

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2258
(Senators Klein, Armstrong, Casper)
(Representatives Dockter, Keiser, Vigesaa)

AN ACT to create and enact a new section to chapter 19-02.1 of the North Dakota Century Code, relating to pharmacy claim fees and pharmacy rights; to provide a penalty; and to provide for application.

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:

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

1. As used in this section:
 - a. "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.
 - b. "Plan sponsor" has the same meaning as in section 19-03.6-01.
 - c. "Third-party payer" has the same meaning as in section 19-03.6-01.
2. A pharmacy benefits manager or third-party payer may not directly or indirectly charge or hold a pharmacy responsible for a fee related to a claim:
 - a. That is not apparent at the time of claim processing;
 - b. That is not reported on the remittance advice of an adjudicated claim; or
 - c. After the initial claim is adjudicated at the point of sale.
3. Pharmacy performance measures or pay for performance pharmacy networks shall utilize the electronic quality improvement platform for plans and pharmacies or other unbiased nationally recognized entity aiding in improving pharmacy performance measures.
 - a. A pharmacy benefits manager or third-party payer may not collect a fee from a pharmacy if the pharmacy's performance scores or metrics fall within the criteria identified by the electronic quality improvement platform for plans and pharmacies or other unbiased nationally recognized entity aiding in improving pharmacy performance measures.
 - b. If a pharmacy benefits manager or third-party payer imposes a fee upon a pharmacy for scores or metrics or both scores and metrics that do not meet those established by the electronic quality improvement platform for plans and pharmacies or other nationally recognized entity aiding in improving pharmacy performance measures, a pharmacy benefits manager or third-party payer is limited to applying the fee to the professional dispensing fee outlined in the pharmacy contract.
 - c. A pharmacy benefits manager or third-party payer may not impose a fee relating to performance metrics on the cost of goods sold by a pharmacy.
4. A pharmacy benefits manager or third-party payer may not charge a patient a copayment that exceeds the cost of the medication. If a patient pays a copayment, the dispensing provider or pharmacy shall retain the adjudicated cost and the pharmacy benefits manager or third-party payer may not redact the adjudicated cost.

5. A pharmacy benefits manager or third-party payer may not prohibit a pharmacist or pharmacy from participating in a class action lawsuit. A pharmacy or pharmacist may disclose to the plan sponsor or to the patient information regarding the adjudicated reimbursement paid to the pharmacy which is compliant under the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.].
6. A pharmacist or pharmacy that belongs to a pharmacy service administration organization may receive a copy of a contract the pharmacy service administration organization entered with a pharmacy benefits manager or third-party payer on the pharmacy's or pharmacist's behalf.
7. A pharmacy or pharmacist may provide relevant information to a patient if the patient is acquiring prescription drugs. This information may include the cost and clinical efficacy of a more affordable alternative drug if one is available. Gag orders of such a nature placed on a pharmacy or pharmacist are prohibited.
8. A pharmacy or pharmacist may mail or deliver drugs to a patient as an ancillary service of a pharmacy.
9. A pharmacy benefits manager or third-party payer may not prohibit a pharmacist or pharmacy from charging a shipping and handling fee to a patient requesting a prescription be mailed or delivered.
10. Upon request, a pharmacy benefits manager or third-party payer shall provide a pharmacy or pharmacist with the processor control number, bank identification number, and group number for each pharmacy network established or administered by a pharmacy benefits manager to enable the pharmacy to make an informed contracting decision.
11. A pharmacy benefits manager or third-party payer may not require pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements for licensure as a pharmacy in this state.
12. A pharmacy benefits manager or other third-party payer that violates this section is guilty of a class B misdemeanor per violation occurrence.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2258.

Senate Vote: Yeas 44 Nays 0 Absent 3

House Vote: Yeas 84 Nays 8 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State