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Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO  
ENGROSSED HOUSE BILL NO. 1584**

**FIRST ENGROSSMENT**

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 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 sections  
3 26.1-01-07.1, 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 , and  
4 26.1-36.10-06, of the North Dakota Century Code, relating to pharmacy benefits managers; to  
5 repeal section 26.1-27-01.1 and chapter 26.1-36.10; to provide a penalty; to provide a  
6 continuing appropriation, to provide a transfer; to provide an effective date; and to declare an  
7 emergency.

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

9 **SECTION 1. AMENDMENT.** One new subdivision to subsection one of section 26.1-01-07  
10 of the North Dakota Century Code is created and enacted as follows:

11 For the initial application fee for a pharmacy benefit manager, an amount determined by the  
12 commissioner, which may not exceed ten thousand dollars. For each annual renewal, an  
13 amount to be determined by the commissioner, which may not exceed ten thousand dollars.

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

16 **26.1-27.1-01. Definitions.**

17 In this chapter, unless the context otherwise requires:

18 1. "Covered entity" means a nonprofit hospital or a medical service corporation; a health insurer;  
19 a health benefit plan; a health maintenance organization; a health program  
20 administered by the state in the capacity of provider of health coverage; or ~~an~~  
21 ~~employer~~, a labor union, or other entity organized in the state which provides health  
22 coverage to covered individuals who are employed or reside in the state. The term

1 does not include a ~~self-funded plan that is exempt from state regulation pursuant to~~  
 2 ~~the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829;~~  
 3 ~~29 U.S.C. 1001 et seq.]; a plan issued for coverage for federal employees; or a health~~  
 4 ~~plan that provides coverage only for accidental injury, specified disease, hospital~~  
 5 ~~indemnity, Medicare supplement, disability income, longterm care, or~~  
 6 ~~other -limitedbenefit- health insurance policypolicies or ~~contract~~contracts that do not~~  
 7 ~~include prescription drug coverage.~~

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

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

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

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

22 6-5. "Payment received by the pharmacy benefits manager" means the aggregate amount  
 23 of the following types of payments:

24 a. A rebate collected by the pharmacy benefits manager or a rebate aggregator  
 25 which is allocated to a covered entity, or retained by the pharmacy benefits  
 26 manager;

27 b. An administrative fee collected from the manufacturer in consideration of an  
 28 administrative service provided by the pharmacy benefits manager to the  
 29 manufacturer;

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

32 d. Any other fee or amount collected by the pharmacy benefits manager from a  
 33 manufacturer or labeler for a drug switch program, formulary management



program, mail service pharmacy, educational support, data sales related to a 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 registrationlicense as an administrator under chapter 26.1-27.1 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 ~~and~~or renewal~~  
19    application for ~~registration~~licensure. The initial application fee ~~is~~and 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.
- 32    8. The license may be in paper or electronic form. The license is nontransferable, and  
33    must prominently list the expiration date.



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

3       **26.1-27.1-04. Prohibited practices.**

- 4       1. A pharmacy benefits manager shall comply with subsections 19-02.1-01, 19-02.1-02,  
5       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, 19-  
6       02.1-16.5, and 19-02.1-16.6 in chapter 19-02.1 ~~regarding the substitution of one~~  
7       prescription drug for another.
- 8       2. A pharmacy benefits manager may not require a pharmacist or pharmacy to  
9       participate in one contract in order to participate in another contract. The pharmacy  
10       benefits manager may not exclude an otherwise qualified pharmacist or pharmacy  
11       from participation in a particular network if the pharmacist or pharmacy accepts the  
12       terms, conditions, and reimbursement rates of the pharmacy benefits manager's  
13       contract.
- 14       3. A pharmacy benefits manager shall offer pharmacy contracts that are opt-in contracts  
15       with at least thirty days to respond and signatures must be obtained from the  
16       pharmacy or ~~entities~~an entity contracting on behalf of ~~pharmacies~~the pharmacy.
- 17       4. A pharmacy ~~must be allowed to~~may opt-out of a pharmacy benefits managers contract  
18       by providing at least a ninety-day notice.

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

21       **26.1-27.106. Examination of insurer- covered- entity.**

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

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

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

6       **26.1-27.1-07. Rulemaking authority.**

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

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      **Enforcement.**

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

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

21      **Administrative penalties.**

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

32      **SECTION 9.** A new section to chapter 26.1--27.1 of the North Dakota Century Code is  
33      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:

**Attorney General.**

The attorney general shall appear, represent, and defend against all lawsuits, actions, or proceedings brought against the state or commissioner in the commissioner's official capacity. If the attorney general determines that the attorney general or an assistant attorney general is unable to defend the commissioner, the attorney general shall contract a special assistant attorney general to represent the commissioner. The attorney general shall be responsible for all costs under this section.

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

**Wholesale License Fee.**

The State Board of Pharmacy may deposit 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 insurance regulatory trust fund.

**SECTION 12. AMENDMENT – Continuing appropriation.** Section 26.1-01-07.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-07.1. Insurance regulatory trust fund established.

1. There is ~~hereby~~ created a trust fund designated as the "insurance regulatory trust fund". The following amounts must be deposited in the insurance regulatory trust fund:

- a. All sums received under section 26.1-01-07.
- b. All sums received under section 26.1-01-07.2 from the insurance regulatory trust fund investments.
- c. All retaliatory fees imposed upon persons by the insurance department as authorized by law.
- d. All administrative penalties, fines, and fees collected by the commissioner from any person subject to this title.



e. Any other amounts provided by legislative appropriation.

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

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

**SECTION 13. REPEAL.** Section 26.1-27-01.1 of the North Dakota Century Code is repealed.

**SECTION 14. REPEAL.** Chapter 26.1-36.10 of the North Dakota Century Code is repealed.

**SECTION 15. EXEMPTION - FULL-TIME EQUIVALENT POSITIONS. ADJUSTMENTS.**

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

**SECTION 16. TRANSFER – DRUG PRICING FUND TO INSURANCE REGULATORY TRUST FUND.** On the effective date of sections of this Act, the office of management and budget shall transfer any money in the drug pricing fund to the insurance regulatory trust fund for the purpose of enforcing the provisions of chapter 26.1-27.1.

**SECTION 17. EFFECTIVE DATE.** Section 3 of this Act becomes effective January 1, 2026.

**SECTION 18. EMERGENCY.** This Act is declared to be an emergency measure.