

Sixty-third  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1363

Introduced by

Representatives Keiser, N. Johnson, Kasper, Pollert, Weisz, Mock, M. Nelson

Senators Klein, J. Lee, Heckaman

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 maximum allowable cost lists for pharmaceuticals; and to provide a  
3 penalty.

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 **Maximum allowable cost lists for pharmaceuticals - Pharmacy benefits managers -**

8 **Penalty.**

9 1. For the purposes of this section:

10 a. "Determination" means a decision that settles and ends a controversy or the  
11 resolution of a question through appeal.

12 b. "Maximum allowable cost price" means a maximum reimbursement amount for a  
13 group of therapeutically equivalent and pharmaceutically equivalent multiple  
14 source drugs.

15 c. "Multiple source drug" means a therapeutically equivalent drug that is available  
16 from at least two manufacturers.

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

18 2. With respect to each contract between a pharmacy benefits manager and a pharmacy,  
19 each pharmacy benefits manager shall:

20 a. Provide to the pharmacy, at the beginning of each contract and contract renewal,  
21 the sources utilized to determine the maximum allowable cost pricing of the  
22 pharmacy benefits manager.

- 1           b. Update any maximum allowable cost price list at least every seven business  
2           days, and provide prompt notification of the pricing changes to network  
3           pharmacies.
- 4           c. Disclose the sources utilized for setting maximum allowable cost price rates on  
5           each maximum allowable cost price list included under the contract and identify  
6           each maximum allowable cost price list that applies to the contracted pharmacy.  
7           A pharmacy benefits manager shall make the list of the maximum allowable costs  
8           available to a contracted pharmacy in a format that is readily accessible and  
9           usable to the contracted pharmacy.
- 10          d. Ensure maximum allowable cost prices are not set below sources utilized by the  
11          pharmacy benefits manager.
- 12          e. Provide a reasonable administrative appeals procedure to allow a dispensing  
13          pharmacy provider to contest a listed maximum allowable price rate. The  
14          pharmacy benefits manager shall provide a determination to a provider that has  
15          contested a maximum allowable price rate within seven business days. If an  
16          update to the maximum allowable price rate for an appealed drug is warranted,  
17          the pharmacy benefits manager shall make the change based on the date of the  
18          determination and make the adjustment effective for all similarly situated  
19          pharmacy providers in this state within the network.
- 20          f. Ensure dispensing fees are not included in the calculation of maximum allowable  
21          cost price reimbursement to pharmacy providers.
- 22          3. A pharmacy benefits manager may not place a prescription drug on a maximum  
23          allowable price list unless:
- 24              a. The drug has at least two nationally available, therapeutically equivalent, multiple  
25              source drugs or a generic drug is available only from one manufacturer;
- 26              b. The drug is listed as therapeutically equivalent and pharmaceutically equivalent  
27              or "A" or "B" rated in the United States food and drug administration's most  
28              recent version of the "Orange Book" or the drug is "Z" rated; and
- 29              c. The drug is generally available for purchase by pharmacies in the state from  
30              national or regional wholesalers and not obsolete.
- 31          4. This section does not apply to state medicaid programs.

- 1        5. A pharmacy benefits manager that violates this section is guilty of a class B
- 2        misdemeanor.