

1.1 A bill for an act

1.2 relating to health; enforcing Minnesota unfair price discrimination law for  
1.3 prescription drugs; requiring disclosure of all financial transactions related  
1.4 to prescription drug pricing; requiring certificate of authority for a pharmacy  
1.5 benefits manager; requiring rulemaking; providing civil penalties; amending  
1.6 Minnesota Statutes 2008, section 151.061, subdivision 2; proposing coding for  
1.7 new law as Minnesota Statutes, chapter 151A.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2008, section 151.061, subdivision 2, is amended to read:

1.10 Subd. 2. **Remedy.** Any person injured by unfair discrimination as defined in  
1.11 subdivision 1 may bring a civil action and recover damages, together with costs and  
1.12 disbursements, including reasonable attorney's fees, and receive other equitable relief as  
1.13 determined by the court. The remedies provided by this section are cumulative and shall  
1.14 not be construed as restricting any remedy which is otherwise available. The attorney  
1.15 general may enforce this section pursuant to the authority in section 8.31.

1.16 Sec. 2. **[151A.01] DEFINITIONS.**

1.17 Subdivision 1. **Application.** The definitions in this section have the meanings  
1.18 given and apply to this chapter.

1.19 Subd. 2. **Commissioner.** "Commissioner" means the commissioner of health.

1.20 Subd. 3. **Covered entity.** "Covered entity" means a hospital; a health maintenance  
1.21 organization operating under chapter 62D; an insurance company licensed under chapter  
1.22 60A; a nonprofit health service plan corporation operating under chapter 62C; a fraternal  
1.23 benefit society operating under chapter 64B; a joint self-insurance employee health  
1.24 plan operating under chapter 62H; a health program administered by a department of

2.1 the state in the capacity of provider of health coverage; or an employer, labor union, or  
2.2 other group of persons organized in the state that provides health coverage to covered  
2.3 individuals who are employed or reside in the state. Covered entity does not include a  
2.4 self-funded plan that is exempt from state regulation under the Employee Retirement and  
2.5 Income Security Act; a plan issued for coverage for federal employees; or a health plan  
2.6 that provides coverage only for accidental injury, a specified disease, hospital indemnity,  
2.7 Medicare supplement, disability income, long-term care, or other limited benefit health  
2.8 insurance policies and contracts.

2.9 Subd. 4. **Covered individual.** "Covered individual" means a member, participant,  
2.10 enrollee, contract holder, policyholder, or beneficiary of a covered entity who is provided  
2.11 health coverage by the covered entity. Covered individual includes a dependent or  
2.12 other person provided health coverage through a policy, contract, or plan for a covered  
2.13 individual.

2.14 Subd. 5. **Labeler.** "Labeler" means an entity or person that receives prescription  
2.15 drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale  
2.16 and that has a labeler code from the federal Food and Drug Administration under Code of  
2.17 Federal Regulations, title 21, section 207.20.

2.18 Subd. 6. **Pharmacy benefits management.** "Pharmacy benefits management"  
2.19 means the procurement of prescription drugs at a negotiated rate for dispensing within  
2.20 the state to covered individuals, the administration or management of prescription drug  
2.21 benefits provided by a covered entity for the benefit of covered individuals, or any of the  
2.22 following services provided with regard to the administration of pharmacy benefits:

- 2.23 (1) mail service pharmacy;  
2.24 (2) claims processing, retail network management, and payment of claims to  
2.25 pharmacies for prescription drugs dispensed to covered individuals;  
2.26 (3) clinical formulary development and management services;  
2.27 (4) rebate contracting and administration;  
2.28 (5) patient compliance, therapeutic intervention, and generic substitution programs;  
2.29 and  
2.30 (6) disease management programs.

2.31 Subd. 7. **Pharmacy benefits manager.** "Pharmacy benefits manager" means an  
2.32 entity that performs pharmacy benefits management. Pharmacy benefits manager includes  
2.33 a person or entity acting for a pharmacy benefits manager in a contractual or employment  
2.34 relationship in the performance of pharmacy benefits management for a covered entity and  
2.35 includes mail service pharmacy.

3.1 Sec. 3. **[151A.03] CERTIFICATE OF AUTHORITY.**

3.2 No person or entity may perform or act as a pharmacy benefits manager in this state  
3.3 without a valid certificate of authority issued by the commissioner. Each person or entity  
3.4 seeking a certificate of authority to act as a pharmacy benefits manager shall file with the  
3.5 commissioner an application for a certificate of authority on a form furnished by the  
3.6 commissioner, along with a filing fee determined by the commissioner. Notwithstanding  
3.7 section 16A.1283, the commissioner may establish a filing fee.

3.8 Sec. 4. **[151A.05] DISCLOSURE.**

3.9 (a) Each pharmacy benefits manager shall provide to a covered entity and any other  
3.10 person with which it contracts within the state:

3.11 (1) all financial and utilization information requested by the covered entity relating to  
3.12 the provision of benefits to covered individuals through that covered entity and all financial  
3.13 and utilization information relating to services to that covered entity or person; and

3.14 (2) all rebates, discounts, or other forms of economic incentives that apply between  
3.15 the pharmacy benefits manager and any prescription drug manufacturer, labeler, or  
3.16 pharmacy, including formulary management and drug-switch programs, educational  
3.17 support, claims processing, pharmacy network fees that are charged from retail  
3.18 pharmacies, and data sales fees.

3.19 (b) The pharmacy benefits manager shall provide all information identified in  
3.20 paragraph (a), clause (2), to the commissioner and the attorney general's office. The  
3.21 information may be used for law enforcement purposes, including the enforcement  
3.22 of section 151.061.

3.23 Sec. 5. **[151A.07] DISPENSATION OF THERAPEUTIC ALTERNATIVE**  
3.24 **PRESCRIPTION DRUG.**

3.25 (a) In dispensing a therapeutic alternative prescription drug for a prescribed drug  
3.26 to a covered individual, the following provisions apply:

3.27 (1) the pharmacy benefits manager may request the switch of a lower-priced generic  
3.28 and therapeutically equivalent drug for a higher-priced prescribed drug; and

3.29 (2) if the therapeutic alternative drug costs more than the prescribed drug, the switch  
3.30 must only be made for medical reasons that benefit the covered individual.

3.31 (b) Before a switch is made under this section, the pharmacy benefits manager shall  
3.32 obtain approval of the prescribing health professional and must disclose to the covered  
3.33 individual and the covered entity the cost of both drugs and any benefit or payment  
3.34 directly or indirectly accruing to the pharmacy benefits manager as a result of the switch.

4.1 Sec. 6. [151A.08] REQUIRING MAIL ORDER SERVICE.

4.2 A pharmacy benefits manager shall not require a covered individual whose contract  
4.3 has the option of using a retail pharmacy to change by requiring the individual to  
4.4 exclusively use a mail order pharmacy unless the mail order pharmacy offers drugs at the  
4.5 same or at a lower price than the covered individual could receive at the retail pharmacy.

4.6 Sec. 7. [151A.09] ENFORCEMENT.

4.7 The commissioner shall enforce this chapter, including the suspension or revocation  
4.8 of the authority of a pharmacy benefits manager to provide pharmacy benefits management  
4.9 in this state for a violation of this chapter or the imposition of a monetary penalty not to  
4.10 exceed \$25,000 for each violation. The attorney general may pursue the penalties and  
4.11 remedies available to the attorney general under section 8.31 for any violation of this  
4.12 chapter.

4.13 Sec. 8. [151A.11] RULES.

4.14 The commissioner shall adopt rules to issue a certificate of authority and to enforce  
4.15 this chapter.

4.16 Sec. 9. [151A.13] CIVIL ACTION.

4.17 A covered entity may bring a civil action to enforce this chapter or to seek civil  
4.18 damages for the violation of this chapter.