Sixty-fifth Legislative Assembly of North Dakota

## **SENATE BILL NO. 2231**

Introduced by

Senators J. Lee, Schaible

**Representative Weisz** 

- 1 A BILL for an Act to create and enact two new sections to chapter 26.1-47 of the North Dakota
- 2 Century Code, relating to preferred provider arrangement requirements for insurance prior
- 3 authorization for air ambulance services; to amend and reenact section 26.1-47-01,
- 4 subsection 6 of section 26.1-47-02, and section 26.1-47-07 of the North Dakota Century Code,
- 5 relating to preferred provider organizations; and to provide an effective date.

## 6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 7 SECTION 1. AMENDMENT. Section 26.1-47-01 of the North Dakota Century Code is
- 8 amended and reenacted as follows:

## 9 **26.1-47-01. Definitions.**

- 10 As used in this chapter, unless the context indicates otherwise:
- 1. <u>"Air ambulance" means a specially equipped aircraft licensed by the state department</u>
  of health for transporting patients.
- 13 <u>2.</u> "Air ambulance provider" means a publicly or privately owned organization that is
  14 licensed or applies for licensure by the state department of health to provide
- 15 <u>transportation and care of patients by air ambulance.</u>
- 16 <u>3.</u> <u>"Authorized representative" means:</u>
- 17 <u>a.</u> <u>A person to which a covered person has given express written consent to</u>
  18 <u>represent the covered person;</u>
- 19b.A person authorized by law to provide substituted consent for a covered person;20or
- 21c.If a covered person is unable to provide consent, the covered person's treating22health care professional or a family member of the covered person.

1	<u>5.</u>	"Balance billing" means the practice of an air ambulance provider billing for the
2		difference between the air ambulance provider's charge and the health care insurer's
3		allowed amount.
4	<u>6.</u>	"Commissioner" means the insurance commissioner of the state of North Dakota.
5	<del>2.<u>7.</u></del>	"Covered person" means any personan individual on whose behalf the health care
6		insurer is obligated to pay for or provide health care services.
7	<del>3.<u>8.</u></del>	"Facility" means an institution or other immobile health care setting providing physical,
8		mental, or behavioral health care services.
9	<u>9.</u>	"Health benefit plan" means the health insurance policy or subscriber agreement
10		between the covered person or the policyholder and the health care insurer which
11		defines the services covered.
12	<u>4.10.</u>	"Health care insurer" includes an insurance company as defined in section 26.1-02-01,
13		a health service corporation as defined in section 26.1-17-01, a health maintenance
14		organization as defined in section 26.1-18.1-01, and a fraternal benefit society as
15		defined in section 26.1-15.1-02.
16	<del>5.<u>11.</u></del>	"Health care provider" means licensed providers of health care services in this state.
17	<del>6.<u>12.</u></del>	"Health care services" means services rendered or products sold by a health care
18		provider within the scope of the provider's license. The term includes hospital, medical,
19		surgical, dental, vision, chiropractic, and pharmaceutical services or products.
20	<del>7.<u>13.</u></del>	"Network" means a group of preferred providers providing services under a network
21		<u>plan.</u>
22	<u>14.</u>	"Network plan" means a health benefit plan that requires a covered person to use, or
23		creates incentives, including financial incentives, for a covered person to use health
24		care providers managed by, owned by, under contract with, or employed by the health
25		care insurer.
26	<u>15.</u>	"Preferred provider" means a duly licensed health care provider or group of providers
27		who have contracted with the health care insurer, under this chapter, to provide health
28		care services to covered persons under a health benefit plan.
29	<del>8.<u>16.</u></del>	"Preferred provider arrangement" means a contract between the health care insurer
30		and one or more health care providers which complies with all the requirements of this
31		chapter.

1	<u>17.</u>	"Prior authorization" means confirmation by the covered person's health care insurer					
2		that the air ambulance services sought to be provided by the air ambulance provider					
3		meet the criteria for coverage under the covered person's health benefit plan as					
4		defined by the provisions of the covered person's health benefit plan.					
5	SECTION 2. AMENDMENT. Subsection 6 of section 26.1-47-02 of the North Dakota						
6	Century	ntury Code is amended and reenacted as follows:					
7	6.	A health care insurer may not penalize a provider because the provider, in good faith,					
8		reports to state or federal authorities any act or practice by the health carrier that care					
9		insurer which jeopardizes patient health or welfare.					
10	SECTION 3. AMENDMENT. Section 26.1-47-07 of the North Dakota Century Code is						
11	amende	d and reenacted as follows:					
12	26.1-47-07. Penalty.						
13	The commissioner may levy an administrative penalty not to exceed ten thousand dollars						
14	for a violation of this chapter. Any person who violates this chapter is guilty of a class A						
15	misdemeanor.						
16	SECTION 4. A new section to chapter 26.1-47 of the North Dakota Century Code is created						
17	and ena	cted as follows:					
18	Pre	ferred provider arrangements - Requirements for accessing air ambulance					
19	provide	<u>rs.</u>					
20	<u>1.</u>	In addition to the other preferred provider arrangement requirements under this					
21		chapter, a preferred provider arrangement must require the health care insurer and					
22		health care provider comply with this section.					
23	<u>2.</u>	Before a health care provider arranges for air ambulance services for an individual the					
24		health care provider knows to be a covered person, the health care provider shall					
25		request a prior authorization from the covered person's health care insurer for the air					
26		ambulance services to be provided to the covered person. If the health care provider is					
27		unable to obtain prior authorization from the covered person's health care insurer:					
28		a. The health care provider shall provide the covered person or the covered					
29		person's authorized representative an out-of-network services written disclosure					
30		stating the following:					

1		(1)	Certain air ambulance providers may be called upon to render care to the
2			covered person during the course of treatment;
3		<u>(2)</u>	These air ambulance providers might not have contracts with the covered
4			person's health care insurer and are, therefore, considered to be out of
5			network;
6		<u>(3)</u>	If these air ambulance providers do not have contracts with the covered
7			person's health care insurer, the air ambulance services will be provided on
8			an out-of-network basis;
9		<u>(4)</u>	A description of the range of the charges for the out-of-network air
10			ambulance services for which the covered person may be responsible;
11		<u>(5)</u>	A notification the covered person or the covered person's authorized
12			representative may agree to accept and pay the charges for the out-of-
13			network air ambulance services, contact the covered person's health care
14			insurer for additional assistance, or rely on other rights and remedies that
15			may be available under state or federal law; and
16		<u>(6)</u>	A statement indicating the covered person or the covered person's
17			authorized representative may obtain a list of air ambulance providers from
18			the covered person's health care insurer which are preferred providers and
19			the covered person or the covered person's representative may request
20			those participating air ambulance providers be accessed by the health care
21			provider.
22	<u>b.</u>	<u>Bef</u>	ore air ambulance services are accessed for the covered person, the health
23		care	e provider shall provide the covered person or the covered person's
24		<u>auth</u>	norized representative the written disclosure, as outlined by subdivision a and
25		<u>obta</u>	ain the covered person's or the covered person's authorized representative's
26		<u>sigr</u>	nature on the disclosure document acknowledging the covered person or the
27		<u>COV</u>	ered person's authorized representative received the disclosure document
28		befo	ore the air ambulance services were accessed. If the health care provider is
29		<u>una</u>	ble to obtain the signature required under this subdivision, the health care
30		prov	vider shall document the reason, which satisfies the requirement under this
31		<u>sub</u>	division.

1	<u>3.</u>	This section does not:		
2		<u>a.</u>	Preclude a covered person from agreeing to accept and pay the charges for the	
3			out-of-network services and not access the covered person's health care	
4			insurer's out-of-network air ambulance billing process described under this	
5			section.	
6		<u>b.</u>	Preclude a covered person from agreeing to accept and pay the bill received	
7			from the out-of-network air ambulance provider or from not accessing the air	
8			ambulance provider mediation process described under this section.	
9		<u>C.</u>	Regulate an out-of-network air ambulance provider's ability to charge certain fees	
10			for services or to charge any amount of fee for services provided to a covered	
11			person by the out-of-network air ambulance provider.	
12	<u>4.</u>	<u>A h</u>	ealth care insurer shall develop a program for payment of out-of-network air	
13		<u>aml</u>	bulance bills submitted under this section. A health benefit plan may not be issued	
14		<u>in t</u> ł	nis state without the terms of the health benefit plan including the provisions of the	
15		<u>hea</u>	Ith care insurer's program for payment of out-of-network air ambulance bills.	
16		<u>a.</u>	A health care insurer may elect to pay out-of-network air ambulance provider bills	
17			as submitted, or the health care insurer may elect to use the out-of-network air	
18			ambulance provider mediation process described in subsection 5.	
19		<u>b.</u>	This section does not preclude a health care insurer and an out-of-network facility	
20			air ambulance provider from agreeing to a separate payment arrangement.	
21	<u>5.</u>	<u>A h</u>	ealth care insurer shall establish an air ambulance provider mediation process for	
22		pay	ment of out-of-network air ambulance provider bills. A health benefit plan may not	
23		<u>be i</u>	ssued in this state if the terms of the health benefit plan do not include the	
24		pro	visions of the health care insurer's air ambulance provider mediation process for	
25		pay	ment of out-of-network air ambulance provider bills.	
26		<u>a.</u>	A health care insurer's air ambulance provider mediation process must be	
27			established in accordance with mediation standards recognized by the	
28			department by rule.	
29		<u>b.</u>	If the health care insurer and the out-of-network air ambulance provider agree to	
30			a separate payment arrangement or if the covered person agrees to accept and	
31			pay the out-of-network air ambulance provider's charges for the out-of-network	

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1			services, compliance with the air ambulance provider mediation process is not	
2			required.	
3		<u>C.</u>	A health care insurer shall maintain records on all requests for mediation and	
4			completed mediation under this subsection for one year and, upon request of the	
5			commissioner, submit a report to the commissioner in the format specified by the	
6			commissioner.	
7	<u>6.</u>	<u>The</u>	e rights and remedies provided under this section to covered persons are in	
8		ado	lition to and may not pre-empt any other rights and remedies available to covered	
9		per	sons under state or federal law.	
10	<u>7.</u>	<u>The</u>	e department shall enforce this section and shall report a violation of this section by	
11		<u>a fa</u>	acility to the state department of health.	
12	<u>8.</u>	<u>Thi</u>	s section does not apply to a policy or certificate of insurance, whether written on a	
13		gro	up or individual basis, which provides coverage limited to:	
14		<u>a.</u>	A specified disease, a specified accident, or accident-only coverage;	
15		<u>b.</u>	<u>Credit;</u>	
16		<u>C.</u>	Dental;	
17		<u>d.</u>	<u>Disability;</u>	
18		<u>e.</u>	<u>Hospital;</u>	
19		<u>f.</u>	Long-term care insurance as defined by chapter 26.1-45;	
20		<u>g.</u>	Vision care or any other limited supplemental benefit;	
21		<u>h.</u>	A medicare supplement policy of insurance, as defined by the commissioner by	
22			rule or coverage under a plan through medicare;	
23		<u>i.</u>	Medicaid;	
24		<u>j.</u>	The federal employees health benefits program and any coverage issued as a	
25			supplement to that coverage;	
26		<u>k.</u>	Coverage issued as supplemental to liability insurance, workers' compensation,	
27			or similar insurance; and	
28		<u>l.</u>	Automobile medical payment insurance.	
29	<u>9.</u>	<u>The</u>	e commissioner may adopt rules to implement this section.	
30	SEC	СТІО	N 5. A new section to chapter 26.1-47 of the North Dakota Century Code is created	
31	and enacted as follows:			

- 1 <u>Rules.</u>
- 2 If an action of Congress, the president of the United States, or a federal agency allows the
- 3 state to regulate the rates, routes, or services of air ambulance providers, the commissioner
- 4 may adopt rules consistent with the action taken.
- 5 SECTION 6. EFFECTIVE DATE. This Act becomes effective January 1, 2018.