pharmacy benefits manager

received under any contract ~~with a pharmacy benefits manager~~ and shall describe the manner in which the payment received by the pharmacy benefits manager is applied toward reducing rates or is distributed to covered individuals.

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

SECTION 6. AMENDMENT. Section 26.1-27.1-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-07. Rulemaking authority.

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

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

Enforcement.

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

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

Administrative penalties.

1. A pharmacy benefits manager found to be in violation of this chapter or any rules adopted under this chapter is subject to:
 - a. A monetary penalty of up to ten thousand dollars per violation;
 - b. Suspension or revocation of license; and
 - c. A civil penalty of up to fifty thousand dollars for a second or subsequent violation.

2. The commissioner may require a pharmacy benefits manager to provide restitution to affected covered entities, **pharmacies**, or individuals for losses incurred as a result of the violation.

3. A pharmacy benefits manager subject to penalties under this section is entitled to a hearing conducted in accordance with chapter 28-32.

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

Proceedings by commissioner - Service of process - Procedure.

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

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

Pharmacy benefit manager enforcement fund - State board of pharmacy wholesaler and virtual wholesaler license fees - Revenue deposits or transfers.

The pharmacy benefit manager enforcement fund is a special fund in the state treasury. The fund consists of moneys transferred to or deposited in the fund by legislative action and moneys transferred to or deposited in the fund by the state board of pharmacy. The state board of pharmacy may deposit or transfer up to six hundred dollars of every eligible wholesaler license fee and every virtual wholesaler license fee collected by the board under section 43-15.3-12 to the pharmacy benefit manager enforcement fund. Moneys in the fund are available to the insurance commissioner, subject to legislative appropriations, for enforcing the provisions of this chapter.

SECTION 11. REPEAL. Section 26.1-27-01.1 and chapter 26.1-36.10 of the North Dakota Century Code are repealed.

SECTION 12. TRANSFER - DRUG PRICING FUND TO PHARMACY BENEFIT MANAGER ENFORCEMENT FUND. On the effective date of this Act, the office of management and budget shall transfer the balance in the drug pricing fund to the pharmacy benefit manager enforcement fund for the purpose of enforcing the provisions of chapter 26.1-27.1.

1 **SECTION 13. APPROPRIATION - INSURANCE COMMISSIONER - PHARMACY**

2 **BENEFIT MANAGER ENFORCEMENT FUND.** There is appropriated out of any moneys in the
3 pharmacy benefit manager enforcement fund in the state treasury, not otherwise appropriated,
4 the sum of \$1,200,000, or so much of the sum as may be necessary, to the insurance
5 commissioner for the purpose of enforcing the provisions of chapter 26.1-27.1 and conducting
6 an actuarial analysis of the effect of the policies contained in this Act on health insurance
7 premiums and consumer drug prices, for the period beginning with the effective date of this Act
8 and ending June 30, 2027. The insurance commissioner is authorized three full-time equivalent
9 positions, including an attorney, a pharmacist, and an investigator, for this purpose.

10 **SECTION 14. EFFECTIVE DATE.** Section 3 of this Act becomes effective on January 1,
11 2026.

12 **SECTION 15. EXPIRATION DATE.** Section 10 of this Act is effective through June 30,
13 2029, and after that date is ineffective.

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