

**Sixty-third Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1363  
(Representatives Keiser, N. Johnson, Kasper, Pollert, Weisz, Mock, M. Nelson)  
(Senators Klein, J. Lee, Heckaman)

AN ACT to create and enact a new section to chapter 19-02.1 of the North Dakota Century Code, relating to maximum allowable cost lists for pharmaceuticals; and to provide a penalty.

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

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

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

1. For the purposes of this section:
  - a. "Determination" means a decision that settles and ends a controversy or the resolution of a question through appeal.
  - b. "Maximum allowable cost price" means a maximum reimbursement amount for a group of therapeutically equivalent and pharmaceutically equivalent multiple source drugs.
  - c. "Multiple source drug" means a therapeutically equivalent drug that is available from at least two manufacturers.
  - d. "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.
2. With respect to each contract between a pharmacy benefits manager and a pharmacy, each pharmacy benefits manager shall:
  - a. Provide to the pharmacy, at the beginning of each contract and contract renewal, the sources utilized to determine the maximum allowable cost pricing of the pharmacy benefits manager.
  - b. Update any maximum allowable cost price list at least every seven business days, and provide prompt notification of the pricing changes to network pharmacies.
  - c. Disclose the sources utilized for setting maximum allowable cost price rates on each maximum allowable cost price list included under the contract and identify each maximum allowable cost price list that applies to the contracted pharmacy. A pharmacy benefits manager shall make the list of the maximum allowable costs available to a contracted pharmacy in a format that is readily accessible and usable to the contracted pharmacy.
  - d. Ensure maximum allowable cost prices are not set below sources utilized by the pharmacy benefits manager.
  - e. Provide a reasonable administrative appeals procedure to allow a dispensing pharmacy provider to contest a listed maximum allowable price rate. The pharmacy benefits manager shall provide a determination to a provider that has contested a maximum allowable price rate within seven business days. If an update to the maximum allowable price rate for an appealed drug is warranted, the pharmacy benefits manager shall make the change based on the date of the determination and make the adjustment effective for all similarly situated pharmacy providers in this state within the network.

- f. Ensure dispensing fees are not included in the calculation of maximum allowable cost price reimbursement to pharmacy providers.
- 3. A pharmacy benefits manager may not place a prescription drug on a maximum allowable price list unless:
  - a. The drug has at least two nationally available, therapeutically equivalent, multiple source drugs or a generic drug is available only from one manufacturer;
  - b. The drug is listed as therapeutically equivalent and pharmaceutically equivalent or "A" or "B" rated in the United States food and drug administration's most recent version of the "Orange Book" or the drug is "Z" rated; and
  - c. The drug is generally available for purchase by pharmacies in the state from national or regional wholesalers and not obsolete.
- 4. This section does not apply to state medicaid programs.
- 5. A pharmacy benefits manager that violates this section is guilty of a class B misdemeanor.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1363.

House Vote:      Yeas 93              Nays 0              Absent 1

Senate Vote:    Yeas 45              Nays 0              Absent 2

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2013.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2013,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State