

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0774

HOUSE BILL NO. 1311

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to provide for the regulation of pharmacy benefits
2 management.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Covered entity," a nonprofit hospital or medical service organization, insurer, health
6 coverage plan, or health maintenance organization licensed pursuant to chapter 41,
7 a health program administered by a department or the state in the capacity of provider
8 of health coverage; or an employer, labor union, or other group of persons organized
9 in the state that provides health coverage to covered individuals who are employed
10 or reside in the state. The term does not include a self-funded plan that is exempt
11 from state regulation pursuant to ERISA, a plan issued for coverage for federal
12 employees or a health plan that provides coverage only for accidental injury,
13 specified disease, hospital indemnity, medicare supplement, disability income, long-
14 term care, or other limited benefit health insurance policies and contracts;

15 (2) "Covered individual," a member, participant, enrollee, contract holder, or policy
16 holder or beneficiary of a covered entity who is provided health coverage by the



1 covered entity. The term includes a dependent or other person provided health
2 coverage through a policy, contract, or plan for a covered individual;

3 (3) "Director," the director of the Division of Insurance;

4 (4) "Generic drug," a chemically equivalent copy of a brand-name drug with an expired
5 patent;

6 (5) "Labeler," an entity or person that receives prescription drugs from a manufacturer
7 or wholesaler and repackages those drugs for later retail sale and that has a labeler
8 code from the federal Food and Drug Administration under 21 Code of Federal
9 Regulations, 270.20 (1999);

10 (6) "Pharmacy benefits management," the procurement of prescription drugs at a
11 negotiated rate for dispensation within this state to covered individuals, the
12 administration or management of prescription drug benefits provided by a covered
13 entity for the benefit of covered individuals, or any of the following services provided
14 with regard to the administration of pharmacy benefits:

15 (a) Mail service pharmacy;

16 (b) Claims processing, retail network management, and payment of claims to
17 pharmacies for prescription drugs dispensed to covered individuals;

18 (c) Clinical formulary development and management services;

19 (d) Rebate contracting and administration;

20 (e) Certain patient compliance, therapeutic intervention, and generic substitution
21 programs; and

22 (f) Disease management programs;

23 (7) "Pharmacy benefits manager," an entity that performs pharmacy benefits
24 management. The term includes a person or entity acting for a pharmacy benefits

1 manager in a contractual or employment relationship in the performance of pharmacy
2 benefits management for a covered entity and includes mail service pharmacy;

3 (8) "Proprietary information," information on pricing, costs, revenue, taxes, market
4 share, customers, and personnel held by private entities and used for that private
5 entity's business purposes;

6 (9) "Trade secret," information, including a formula, pattern, compilation, program,
7 device, method, technique or process, that:

8 (a) Derives independent economic value, actual or potential, from not being
9 generally known to, and not being readily ascertainable by proper means by,
10 other persons who can obtain economic value from its disclosure or use; and

11 (b) Is the subject of efforts that are reasonable under the circumstances to
12 maintain its secrecy.

13 Section 2. No person or entity may perform or act as a pharmacy benefit manager in this
14 state without a valid certificate of authority issued by the Division of Insurance. The division
15 may impose a civil fine for any violation of this section not to exceed twenty-five thousand
16 dollars for each violation. Each person or entity seeking a certificate of authority to act as a
17 pharmacy benefit manager shall file with the division an application for a certificate of authority
18 upon a form to be furnished by the division and a filing fee of five hundred dollars.

19 Section 3. Each pharmacy benefits manager owes a fiduciary duty to a covered entity and
20 shall discharge that duty in accordance with the provisions of state and federal law.

21 Section 4. Each pharmacy benefits manager shall perform its duties with care, skill,
22 prudence and diligence and in accordance with the standards of conduct applicable to a fiduciary
23 in an enterprise of a like character and with like aims.

24 Section 5. Each pharmacy benefits manager shall discharge its duties with respect to the

1 covered entity for the primary purpose of providing benefits to covered individuals and
2 defraying reasonable expenses of administering health plans.

3 Section 6. Each pharmacy benefits manager shall notify the covered entity and any other
4 person with which it contracts in this state in writing of any activity, policy, or practice of the
5 pharmacy benefits manager that directly or indirectly presents any conflict of interest with the
6 duties imposed by sections 3 to 6, inclusive, of this Act.

7 Section 7. Each pharmacy benefits manager shall provide to a covered entity and any other
8 person that it contracts with in this state all financial and utilization information requested by
9 the covered entity relating to the provision of benefits to covered individuals through that
10 covered entity and all financial and utilization information relating to services to that covered
11 entity or person contracted with. A pharmacy benefits manager providing information under this
12 section may designate that material as confidential if the material or information is proprietary
13 information or a trade secret and is not utilization information. Information designated as
14 proprietary or a trade secret by a pharmacy benefits manager and provided to a covered entity
15 under this section may not be disclosed by the covered entity to any person without the consent
16 of the pharmacy benefits manager. However, the disclosure may be made in a court filing if
17 ordered by a court of this state for good cause shown. The pharmacy benefits manager shall
18 provide any information requested by the director within twenty days, but the director shall hold
19 any proprietary information or trade secrets confidential.

20 Section 8. With regard to the dispensation of a substitute prescription drug for a prescribed
21 drug to a covered individual the following provisions apply:

22 (1) The pharmacy benefits manager may request the substitution of a lower-priced
23 generic and therapeutically equivalent drug for a higher-priced prescribed drug;

24 (2) With regard to substitutions in which the substitute drug costs more than the

1 prescribed drug, the substitution must be made for medical reasons that benefit the
2 covered individual and must benefit the covered entity. If a substitution is being
3 made pursuant to this subdivision, the pharmacy benefits manager shall obtain the
4 approval of the prescribing health professional or that person's authorized
5 representative after disclosing to the covered individual and the covered entity the
6 cost of both drugs and any benefit or payment directly or indirectly accruing to the
7 pharmacy benefits manager as a result of the substitution.

8 Section 9. Each pharmacy benefits manager shall disclose to the covered entity and any other
9 person with which it contracts in this state all financial terms and arrangements for remuneration
10 of any kind that apply between the pharmacy benefits manager and any prescription drug
11 manufacturer or labeler, including formulary management and drug-switch programs,
12 educational support, claims processing, and pharmacy network fees that are charged from retail
13 pharmacies and data sales fees.

14 Section 10. The division shall enforce the provisions of this Act including the suspension
15 or revocation of the authority of a pharmacy benefit manager to provide pharmacy benefits
16 management in this state for a violation of any provision of this Act and or the imposition of a
17 monetary penalty not to exceed twenty-five thousand dollars for each violation pursuant to § 58-
18 4-28.1.

19 Section 11. The division shall promulgate rules, pursuant to chapter 1-26, to carry out the
20 issuance of a certificate of authority and the enforcement provisions of this Act. The rules may
21 include the following:

- 22 (1) Definition of terms;
- 23 (2) Use of prescribed forms;
- 24 (3) Reporting requirements;

1 (4) Prohibited practices; and

2 (5) Enforcement procedures.

3 Section 12. Any covered entity may bring a civil action to enforce the provisions of this Act

4 or to seek civil damages for the violation of its provisions.