

Sixty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2258

Introduced by

Senators Klein, Armstrong, Casper

Representatives Dockter, Keiser, Vigesaa

1 A BILL for an Act to create and enact a new section to chapter 19-02.1 of the North Dakota  
2 Century Code, relating to pharmacy claim fees and pharmacy rights; to provide a penalty; and  
3 to provide for application.

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

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

7 **Pharmacy claim fees and pharmacy rights - Pharmacy benefits managers - Penalty.**

8 1. As used in this section:

9 a. "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.

10 b. "Plan sponsor" has the same meaning as in section 19-03.6-01.

11 c. "Third-party payer" has the same meaning as in section 19-03.6-01.

12 2. A pharmacy benefits manager or third-party payer may not directly or indirectly charge  
13 or hold a pharmacy responsible for a fee related to a claim:

14 a. That is not apparent at the time of claim processing;

15 b. That is not reported on the remittance advice of an adjudicated claim; or

16 c. After the initial claim is adjudicated at the point of sale.

17 3. Pharmacy performance measures or pay for performance pharmacy networks shall  
18 utilize the electronic quality improvement platform for plans and pharmacies or other  
19 unbiased nationally recognized entity aiding in improving pharmacy performance  
20 measures.

21 a. A pharmacy benefits manager or third-party payer may not collect a fee from a  
22 pharmacy if the pharmacy's performance scores or metrics fall within the criteria  
23 identified by the electronic quality improvement platform for plans and

- 1                    pharmacies or other unbiased nationally recognized entity aiding in improving  
2                    pharmacy performance measures.
- 3                    b. If a pharmacy benefits manager or third-party payer imposes a fee upon a  
4                    pharmacy for scores or metrics or both scores and metrics that do not meet those  
5                    established by the electronic quality improvement platform for plans and  
6                    pharmacies or other nationally recognized entity aiding in improving pharmacy  
7                    performance measures, a pharmacy benefits manager or third-party payer is  
8                    limited to applying the fee to the professional dispensing fee outlined in the  
9                    pharmacy contract.
- 10                  c. A pharmacy benefits manager or third-party payer may not impose a fee relating  
11                  to performance metrics on the cost of goods sold by a pharmacy.
- 12                  4. A pharmacy benefits manager or third-party payer may not charge a patient a  
13                  copayment that exceeds the cost of the medication. If a patient pays a copayment, the  
14                  dispensing provider or pharmacy shall retain the adjudicated cost and the pharmacy  
15                  benefits manager or third-party payer may not redact the adjudicated cost.
- 16                  5. A pharmacy benefits manager or third-party payer may not prohibit a pharmacist or  
17                  pharmacy from participating in a class action lawsuit. A pharmacy or pharmacist may  
18                  disclose to the plan sponsor or to the patient information regarding the adjudicated  
19                  reimbursement paid to the pharmacy which is compliant under the federal Health  
20                  Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936;  
21                  29 U.S.C. 1181 et seq.].
- 22                  6. A pharmacist or pharmacy that belongs to a pharmacy service administration  
23                  organization may receive a copy of a contract the pharmacy service administration  
24                  organization entered with a pharmacy benefits manager or third-party payer on the  
25                  pharmacy's or pharmacist's behalf.
- 26                  7. A pharmacy or pharmacist may provide relevant information to a patient if the patient  
27                  is acquiring prescription drugs. This information may include the cost and clinical  
28                  efficacy of a more affordable alternative drug if one is available. Gag orders of such a  
29                  nature placed on a pharmacy or pharmacist are prohibited.
- 30                  8. A pharmacy or pharmacist may mail or deliver drugs to a patient as an ancillary  
31                  service of a pharmacy.

- 1        9. A pharmacy benefits manager or third-party payer may not prohibit a pharmacist or  
2        pharmacy from charging a shipping and handling fee to a patient requesting a  
3        prescription be mailed or delivered.
- 4        10. Upon request, a pharmacy benefits manager or third-party payer shall provide a  
5        pharmacy or pharmacist with the processor control number, bank identification  
6        number, and group number for each pharmacy network established or administered by  
7        a pharmacy benefits manager to enable the pharmacy to make an informed  
8        contracting decision.
- 9        11. A pharmacy benefits manager or third-party payer may not require pharmacy  
10       accreditation standards or recertification requirements inconsistent with, more  
11       stringent than, or in addition to federal and state requirements for licensure as a  
12       pharmacy in this state.
- 13       12. A pharmacy benefits manager or other third-party payer that violates this section is  
14       guilty of a class B misdemeanor per violation occurrence.

15        **SECTION 2. APPLICATION.** This Act applies to contracts and agreements in effect on and  
16 after the effective date of this Act.