

Introduced by

Representative Keiser

1 A BILL for an Act to create and enact a new chapter to title 19 of the North Dakota Century  
2 Code, relating to prescription drug cost transparency; and to provide a penalty.

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

4 **SECTION 1.** A new chapter to title 19 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

- 8 1. "Board" means the state board of pharmacy.
- 9 2. "Commissioner" means the insurance commissioner.
- 10 3. "Concession" includes a free good, delayed billing, and billing forgiveness.
- 11 4. "Drug" means an:
  - 12 a. Article recognized in the official United States pharmacopoeia, official
  - 13 homeopathic pharmacopoeia of the United States, or official national formulary;
  - 14 b. Article intended for use in the diagnosis, cure, mitigation, treatment, or prevention
  - 15 of disease in a human or other animal;
  - 16 c. Article, other than food, intended to affect the structure or any function of the
  - 17 body of a human or any other animal; or
  - 18 d. Article intended for use as a component of any article specified in this subsection;
  - 19 but does not include a device or component, part, or accessory of the device.
- 20 5. "Health care plan" means an individual, blanket, or group plan, policy, or contract for
- 21 health care services issued or delivered in this state by a health insurer.
- 22 6. "Health insurer" means an insurance company, nonprofit health service corporation,
- 23 health maintenance organization, third-party payer, health program administered by a

1 state agency, or other person engaged as principal in the business of insurance which  
2 issues or delivers a health care plan in this state.

3 7. "Net spending" means the cost of drugs minus any discounts that lower the price of  
4 the drugs, including a rebate, fee, retained price protection, retail pharmacy network  
5 spread, and dispensing fee.

6 8. "Pharmacy benefits manager" has the same meaning as provided under section  
7 19-03.6-01.

8 9. "Rebate" means any discount, financial incentive, or concession that affects the price  
9 of a drug to a pharmacy benefits manager or health insurer for a drug manufactured  
10 by the pharmaceutical manufacturer.

11 10. "Specialty drug" has the same meaning as provided under section 19-02.1-16.2.

12 11. "Utilization management" means a set of formal techniques designed to monitor the  
13 use of, or evaluate the medical necessity, appropriateness, efficacy, or efficiency of,  
14 health care services, procedures, or settings.

15 12. "Wholesale acquisition cost" means, with respect to a drug, the manufacturer's list  
16 price for the drug to wholesalers or direct purchasers in the United States for the most  
17 recent month for which the information is available, as reported in wholesale price  
18 guides or other publications of drug pricing data, such as Medi-Span Price Rx or First  
19 Databank drug data. The term does not include a rebate, prompt pay, or other  
20 discount or other reduction in price.

**NOTE:** This bill draft creates duties for the State Board of Pharmacy. As an alternative, those same duties could be assigned to the Insurance Commissioner and Insurance Department.

21 **Disclosure of drug pricing information.**

- 22 1. a. Each drug manufacturer shall submit a report to the board no later than the  
23 fifteenth day of January, April, July, and October with the current wholesale  
24 acquisition cost information for the United States food and drug administration-  
25 approved drugs sold in or into the state by that manufacturer.
- 26 b. The board shall develop a website to publish wholesale acquisition cost  
27 information submitted under this subsection. The board shall make the website  
28 available on the board's website with a dedicated link prominently displayed on  
29 the home page, or by a separate, easily identifiable internet address.

- 1       2.   a.   Not more than thirty days after an increase in wholesale acquisition cost of forty  
2           percent or greater over the preceding five calendar years or ten percent or  
3           greater in the preceding twelve months for a drug with a wholesale acquisition  
4           cost of seventy dollars or more for a manufacturer-packaged drug container, a  
5           drug manufacturer shall submit a report to the board. The report must contain the  
6           following information:
- 7           (1)   Name of the drug;  
8           (2)   Whether the drug is a brand name or a generic;  
9           (3)   The effective date of the change in wholesale acquisition cost;  
10          (4)   Aggregate, company-level research and development costs for the previous  
11          calendar year;  
12          (5)   Aggregate rebate amounts paid to each pharmacy benefits manager for the  
13          calendar year;  
14          (6)   The name of each of the manufacturer's drugs approved by the United  
15          States food and drug administration in the previous five calendar years;  
16          (7)   The name of each of the manufacturer's drugs that lost patent exclusivity in  
17          the United States in the previous five calendar years; and  
18          (8)   A statement of rationale regarding the factor or factors that caused the  
19          increase in the wholesale acquisition cost, such as raw ingredient shortage  
20          or increase in pharmacy benefits manager rebates.
- 21        b.   The quality and types of information and data a drug manufacturer submits to the  
22           board pursuant to this subsection must be the same as the quality and types of  
23           information and data the manufacturer includes in the manufacturer's annual  
24           consolidated report on securities and exchange commission form 10-K or any  
25           other public disclosure.
- 26        c.   Within sixty days of receipt, the board shall publish the report on the board's  
27           prescription drug price information website developed under this chapter.
- 28        3.   A drug manufacturer shall notify the board in writing if the manufacturer is introducing  
29           a new drug to market at a wholesale acquisition cost that exceeds the threshold set for  
30           a specialty drug under the Medicare part D program.

- 1           a. The notice must include a statement of rationale regarding the factor or factors  
2           that caused the new drug to exceed the Medicare part D program price.
- 3           b. The drug manufacturer shall provide the written notice within three calendar days  
4           following the release of the drug in the commercial market.
- 5           c. A drug manufacturer may make the notification pending approval by the United  
6           States food and drug administration if commercial availability is expected within  
7           three calendar days following the approval.

8           **Disclosure of pharmacy benefits manager information.**

- 9           1. By February 1, 2022, and annually thereafter, a pharmacy benefits manager providing  
10           services for a health care plan shall file a report with the board. The report must  
11           contain the following information for the previous calendar year:
  - 12           a. The aggregated rebates, fees, price protection payments, and any other  
13           payments collected from each drug manufacturer;
  - 14           b. The aggregated dollar amount of rebates, price protection payments, fees, and  
15           any other payments collected from each drug manufacturer which were passed  
16           to health insurers;
  - 17           c. The aggregated fees, price concessions, penalties, effective rates, and any other  
18           financial incentive collected from pharmacies which were passed to enrollees at  
19           the point of sale; and
  - 20           d. The aggregated dollar amount of rebates, price protection payments, fees, and  
21           any other payments collected from drug manufacturers which were retained as  
22           revenue by the pharmacy benefits manager.
- 23           2. Reports submitted by pharmacy benefits managers under this section may not  
24           disclose the identity of a specific health benefit plan or enrollee, the prices charged for  
25           specific drugs or classes of drugs, or the amount of any rebates or fees provided for  
26           specific drugs or classes of drugs.
- 27           3. Within sixty days of receipt, the board shall publish the report on the board's  
28           prescription drug price information website developed under this chapter.

1        **Disclosure of health insurer spending information.**

2        1.    a.    By February 1, 2022, and annually thereafter, each health insurer shall submit a  
3                report to the board. The report must contain the following information for the  
4                previous two calendar years:

5                (1)   Names of the twenty-five most frequently prescribed drugs across all plans;

6                (2)   Names of the twenty-five drugs dispensed with the highest dollar spend in  
7                terms of gross revenue;

8                (3)   Percent increase in annual net spending for drugs across all plans;

9                (4)   Percent increase in premiums which is attributable to drugs across all plans;

10               (5)   Percentage of specialty drugs with utilization management requirements  
11               across all plans; and

12               (6)   Premium reductions attributable to specialty drug utilization management.

13               b.    Within sixty days of receipt, the board shall publish the report on the board's  
14               prescription drug price information website developed under this chapter.

15        2.    A report submitted by a health insurer may not disclose the identity of a specific health  
16               benefit plan or the prices charged for specific drugs or classes of drugs.

17        **Rulemaking - Forms.**

18        1.    The board may adopt rules to implement this chapter.

19        2.    The board shall develop forms that must be used for reporting required under this  
20               chapter. The commissioner shall assist the board in developing forms for health  
21               insurer reporting required under this chapter.

22        **Penalty.**

23        A health care plan, drug manufacturer, or pharmacy benefits manager that violates this  
24        chapter is guilty of a class B misdemeanor.