

# INSURANCE

## CHAPTER 253

### SENATE BILL NO. 2347

(Senators Wardner, Flakoll, Heitkamp)  
(Representatives Delmore, L. Meier, Monson)

## SELF-INSURANCE BY COOPERATIVE AGREEMENT

AN ACT to amend and reenact section 26.1-01-07.4 of the North Dakota Century Code, relating to cooperative agreements for group health care coverage.

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

**SECTION 1. AMENDMENT.** Section 26.1-01-07.4 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-01-07.4. Group health care coverage - Cooperative agreement allowed.** The insurance commissioner shall adopt rules to enable groups to form a cooperative that would allow those groups to purchase group health insurance coverage or to self-insure as one entity.

Approved March 16, 2005

Filed March 17, 2005

## CHAPTER 254

### SENATE BILL NO. 2194

(Senators Klein, Krebsbach)  
(Representatives Keiser, Wald)

## REINSURANCE TREATMENT AND DELINQUENCY

AN ACT to amend and reenact sections 26.1-02-21 and 26.1-06.1-31 of the North Dakota Century Code, relating to treatment of reinsurance upon insolvency, liquidation, or dissolution and reinsurer's liability in delinquency proceedings.

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

**SECTION 1. AMENDMENT.** Section 26.1-02-21 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-02-21. Reinsurance - Treatment upon insolvency, liquidation, or dissolution.** ~~No credit~~

1. Credit may not be allowed, as an admitted asset or as a deduction from liability, to any ceding insurer for reinsurance, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance must be payable under one or more contracts reinsured by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured reported claims allowed by the liquidation court or proof of payment of the claim by a guaranty association without diminution because of the insolvency of the ceding insurer or to its domiciliary liquidator or receiver except when. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except if:
  4. a. The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; and or
  2. b. The assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.
2. Notwithstanding subsection 1, if a life and health insurance guaranty association has elected to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or the guaranty association's designated successor. Any payment made at the direction of the guaranty association or the guaranty association's designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for the claim payment.

3. The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding. During the pendency of the claim, any assuming insurer may investigate the claim and interpose, at the assuming insurer's own expense, in the proceeding in which the claim is to be adjudicated any defenses the assuming insurer determines available to the ceding insurer, or the ceding insurer's liquidator. The expense may be filed as a claim against the insolvent ceding insurer as a class 7 claim under section 26.1-06.1-41 to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. If two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose one or more defenses to the claim, the expense must be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

**SECTION 2. AMENDMENT.** Section 26.1-06.1-31 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-06.1-31. Reinsurer's liability.**

1. The amount recoverable by the liquidator from reinsurers may not be reduced as a result of the delinquency proceedings; regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance must be payable under one or more reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court or proof of payment of the claim by a guaranty association without diminution because of the insolvency of the ceding insurer. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except if:
  - a. The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or
  - b. The assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to such payees.

2. Notwithstanding subsection 1, if a life and health insurance guaranty association has elected to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or the guaranty association's designated successor. Any payment made at the direction of the guaranty association or the guaranty association's designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for the claim payment.

Approved March 25, 2005

Filed March 25, 2005

**CHAPTER 255****HOUSE BILL NO. 1213**

(Representatives Dosch, Ekstrom, N. Johnson)  
(Senators Espegard, Heitkamp, Klein)

**UNAUTHORIZED INSURANCE SALES**

AN ACT to amend and reenact section 26.1-02-25 of the North Dakota Century Code, relating to the penalty for an insurance company selling unauthorized insurance without a license; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 26.1-02-25 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-02-25. Penalty.** Any unauthorized insurance company or other insurance entity or any representative or agent of the company or entity that transacts any unauthorized act of insurance business as provided by this chapter is guilty of a class A ~~misdemeanor~~ C felony.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 21, 2005  
Filed March 22, 2005

## CHAPTER 256

### SENATE BILL NO. 2088

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

## INSURANCE INCORPORATION ARTICLES REVIEW

AN ACT to amend and reenact sections 26.1-05-07, 26.1-13-02, 26.1-13-33, and 26.1-16-07 of the North Dakota Century Code, relating to review of insurance company articles of incorporation and amendments by the insurance commissioner.

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

**SECTION 1. AMENDMENT.** Section 26.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-05-07. Examination of articles by attorney general and by commissioner - Certificate - Filing.** The ~~attorney general~~ commissioner shall examine the articles of incorporation and any amendments ~~and if they conform to this chapter and to determine if the articles and any amendments~~ are consistent with the constitution and laws of this state ~~shall certify to the commissioner~~. The commissioner shall examine the company to ascertain whether it has complied with the requirements of law according to the nature of the business proposed to be transacted by it. If the commissioner is satisfied by the examination that the corporation has complied with the law, the commissioner shall deliver to it a certified copy of the articles of incorporation or amendments to the articles of incorporation and a certificate stating the corporation has complied with all requirements of law. The certified copy of the articles of incorporation or amendments to the articles of incorporation and of the certificate may be used for or against the company with the same effect as the originals and are conclusive evidence of the fact of organization of the company as of the date of the certificate.

**SECTION 2. AMENDMENT.** Section 26.1-13-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-02. Articles of incorporation - Territory of operation - Insurance applications required.** Persons desiring to form a county mutual insurance company shall submit to the commissioner a description of the territory of operation and shall submit to the commissioner ~~and to the attorney general~~ the articles of incorporation of the proposed company. The territory of operation is subject to the review and approval of the commissioner. An existing county mutual insurance company that desires to expand its territory of operation shall submit a description of the current territory of operation and proposed territory of operation to the commissioner for review and approval. If merger of two or more county mutual insurance companies is proposed, the commissioner shall determine the territory of operation of the merged company. Upon a showing of good cause, the territory of operations of the merged company may exceed thirty counties. If the articles are found to comply with this chapter, the commissioner shall approve the articles and the articles must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The articles must be signed by the number of persons required to incorporate the company and must be accompanied by sufficient evidence of the execution of bona fide applications for insurance to the number and

in the amount stated in section 26.1-13-01. The articles of incorporation must set forth:

1. The name of the company.
2. The name of the city in or near which the business office of the company is to be located.
3. The intended duration of the company, which is perpetual.

**SECTION 3. AMENDMENT.** Section 26.1-13-33 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-33. Articles and bylaws of mutual reinsurance company - Certificate of authority - Right to do business.** The articles of incorporation and bylaws of a mutual reinsurance company formed under section 26.1-13-31 must be submitted for approval to the ~~attorney general and to the~~ commissioner. If the articles and bylaws are found to conform with this chapter and not inconsistent with the constitution or laws of this state, the commissioner shall approve the articles and bylaws and they must be filed in the office of the secretary of state. A certified copy of the articles and bylaws then must be filed with the commissioner, and a copy must be delivered to the members of the company. The commissioner shall issue a certificate to the effect that the company has complied with the requirements of law. The certificate is the company's authority to commence business and issue policies. A certified copy of the articles and the certificate may be used for or against the company with the same effect as the originals and is conclusive evidence of the organization of the company as of the date of the certificate.

**SECTION 4. AMENDMENT.** Section 26.1-16-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-16-07. Articles of incorporation - Filing - Approval - Deposit required - Authority to solicit.** The articles of incorporation must be submitted to the ~~attorney general, and if the attorney general finds them in conformity with this chapter and not inconsistent with the constitution and laws of this state, the attorney general shall approve the articles and certify them to the~~ commissioner, who also shall examine the articles to ascertain whether they comply with all applicable requirements of the law. After the articles have been approved by the ~~attorney general and by the~~ commissioner, they must be filed in the office of the secretary of state, and a certified copy must be filed with the commissioner. The society shall deposit with the commissioner United States government bonds, United States treasury certificates, bonds of the state of North Dakota, or certificates of deposit of the Bank of North Dakota in the amount of at least two hundred fifty dollars. Upon filing the certified copy of its articles and making the deposit, the society may solicit and secure the necessary preliminary members as the basis for the issuance to it of a certificate of authority. The solicitation of such members, however, must be conducted in accordance with any applicable rules adopted by the commissioner.

Approved March 8, 2005

Filed March 8, 2005

## CHAPTER 257

### SENATE BILL NO. 2093

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

## INSURANCE HEARING WAIVERS

AN ACT to amend and reenact section 26.1-07-05.1 and subsection 4 of section 26.1-10-03 of the North Dakota Century Code, relating to waiver of dissolution, merger, or acquisition hearings by the insurance commissioner.

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

**SECTION 1. AMENDMENT.** Section 26.1-07-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-07-05.1. Hearing on petition - General duties of commissioner.** The commissioner shall hold a hearing on the petition and determine whether the consolidation or reinsurance will be allowed. The hearing must be conducted under chapter 28-32. Within sixty days of the close of the hearing, the commissioner shall enter findings of fact, conclusions of law, and an order either approving or disapproving any petition. The commissioner in making the determination shall consider the following:

1. Whether the proposed consolidation or reinsurance contract is inequitable to the policyholders of any domestic insurance company involved;
2. Whether the proposed consolidation or reinsurance contract would materially reduce the financial security of policyholders of the domestic insurer in this state or elsewhere; and
3. Whether the competence, experience, and integrity of the persons of a foreign insurance company who would control the operation of the consolidated insurance company or the reinsuring company are such that it would not be in the interest of the policyholders of the company to permit the consolidation or reinsurance contract.

The findings of fact, conclusions of law, and order entered by the commissioner are subject to appeal under chapter 28-32. The commissioner may waive the hearing if the companies involved and all the policyholders of the domestic companies involved consent to waiving the hearing.

**SECTION 2. AMENDMENT.** Subsection 4 of section 26.1-10-03 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 unless, after a public hearing, the commissioner finds that:
  - a. After the change of control, the domestic insurance company referred to in subsection 1 would not be able to satisfy the

- requirements for the issuance of a certificate of authority to write the lines of insurance for which it is presently licensed.
- b. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.
  - c. The financial condition of any acquiring party might jeopardize the financial stability of the insurance company or prejudice the interest of its policyholders.
  - d. The plans or proposals which the acquiring party has to liquidate the insurance company, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the company and not in the public interest.
  - e. The competence, experience, and integrity of those persons who would control the operation of the insurance company are such that it would not be in the interest of policyholders of the company and of the public to permit the merger or other acquisition of control.
  - f. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

The commissioner shall hold the public hearing referred to in this subsection within thirty days after the statement required by subsection 1 is filed and shall give at least twenty days' notice to the person filing the statement. Not less than seven days' notice of the hearing must be given by the person filing the statement to the insurance company and to other persons designated by the commissioner. The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurance company, any person to whom notice of hearing was sent, and any other person whose interests may be affected have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith are entitled to conduct discovery proceedings in the same manner allowed in district court of this state. All discovery proceedings must be concluded not later than three days prior to the hearing. The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. The commissioner may waive the hearing if the companies involved and all the policyholders of the domestic companies involved consent to waiving the hearing.

## CHAPTER 258

### SENATE BILL NO. 2244

(Senator Brown)  
(Representative Price)

### CHAND COVERAGE ELIGIBILITY

AN ACT to amend and reenact subsection 9 of section 26.1-08-01, subsections 4 and 10 of section 26.1-08-12, and section 26.1-08-13 of the North Dakota Century Code, relating to eligibility for coverage under the comprehensive health association of North Dakota.

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

**SECTION 1. AMENDMENT.** Subsection 9 of section 26.1-08-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Health insurance coverage" means any hospital and medical expense-incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes benefits that pay the costs of or provide medical, surgical, or hospital care or, if selected by the eligible individual, chiropractic care. The term does not include:
  - a. Coverage only for accident, disability income insurance, or any combination of the two;
  - b. Coverage issued as a supplement to liability insurance;
  - c. Liability insurance, including general liability insurance and automobile liability insurance;
  - d. Workforce safety and insurance or similar insurance;
  - e. Automobile medical payment insurance;
  - f. Credit-only insurance;
  - g. Coverage for onsite medical clinics; ~~or~~
  - h. Other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits;
  - i. Limited scope dental or vision benefits;
  - j. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of this care;
  - k. Other similar limited benefits specified under federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.];

- l. Coverage only for specified disease or illness;
- m. Hospital indemnity or other fixed indemnity insurance;
- n. Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act [42 U.S.C. 1395ss(g)(1)];
- o. Coverage supplemental to the coverage provided under chapter 55 of United States Code title 10 [10 U.S.C. 1071 et seq.] relating to armed forces medical and dental care; or
- p. Similar supplemental coverage provided under a group health plan.

**SECTION 2. AMENDMENT.** Subsections 4 and 10 of section 26.1-08-12 of the North Dakota Century Code are amended and reenacted as follows:

- 4. An individual may qualify to enroll in the association for benefit plan coverage as:
  - a. A standard applicant:
    - (1) An individual who has been a resident of this state ~~for one hundred eighty-three days~~ and continues to be a resident of the state who has received from at least one insurance carrier within one hundred ~~eighty-three~~ eighty days of the date of application, one of the following:
      - (a) Written evidence of rejection or refusal to issue substantially similar insurance for health reasons by one insurer.
      - (b) Written evidence that a restrictive rider or a preexisting condition limitation, the effect of which is to reduce substantially, coverage from that received by an individual considered a standard risk, has been placed on the individual's policy.
      - (c) Refusal by an insurer to issue insurance except at the rate exceeding the association benefit rate.
    - (2) Is not eligible for the state's medical assistance program.
  - b. A Health Insurance Portability and Accountability Act of 1996 applicant:
    - (1) An individual who meets the federally defined eligibility guidelines as follows:
      - (a) Has had eighteen months of qualifying previous coverage as defined in section 26.1-36.3-01, the most recent of which is covered under a group health plan, governmental plan, or church plan;

- (b) Has applied for coverage under this chapter within sixty-three days of the termination of the qualifying previous coverage;
    - (c) Is not eligible for coverage under a group health benefit plan as the term is defined in section 26.1-36.3-01, medicare, or medicaid;
    - (d) Does not have any other health insurance coverage;
    - (e) Has not had the most recent qualifying previous coverage described in subparagraph a terminated for nonpayment of premiums or fraud; and
    - (f) If offered under the option, has elected continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82], or under a similar state program, and that coverage has exhausted.
  - (2) Is and continues to be a resident of the state.
  - (3) Is not eligible for the state's medical assistance program.
- c. An applicant age sixty-five and over or disabled:
  - (1) An individual who is eligible for medicare by reason of age or disability and has been a resident of this state ~~for one hundred eighty-three days~~ and continues to be a resident of this state who has received from at least one insurance carrier within one hundred ~~eighty-three~~ eighty days of the date of application, one of the following:
    - (a) Written evidence of rejection or refusal to issue substantially similar insurance for health reasons by one insurer.
    - (b) Written evidence that a restrictive rider or a preexisting condition limitation, the effect of which is to reduce substantially, coverage from that received by an individual considered a standard risk, has been placed on the individual's policy.
    - (c) Refusal by an insurer to issue insurance except at the rate exceeding the association benefit rate.
  - (2) Is not eligible for the state's medical assistance program.
- d. A Trade Adjustment Assistance Reform Act of 2002 applicant:
  - (1) A trade adjustment assistance, pension benefit guarantee corporation individual applicant who:
    - (a) Has three or more months of previous health insurance coverage at the time of application;

- (b) Has applied for coverage within sixty-three days of the termination of the individual's previous health insurance coverage;
  - (c) Is and continues to be a resident of the state;
  - (d) Is not enrolled in the state's medical assistance program;
  - (e) Is not an inmate or a resident of a public institution; and
  - (f) Does not have health insurance coverage through:
    - [1] The spouse's employer if the coverage provides for employer contribution of fifty percent or more of the cost of coverage of the spouse, the eligible individual, and the dependents or the coverage is in lieu of an employer's cash or other benefit under a cafeteria plan.
    - [2] A state's children's health insurance program, as defined under section 50-29-01.
    - [3] A government plan.
    - [4] Chapter 55 of United States Code title 10 [10 U.S.C. 1071 et seq.] relating to armed forces medical and dental care.
    - [5] Part A or part B of title XVIII of the federal Social Security Act [42 U.S.C. 1395 et seq.] relating to health insurance for the aged and disabled.
  - (2) Coverage under this subdivision may be provided to an individual who is eligible for health insurance coverage through the federal Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99-272; 100 Stat. 82]; a spouse's employer plan in which the employer contribution is less than fifty percent; or the individual marketplace, including continuation or guaranteed issue, but who elects to obtain coverage under this subdivision.
10. Preexisting conditions.
- a. Association coverage must exclude charges or expenses incurred during the first one hundred eighty days following the effective date of coverage for any condition for which medical advice, diagnosis, care, or treatment was recommended or received during the ~~ninety~~ one hundred eighty days immediately preceding the date of the application.
  - b. Association coverage must exclude charges or expenses incurred for maternity during the first two hundred seventy days following the effective date of coverage.

- c. Any individual with coverage through the association due to a catastrophic condition or major illness who is also pregnant at the time of application is eligible for maternity benefits after the first one hundred eighty days of coverage.
- d. A preexisting condition may not be imposed on an individual who is eligible under subdivision b or d of subsection 4.

**SECTION 3. AMENDMENT.** Section 26.1-08-13 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-08-13. Termination of coverage.** The coverage of an individual who ceases to meet the eligibility requirements of this chapter may be terminated at the end of the policy period for which the necessary premiums have been paid. Coverage under this chapter terminates:

1. Upon request of the covered ~~person~~ individual.
2. For failure to pay the required premium subject to a thirty-one-day grace period.
3. When the one million dollar lifetime maximum benefit amount has been reached.
4. If the covered ~~person~~ individual qualifies for health benefits under the state's medical assistance program.
5. If the covered individual physically resides outside this state for more than one hundred eighty-two days of each calendar year, except for an individual who is absent from the state for a verifiable medical reason as determined by the board.
6. At the option of the plan, thirty days after the plan makes an inquiry concerning the individual's eligibility or place of residence to which the individual does not reply.

Approved March 30, 2005  
Filed March 31, 2005

## CHAPTER 259

### HOUSE BILL NO. 1501

(Representatives Froseth, Damschen, Monson, Nicholas)  
(Senator Klein)

## COUNTY MUTUAL INSURANCE COMPANY BOUNDARIES

AN ACT to amend and reenact section 26.1-13-15 and subsection 2 of section 26.1-25-02 of the North Dakota Century Code, relating to territorial limits of county mutual insurance companies.

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

**SECTION 1. AMENDMENT.** Section 26.1-13-15 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-15. Territorial limits of county mutual company's operations - Terms of policies - Property insurable.** A county mutual insurance company may not insure any property beyond ~~its~~ the company's authorized territory of operation except as provided in subsection 3 of section 26.1-13-12 and except that this territorial limitation does not apply to reinsurance contracts. A policy may not be issued to exceed five years. A policy may not be issued covering property located within the platted limits of any incorporated city in this state unless:

- 1- ~~The~~ the policy issued provides coverage as specified under sections 26.1-13-14 and 26.1-13-16 within the platted limits of any incorporated city in this state on the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof ~~as specified in sections 26.1-13-14 and 26.1-13-16 to existing members within the platted limits of any incorporated city in this state; or~~
- 2- ~~The~~ the policy issued provides coverage specified in sections 26.1-13-14 and 26.1-13-16 on property located within the platted limits of any incorporated city with a population of less than ten thousand located within the territory comprised in the formation of the company and on no more than four residential rental units of each policyholder.

The company may insure all property located outside of incorporated cities within the limits of the territory comprised in the formation of the company. Policies issued on property located within the platted limits of any incorporated city ~~may only cover with a population over ten thousand~~ are limited to covering the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof and no more than four residential rental units of each policyholder and must conform to rules adopted by the commissioner establishing requirements for underwriting risks and safeguarding financial solvency. A company may not exceed twenty-five percent of the company's gross written premiums of the previous year for the gross written premiums in cities with a population over ten thousand.

A policy issued by the company, if it so provides, may cover loss or damage to livestock, personal property, vehicles, and farm machinery while temporarily removed from the premises of the insured to other locations.

**SECTION 2. AMENDMENT.** Subsection 2 of section 26.1-25-02 of the North Dakota Century Code is amended and reenacted as follows:

2. This chapter applies to every insurer, including every stock or mutual company, reciprocal or interinsurance exchange, authorized by any provision of the laws of this state to transact any of the kinds of insurance. However, except with respect to policies issued pursuant to subsection 2 of section 26.1-13-15 in any incorporated city with a population over ten thousand, this chapter does not apply to county mutual insurance companies organized under chapter 26.1-13.

Approved March 30, 2005

Filed March 31, 2005

**CHAPTER 260****HOUSE BILL NO. 1114**

(Human Services Committee)

(At the request of the Insurance Commissioner)

**HMO ANNUAL REPORT FILING**

AN ACT to amend and reenact section 26.1-18.1-08 of the North Dakota Century Code, relating to annual reports filed by health maintenance organizations.

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

**SECTION 1. AMENDMENT.** Section 26.1-18.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-18.1-08. Annual report.**

1. Every domestic health maintenance organization shall annually, on or before March first, and every foreign health maintenance organization shall annually, on or before the date that its annual report is due in its domestic state, file a report verified by at least two principal officers with the commissioner, covering the preceding calendar year. The report must be on forms prescribed by the commissioner. In addition, the domestic health maintenance organization shall file by March first, and every foreign health maintenance organization shall file annually, on or before the date that its annual report is due in its domestic state, unless otherwise stated:
  - a. Audited financial statements on or before June first.
  - b. A list of the providers who have executed a contract that complies with subdivision a of subsection 4 of section 26.1-18.1-12.
  - c.
    - (1) A description of the grievance procedures.
    - (2) The total number of grievances handled through the procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances.
2. The commissioner may require additional reports as are deemed necessary and appropriate to enable the commissioner to carry out the commissioner's duties under this chapter. The commissioner may waive the filing of the annual report and other information for a health maintenance organization that has discontinued its operation in this state.
3. The commissioner may designate the national association of insurance commissioners as the repository for the filing of the annual report.

Approved March 4, 2005

Filed March 4, 2005

## CHAPTER 261

### SENATE BILL NO. 2043

(Legislative Council)  
(Public Services Committee)

### STATE BONDING

AN ACT to amend and reenact sections 4-18.1-04, 4-23-07, 15-19-06, 20.1-02-02, 25-01.1-20, 26.1-21-01, 26.1-21-02, 26.1-21-03, 26.1-21-04, 26.1-21-06, 26.1-21-07, 26.1-21-08, 26.1-21-09, 26.1-21-10, 26.1-21-11, 26.1-21-12, 26.1-21-14, 26.1-21-15, 26.1-21-16, 26.1-21-17, 26.1-21-18, 26.1-21-19, and 26.1-21-23, subsection 3 of section 27-05.2-02, and section 54-09-02 of the North Dakota Century Code, relating to the state bonding fund; and to repeal section 4-27-10 of the North Dakota Century Code, relating to bonding of the dairy promotion commission.

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

**SECTION 1. AMENDMENT.** Section 4-18.1-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **4-18.1-04. Milk marketing board.**

1. There is hereby created a milk marketing board to consist of five members appointed by the governor. The board consists of one person individual who is a dairy farmer selling to a processor, who must be selected by the governor from two names submitted to the governor by the North Dakota milk producers association; one person individual who is a processor, who must be selected by the governor from two names submitted to the governor by the North Dakota dairy industries association; one person individual who is a retailer, who must be selected by the governor from two names submitted to the governor by the North Dakota association of food retailers; and two persons individuals must be selected by the governor who are consumers, and who are not otherwise engaged in the milk business. An appointee may not have held elective or appointive public office during the period of two years immediately preceding appointment and may not hold any other public office, either elective or appointive, during the term of office as a member of the board. Not more than three members of the board may, at the time of the appointment or thereafter during their respective terms of office, reside on the same side of a continuous line following the eastern boundaries of Bottineau, McHenry, Wells, Kidder, Logan, and McIntosh Counties.
2. The members of the board must be appointed within thirty days after passage and approval of this chapter. The term of office of one member expires on July 1, 1968; the term of office of one member expires on July 1, 1969; the term of office of one member expires on July 1, 1970; the term of office of one member expires on July 1, 1971; the term of office of one member expires on July 1, 1972; and each succeeding member holds office for a term of five years and until a successor has been appointed and qualified. Any vacancy must be filled by appointment by the governor.

3. Three members of the board constitute a quorum for the regular transaction of business. The board shall choose one of its members as the chairman, who shall hold office as a chairman for one year; provided, election as chairman does not interfere with the member's right to vote on all matters before the board.
4. The board shall determine the amount of compensation payable to each member of the board. The amount payable may not exceed seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers, while attending meetings or performing duties directed by the board. A member's per diem payments may not exceed fifteen hundred dollars in any one year.
5. Each member of the board shall give bond conditioned for the faithful performance of the member's duties ~~in the manner required by law in the sum of five thousand dollars.~~
6. The board shall employ a director who serves under the direction and at the pleasure of the board and whose qualifications, duties, and compensation must be determined by the board. The director shall serve as financial officer of the board and is authorized to accept money paid to the board in accordance with this chapter. ~~Before beginning employment, the director shall execute and file a bond in an amount as may be fixed by the board or as may be provided by law for public officers.~~
7. 6. The board shall employ, in addition to the director, such assistants and employees, permanent and temporary, as may be necessary to carry out the duties and responsibilities of the board under this chapter. The board shall determine the qualifications, duties, and compensation of such employees. The board may employ a licensed attorney of the state of North Dakota as its legal counsel, who shall serve on a full-time or a part-time basis, and the board may obtain the services of such additional attorneys as it deems necessary. The board may also contract for auditing, economic research, and other technical services, whenever it determines that such services are needed.
8. 7. All expenditures under this chapter must be paid from the receipts ~~hereunder~~ under this chapter. Meetings of the board must be held at least every sixty days at the call of the chairman or a majority of the board.

**SECTION 2. AMENDMENT.** Section 4-23-07 of the North Dakota Century Code is amended and reenacted as follows:

**4-23-07. State agency to keep accounts - Accounts to be credited - Employees to be bonded.** The state agency shall provide for the keeping of full and accurate accounts showing all receipts and expenditures of moneys, securities, or other property received, held, or expended under ~~the provisions~~ of this chapter and shall provide for the auditing of ~~all such these accounts and for the execution of surety bonds for all employees entrusted with moneys or securities under the provisions of this chapter.~~

**SECTION 3. AMENDMENT.** Section 15-19-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-06. Special funds - Deposit of collections - Transfers from general fund appropriations.**

1. A special operating fund for the division of independent study must be maintained within the state treasury and all income and fees collected by the division of independent study from any source must be remitted monthly by the director to the state treasurer and credited to the special operating fund. All expenditures from the fund must be within the limits of legislative appropriations and must be made upon vouchers, signed and approved by the technology director appointed by the educational technology council. Upon approval of the vouchers by the office of the budget, warrant-checks must be prepared by the office of management and budget. The state treasurer shall make periodic transfers upon order of the director of the office of management and budget from the division of independent study general fund appropriation to the special operating fund whenever its balance falls so low as to require supplementation.
2. The educational technology council may establish an administrative operational fund, of not to exceed ten thousand dollars, out of the special operating fund for the division of independent study. The administrative operational fund must be deposited in the Bank of North Dakota and may be drawn upon by the state director of the division of independent study for the payment of necessary expenses in the administration and operation of the division of independent study within the limits and rules prescribed by the educational technology council. The director shall submit a full, minute, and itemized statement of every expenditure made during the month to the council in accordance with the rules adopted by the council, and thereafter the council may periodically authorize additional transfers to the administrative operational fund, but the balance in the fund may never exceed ten thousand dollars, and any unencumbered balance at the end of any biennium must revert to the state treasury. The administrative operational fund may not be used to pay salaries or expenses of the director. ~~The council shall determine the amount of the bond to be posted by the director.~~
3. The educational technology council may establish a scholarship fund to provide financial grants to students enrolled in courses offered through the division of independent study. The scholarship fund may consist only of those funds specifically appropriated by the legislative assembly and property received by the council or the division of independent study as a gift, devise, or bequest. Any gift, devise, or bequest of property received by the council or division of independent study which is designated by the council and donor for the scholarship fund must be deposited in the scholarship fund at the Bank of North Dakota. The state director of the division of independent study may draw only on the interest earned by the scholarship fund for the award of scholarships within the limits and rules adopted by the educational technology council. The interest earned by the scholarship fund is appropriated to the division of independent study.

**SECTION 4. AMENDMENT.** Section 20.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-02. Bond and oath Oath of director.** Before entering upon that ~~person's individual's~~ duties and within ten days after the date of appointment, the director shall take and file the oath prescribed for civil officers ~~and must be bonded in the penal sum of ten thousand dollars.~~

**SECTION 5. AMENDMENT.** Section 25-01.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.1-20. Care and custody of funds belonging to patients of state institutions.** The superintendent of any state institution under the management and control of the supervising department, when the care and custody of any funds belonging to patients ~~thereof of a state institution~~ are by law devolved upon the superintendent, shall keep accurate accounts of ~~such these~~ funds in books provided for that purpose and shall pay out ~~such these~~ funds under ~~such rules and regulations~~ as may be prescribed by law or by the supervising department, taking proper vouchers ~~therefor of the funds~~ in all cases from the patient or responsible representative of ~~such the~~ patient. Each superintendent shall give a bond in ~~such sum as may be required by law, or as may be prescribed by the supervising department,~~ conditioned for the faithful performance of duties and a ~~due accounting for the funds entrusted to the superintendent's care.~~

**SECTION 6. AMENDMENT.** Section 26.1-21-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Blanket bond" means a bond that covers collectively all public employees and public officials without the necessity of scheduling names or positions as a part of the bond, and a bond whereby new public employees and new public officials entering employment or office during the period of the bond are automatically included without notice to the fund.
2. "Fund" means the state bonding fund.
3. "International peace garden" means an entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world.
4. "Political subdivision" means ~~all counties a county, townships township,~~ park ~~districts district,~~ school ~~districts district,~~ cities ~~city,~~ and any other ~~units unit~~ of local government which ~~are is~~ created either by statute or by the Constitution of North Dakota for local government or other public purposes.
5. "Public employee" means ~~any person an individual~~ employed by ~~the a~~ state ~~agency~~ or any of its political ~~subdivisions subdivision,~~ an officer or employee eligible under section 57-15-56, an employee under section 61-16.1-05, and an officer or employee of an international peace garden. "Public employee" does not include ~~a person an individual~~ employed by an occupational and professional board or commission under title 43 or by the state bar association.

6. "Public official" means ~~any an~~ an elected or appointed officer or deputy, ~~either elected or appointed, of the a~~ state agency or ~~any of its a~~ political subdivisions who is required to be bonded by any law of this state subdivision, except for an officer of an occupational and professional board or commission under title 43 or of the state bar association.
7. "State agency" means a state departments board, bureau, commission, department, agencies agency, industries industry, and institutions institution and an the international peace garden.

**SECTION 7. AMENDMENT.** Section 26.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-02. State bonding fund under management of - Management by commissioner.** ~~The commissioner shall manage the fund. The~~ A fund must be maintained as a fund for the bonding of public employees and public officials. All moneys Money collected under this chapter must be paid into such the fund. The commissioner shall manage the fund.

**SECTION 8. AMENDMENT.** Section 26.1-21-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-03. Commissioner may employ assistants.** The commissioner may employ ~~such clerical and other~~ such assistants as may be necessary to operate the fund. The salaries of all employees together with all other expenditures for the operation of the fund must remain within the appropriations made ~~from time to time~~ by the legislative assembly for such these purposes and must be paid by warrant-check drawn on the state treasury prepared by the office of management and budget after the approval of expense vouchers by the office of the budget.

**SECTION 9. AMENDMENT.** Section 26.1-21-04 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-04. Attorney general is attorney for fund.** The attorney general shall act as attorney for the commissioner in any ~~and all actions and proceedings~~ proceeding to which the commissioner is a party on behalf of the fund.

**SECTION 10. AMENDMENT.** Section 26.1-21-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-06. Condition of bond created by chapter - Limitation.** ~~The condition of~~ Unless otherwise provided, the bond provided under this chapter is a blanket bond arising under the provisions of this chapter shall be limited to that of. The blanket bond is a fidelity bond and must provide that. The blanket bond is conditioned on the public employee or public official, as principal, shall render rendering a true account of all moneys and property of every kind that come into the person's hands as such possessed as a public employee or public official, and shall pay over and deliver the same according to delivering the money or the property as required by law. The provisions of this chapter and of any statute requiring a bond constitute the bond of each public official and public employee for the purposes of any law of this state requiring the bond and constitute the entire contract between the fund and a state agency or a political subdivision as the obligee for the bond.

**SECTION 11. AMENDMENT.** Section 26.1-21-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-07. Coverage.** The amount of coverage afforded to each state agency, ~~department, industry, and institution or political subdivision~~ must be determined by the commissioner based upon the amount of money or property handled and the opportunity for defalcation. The coverage may be greater than but not less than the amount required by law or determined under law for ~~such positions~~ a position. The coverage for a state legislative or judicial branch agency, however, may be determined by the legislative council or supreme court, respectively.

**SECTION 12. AMENDMENT.** Section 26.1-21-08 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-08. Review of public official and employee bond coverage by auditor.** Each state agency, department, industry, and institution shall annually ~~review the amount of blanket bond coverage of its officers and employees.~~ When conducting an audit examination of ~~such a state agencies, departments, industries, and institutions~~ agency or political subdivision, the state auditor shall evaluate the blanket bond coverage and, if ~~deemed~~ necessary, the auditor shall include recommendations for changes in the amount of that coverage in the auditor's report.

**SECTION 13. AMENDMENT.** Section 26.1-21-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-09. Premiums - Amount to whom paid - Minimum.** The commissioner shall determine the premium for a blanket bond ~~must be determined by the commissioner.~~ Premiums must be paid Each state agency and political subdivision shall pay the premium in advance ~~by the proper authority of the state, or of the political subdivision of the state, from its treasury,~~ to the state treasurer who shall keep the ~~same~~ premiums collected in the fund. The state treasurer shall issue receipts in triplicate. The treasurer shall file one of ~~such~~ these receipts in the treasurer's office, ~~and shall mail one to the official making such the payment, and shall mail~~ one to the commissioner. The minimum premium for each bond must be two dollars and fifty cents per year. Payments must be made for one year or for ~~such a longer terms term as prescribed by the commissioner may prescribe.~~ From and after July 4, 1953, the The premiums referred to in this section must be waived until the reserve fund of the state bonding fund has been depleted below the sum of two million dollars. The collection of premiums must be resumed on the bonds, at the rates provided under this section, whenever the reserve fund is depleted below the sum of two million dollars. The premiums must continue to be collected until the reserve fund reaches a total of three million dollars, at which time all premiums must again be waived until the reserve fund has been depleted below the sum of two million dollars.

**SECTION 14. AMENDMENT.** Section 26.1-21-10 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-10. Automatic insurance of state and political subdivisions.** The public employees and public officials of the

1. Each state agency and each political subdivision thereof, as the case may be, must shall apply to be insured bonded in the fund according to the provisions of this chapter upon application to the state bonding fund and upon approval by the commissioner on a biennial basis or if a change in coverage is requested. Unless an application is denied within sixty days from the date it is received by the ~~state bonding fund commissioner,~~ the application will be deemed approved and bond coverage in force. ~~The provisions of this chapter and of any statute~~

requiring a bond constitute the bond of each and every public official for the purpose of any law of this state requiring such bond and constitute the entire contract between the fund and the state or its political subdivisions, respectively, as the obligee in any such bond. If a bond is in the discretion of the state agency or political subdivision and a bond is not requested, the state agency or political subdivision is exempt from this section.

2. The application must include a requested amount of bond coverage based on the amount of money and property handled and the opportunity for defalcation and any other condition imposed by law and list twenty-five percent of the money in control of the public officials or employees for which the bond is requested for the preceding year based on the total monthly balances. In addition, the application must include any information requested by the commissioner to determine the amount of money and property handled and the opportunity for defalcation, including the procedure used to determine the amount of bond requested, revenues for the last budget period by type, expenditures for the last budget period by type, the number of people that handle money, any portion of the last audit, and any financial procedures.

**SECTION 15. AMENDMENT.** Section 26.1-21-11 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-11. Default of public employees or public officials - Duty of public officer - Limitation on filing of claims against fund.** ~~Immediately upon, and in no event later than~~ Within sixty days after, the discovery of any default or wrongful act on the part of any public employee or public official, for which the fund is or may become liable, the state auditor, county auditor, city auditor, township clerk, or business manager of the school district, ~~or;~~ the treasurer of the state ~~or state agency or political subdivision thereof,~~ if the defaulting officer is the auditor or clerk of the state ~~or state agency or political subdivision;~~ and any other officer having supervision of a defaulting public employee or public official, shall file a claim with the commissioner against the fund. Any person injured by ~~such a~~ default or wrongful act, ~~if that person intends to hold the fund liable therefor, shall~~ may present the claim to the commissioner within sixty days after the discovery of such default or wrongful act. If a claim is not filed within the time limited by this section, ~~such~~ the claim is waived. A claim filed under ~~the provisions of~~ this section must contain an abstract of the facts upon which ~~it~~ the claim is based and must be verified by the claimant or by someone in the claimant's behalf, ~~and, together with.~~ The claim and all papers relating ~~thereto, to the claim~~ must remain on file with the commissioner.

**SECTION 16. AMENDMENT.** Section 26.1-21-12 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-12. Commissioner to notify state auditor of default of public employee or public official - Duty of state auditor.** If any public employee or public official defaults or creates a liability against the fund, the commissioner shall notify the state auditor, ~~who.~~ The state auditor immediately shall ~~check~~ investigate the accounts of ~~such~~ the public employee or public official and file a report with the commissioner stating ~~the any amount, if any,~~ the amount, if any, due from the fund because of ~~such the~~ the default or wrongful act. ~~For such service these services,~~ For such service these services, the auditor must be paid out of the fund the same fees as the auditor is paid for auditing the accounts of county officers.

**SECTION 17. AMENDMENT.** Section 26.1-21-14 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-14. Filing claim is condition precedent to bringing action - Failure to act is refusal disallowance.** ~~No~~ An action may not be maintained against the fund upon ~~any a~~ any a claim ~~whatsoever~~ until the claim ~~first~~ has been presented for allowance as provided in this chapter and the ~~allowance of such~~ allowance of such commissioner has refused to allow the claim ~~has been refused.~~ Any. A claim which ~~that~~ that has not been ~~acted upon and~~ acted upon and allowed or disallowed within sixty days after its presentation for allowance ~~must be deemed to be refused is disallowed.~~ is disallowed. The filing and disallowance of the claim must be alleged in the complaint in any action brought ~~thereon~~ against the fund.

**SECTION 18. AMENDMENT.** Section 26.1-21-15 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-15. Limitation of time for bringing action against the fund - Interest - Limitation on time for fund liability.** ~~No~~ An action may not be maintained against the fund upon any claim ~~whatsoever~~ unless ~~such the~~ such the action is commenced within one year after filing of the claim with the commissioner. Interest on the claim runs from the date of filing the claim with the commissioner. The liability of the fund is limited to a breach of a condition of the bond which occurred within two years before the date of filing the claim with the commissioner.

**SECTION 19. AMENDMENT.** Section 26.1-21-16 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-16. Suit by party injured by default of public employee or public official - Subrogation - Right of appeal.** ~~Any A~~ Any A person, ~~limited liability company, or corporation~~ injured by the default or wrongful act of any public employee or public official may sue the public employee or public official ~~and to.~~ To effect recovery from the fund ~~shall, that person must join the fund as codefendant.~~ shall, that person must join the fund as codefendant. A judgment must be obtained against the public employee or public official to create liability upon the bond. If the judgment is obtained against the public employee or public official, ~~it the~~ the judgment must specify that to the extent to which the fund is liable upon the bond of the public employee or public official, the judgment must be paid out of any money in the fund or that which may accrue to the fund. If the judgment is paid out of the fund, the fund has a right to recover and is subrogated to the right of the judgment creditor to recover against ~~such the~~ such the public employee or public official. ~~It The~~ The commissioner may act for the fund in all proceedings to enforce ~~such the~~ such the right of subrogation; ~~the commissioner shall act for and in behalf of the fund, and in any action or proceeding the commissioner may appeal from any appealable an order or from any judgment against the fund the same as other parties to civil actions may appeal.~~

**SECTION 20. AMENDMENT.** Section 26.1-21-17 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-17. Allowed liability claims payable from fund - Administrative expenses - Methods of payment.** ~~All liability claims which are A claim~~ All liability claims which are A claim allowed against the fund must be paid upon warrants drawn upon the state treasurer against the fund. ~~Such warrants~~ The warrant must be prepared by the office of management and budget pursuant to the directions of the commissioner. Payments for administrative expenses of the state bonding fund must be made within the limitations of legislative appropriations upon warrant-checks prepared by the office of management and budget after the approval of vouchers by the commissioner.

**SECTION 21. AMENDMENT.** Section 26.1-21-18 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-18. Commissioner may make examinations - Request for accounting - Reporting defaulting official to governor.** If the commissioner ~~is of the opinion at any time~~ determines that the interests of the fund are jeopardized by the misconduct or inefficiency of any public official, the commissioner shall ~~make, or~~ request the state auditor to make, an examination, and, if necessary, shall cause an action for an accounting to be instituted against ~~such the~~ public official for the purpose of requiring a complete disclosure of the business of the office of which ~~such the~~ public official is an incumbent. ~~Such The~~ action must be brought in the name of the commissioner as plaintiff, and the court in ~~such the~~ action may interplead all concerned parties concerned. ~~Whenever the.~~ The commissioner deems it advisable, the commissioner shall may make a complaint to the governor requesting the governor to institute an investigation with the purpose of removing from the office any defaulting public official or any public official who so conducts the affairs of the public official's office as to endanger the fund.

**SECTION 22. AMENDMENT.** Section 26.1-21-19 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-19. Cancellation of liability of fund - When permitted - Effect.** ~~The commissioner, after~~ After due investigation ~~and if in the commissioner's judgment the interests of the fund require, the commissioner~~ may cancel the liability of the fund for the acts of any public employee or public official, ~~such.~~ The cancellation to take takes effect thirty days after written notice ~~thereof.~~ In such case, the. If a public official whose official's or public employee's bond is canceled, or the public employee whose coverage is canceled under a blanket bond, the public official or public employee may secure, at personal expense, a bond executed by a duly authorized surety company in an amount determined by the commissioner. Evidence of a surety bond purchased under this section must be filed with the commissioner.

**SECTION 23. AMENDMENT.** Section 26.1-21-23 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-23. Public official may furnish private bond - Premiums payable from public moneys only to fund.** ~~Any person elected or appointed to office, in~~ In lieu of the bond provided for in this chapter, a public officer or public employee may furnish a bond issued by a duly authorized surety company in an amount determined by the commissioner, but ~~no~~ an officer or board of the state or of any political subdivision may not pay for ~~any such the~~ surety bond or bonds out of any public funds. Evidence of a bond purchased under this section must be filed with the commissioner.

**SECTION 24. AMENDMENT.** Subsection 3 of section 27-05.2-02 of the North Dakota Century Code is amended and reenacted as follows:

3. In a county in which the supreme court determines that at least five full-time employees are necessary to provide adequate clerk of district court services, the elected clerk of district court and clerk of court staff designated by the supreme court shall become employees of the state judicial system if the board of county commissioners consents to the transition after consultation with the elected clerk. This subsection applies upon receipt by the supreme court of a resolution adopted by the board of county commissioners indicating its consent. Any

equipment, including technology-related equipment, and furnishings in the control and custody of the clerk of district court on the date the clerk becomes a state employee must remain in the control and custody of the clerk until the state court administrator determines the items are no longer needed. The clerk, upon becoming a state employee, shall receive a salary in an amount not less than the salary received as a county employee and shall remain an employee of the state judicial system until the clerk retires, resigns, or the term for which the clerk was initially elected expires, whichever occurs earlier. Thereafter, the clerk of district court must be appointed in the manner provided by supreme court rule. ~~The bond for the clerk of district court must be set by the supreme court.~~ If the board of county commissioners does not consent to the clerk and designated staff becoming employees of the state judicial system, the county must provide clerk of district court services at its own expense in accordance with subsection 2.

**SECTION 25. AMENDMENT.** Section 54-09-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-02. Duties of secretary of state.** In addition to the duties prescribed by the constitution, the secretary of state shall:

1. Receive bills and resolutions from every session of the legislative assembly, and shall perform such other duties as may devolve upon the secretary of state by resolution of the two houses, or either of them.
2. Keep a register of and attest the official acts of the governor.
3. Affix the great seal with the secretary of state's attestation to commissions and other public instruments to which the official signature of the governor is required.
4. Record and maintain records of all conveyances made to the state and all articles of incorporation filed in the secretary of state's office.
5. ~~Record and maintain records of the official bond of any state official who furnishes in lieu of the bond furnished by the state bonding fund a bond by a duly authorized surety company.~~
6. Maintain records for all books distributed by the secretary of state and direct the county auditor of each county to do the same as provided by law.
7. 6. Furnish on demand to persons paying the fees therefor a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office.
8. 7. Keep records of all the fees, commissions, and compensation of whatever nature or kind earned, collected, or charged by the secretary of state, with the date, name of payer, and the nature of the services in each case.
9. 8. Biennially report to the governor with copies filed in the secretary of state's office as prescribed by section 54-06-04 all moneys received from any source for services performed and accompany the report with a detailed statement under oath of the manner in which the

appropriations for the secretary of state's office have been expended during the preceding two fiscal years.

- ~~40.~~ 9. Immediately after the laws, resolutions, and journals of the legislative assembly are bound, distribute the laws, resolutions, and journals to the persons entitled thereto by law or rules of the senate and house of representatives.
- ~~44.~~ 10. Keep records of cities as prescribed by law.
- ~~42.~~ 11. Indicate on each bill passed by the legislative assembly the date of filing in the secretary of state's office.
- ~~43.~~ 12. Perform all other duties as are prescribed by law.

**SECTION 26. REPEAL.** Section 4-27-10 of the North Dakota Century Code is repealed.

Approved March 7, 2005

Filed March 8, 2005

## CHAPTER 262

### HOUSE BILL NO. 1066

(Representatives Drovdal, Bellew, Kempenich)  
(Senator Fischer)

### GAME AND FISH AGENT BONDS

AN ACT to amend and reenact section 26.1-21-09.1 of the North Dakota Century Code, relating to premiums for and coverage of bonds of agents appointed to distribute hunting and fishing licenses or stamps.

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

**SECTION 1. AMENDMENT.** Section 26.1-21-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-09.1. Bonds of agents appointed to distribute hunting and fishing licenses or stamps - Premiums - Determination of eligibility.** The annual premium for a bond of an agent appointed by a county auditor to distribute hunting and fishing licenses or stamps pursuant to section 20.1-03-17 is ten dollars ~~for each five thousand dollars of coverage~~. The premium must be paid to the fund pursuant to rules adopted by the commissioner. The commissioner shall deposit the premiums with the state treasurer to the credit of the fund. The commissioner may reduce or waive the premium if it is determined that funds received pursuant to this section are sufficient to cover potential claims on the bonds of agents appointed to distribute hunting and fishing licenses or stamps. The commissioner shall determine the conditions and qualifications of agents bonded under this section. The amount of coverage afforded under this section is ~~five thousand dollars, ten thousand dollars, or fifteen thousand dollars per agent per year as determined by the county auditor.~~

Approved March 7, 2005  
Filed March 8, 2005

## CHAPTER 263

### HOUSE BILL NO. 1116

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

### BOILER INSPECTION

AN ACT to amend and reenact sections 26.1-22.1-08 and 26.1-22.1-10 of the North Dakota Century Code, relating to qualifications of inspectors and the time period for which certificates of inspection of the boiler inspection program are effective for steam traction engines.

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

**SECTION 1. AMENDMENT.** Section 26.1-22.1-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-22.1-08. Special inspector.**

1. Upon written request of ~~the an~~ employer, the commissioner may appoint as a special inspector an inspector in the employ of ~~any~~:
  - a. An insurance company authorized to insure boilers in this state against loss from explosion or any self-insured;
  - b. A company that has employees for the purpose of inspecting its own boilers in this state qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
  - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency.

~~No~~ A person may not be appointed as a special inspector unless that person has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.
2. ~~Every~~ An inspection ~~made~~ performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the commissioner in the time, manner, and form as prescribed by the commissioner.
3. If a complete report is not filed by the special inspector's employer with the commissioner within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless ~~extensions~~ an extension of time ~~are~~ is granted by the chief boiler inspector. ~~For that inspection, the insurance company or self-insured company shall~~ The special inspector's employer must pay all appropriate the inspection fees in accordance with as required by section 26.1-22.1-09 for a special inspection.
4. The chief boiler inspector may inspect any boiler to which a special inspection applies.

5. The commissioner may, for cause, suspend or revoke the appointment of any special inspector.

**SECTION 2. AMENDMENT.** Section 26.1-22.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-22.1-10. Certificate of inspection - Certificate to be posted.** The commissioner shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The commissioner shall charge a fee of twenty dollars for each certificate of inspection issued as the result of inspections authorized under sections 26.1-22.1-07 and 26.1-22.1-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the commissioner. No certificate may be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. No certificate is valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 26.1-22.1-07, and no more than twelve months for other power boilers, ~~twenty-four~~ twelve months for steam traction engines, and thirty-six months for low pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

Approved March 28, 2005  
Filed March 28, 2005

## CHAPTER 264

### SENATE BILL NO. 2186

(Senators Espegard, Heitkamp, Klein, Mutch)  
(Representatives Dietrich, Monson)

## INSURANCE LOSS HISTORY INFORMATION

AN ACT to create and enact chapter 26.1-25.2 of the North Dakota Century Code, relating to personal insurance loss history information.

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

**SECTION 1.** Chapter 26.1-25.2 of the North Dakota Century Code is created and enacted as follows:

**26.1-25.2-01. Scope.** This chapter applies to only personal insurance.

**26.1-25.2-02. Definitions.** As used in this chapter:

1. "Deceptive practices" means any misstatement or omission of any material fact, or submission of a false statement, in light of the circumstances under which it was made, by a person acting with the intent to defraud in filing an insurance claim.
2. "Insurance support organization" means:
  - a. (1) A person who regularly engages, in whole or in part, in the practice of assembling or collecting information about an individual for the primary purpose of providing the information to an insurance institution or insurance producer for an insurance transaction.
  - (2) The term includes the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction.
  - (3) The term also includes the collection of personal information from an insurance institution, insurance producer, or insurance support organization for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.
- b. The following persons are not insurance support organizations:
  - (1) Insurance producers.
  - (2) Government institutions.
  - (3) Insurance institutions.
  - (4) Medical care institutions.

## (5) Medical professionals.

3. "Personal insurance" means private passenger automobile, homeowner, motorcycle, mobile homeowner, and owner-occupied dwelling fire insurance policies.

**26.1-25.2-03. Prohibited claims usage.** An insurer may not consider the following events for purposes of surcharging, declining, nonrenewing, or canceling either personal insurance coverage or a binder for personal insurance coverage. The events include:

1. An insured's inquiry into the type or level of coverage or an inquiry into whether a policy will cover a loss;
2. An insured's inquiry regarding coverage for a loss if the insured files no claim;
3. A claim if the insurer conducts no investigation of a claim or initiates no other claim activity and the claim does not involve deceptive practices on the part of the insured;
4. A claim if the insurer makes no payment to or on behalf of the insured and the claim does not involve deceptive practices on the part of the insured;
5. A first-party property claim resulting from wind or hail if the insured had no previous wind or hail claim on that property within the previous five years regardless of the insurer unless the insurer can provide evidence that the insured unreasonably failed to maintain the property and the failure to maintain the property contributed to the loss; or
6. A claim if the claim is over ten years old, unless the insurer can provide evidence that the insured unreasonably failed to maintain the property and the failure to maintain the property contributed to the loss.

**26.1-25.2-04. Prohibited use of prior owner's history.** An insurer may not decline to insure a property not previously owned by an applicant based solely upon the loss history of a previous owner of the property, unless the insurer can provide evidence that the previous owner did not repair the damage.

**26.1-25.2-05. Disclosure requirements.** An insurer writing personal insurance must inform the applicant in writing or in the same medium as the application at the time of an application for personal insurance that the insurer will consider the insured's claims history in determining whether to decline, cancel, nonrenew, or surcharge a policy and that a claim incurred by the insured will be reported to an insurance support organization.

Approved April 7, 2005  
Filed April 12, 2005

## CHAPTER 265

### HOUSE BILL NO. 1113

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

## INSURANCE PRODUCER CONTINUING EDUCATION

AN ACT to amend and reenact subsection 1 of section 26.1-26-31.1 of the North Dakota Century Code, relating to continuing education requirements for insurance producers and consultants.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 26.1-26-31.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, any person licensed as an insurance producer or insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than ~~fifteen~~ twenty-four hours ~~per year~~ of approved coursework, of which ~~seven and one-half~~ three hours ~~per year~~ must be ~~classroom hours in ethics~~. ~~The commissioner may waive the requirement of seven and one-half hours per year of classroom hours.~~ The commissioner may reduce or waive the minimum number of hours per year of approved coursework for any person having a license limited to a specific product type. ~~The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit.~~ Credit for courses attended in any one year over the minimum number of hours of coursework required, ~~not to exceed twelve hours~~, may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of each two-year period following licensure. No continuing education is required of an insurance producer who is at least sixty-two years of age and who has a combined total years of continuous licensure as an insurance producer and years of age which equals eighty-five.

Approved March 15, 2005

Filed March 16, 2005

**CHAPTER 266****HOUSE BILL NO. 1112**

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

**INSURANCE PRODUCER BUSINESS ACCEPTANCE**

AN ACT to amend and reenact section 26.1-26-36 of the North Dakota Century Code, relating to a surplus lines insurance producer's authority to accept business from a nonadmitted company.

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

**SECTION 1. AMENDMENT.** Section 26.1-26-36 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26-36. Surplus lines insurance producer's authority.** A surplus lines insurance producer may act as a surplus lines insurance producer in this state for any foreign company or insurer not authorized to transact business in this state in securing, issuing, or placing insurance policies, indemnity contracts, or surety bonds on property located in, or undertakings to be carried out in, this state for the company or insurer. A surplus lines insurance producer may accept business from any licensed insurance producer for ~~an admitted~~ a nonadmitted company and may compensate the insurance producer for the business, provided the insurance is written in conformity with this title.

Approved March 16, 2005

Filed March 17, 2005

## CHAPTER 267

### HOUSE BILL NO. 1178

(Representatives Maragos, N. Johnson)  
(Senator Krebsbach)

### BAIL BOND AGENTS

AN ACT to amend and reenact sections 26.1-26.6-01, 26.1-26.6-02, 26.1-26.6-03, 26.1-26.6-04, 26.1-26.6-05, 26.1-26.6-06, 26.1-26.6-07, 26.1-26.6-08, and 26.1-26.6-09 of the North Dakota Century Code, relating to bail bond agents.

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

**SECTION 1. AMENDMENT.** Section 26.1-26.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26.6-01. Definition.** As used in this chapter, unless the context otherwise requires, "Bail bondsman bail bond agent" means any person who has been approved licensed by the commissioner and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with the judicial proceedings and charges and receives money for the services.

**SECTION 2. AMENDMENT.** Section 26.1-26.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26.6-02. Licensing and continuing education requirements.** The licensing and continuing education requirements under chapter 26.1-26 apply to bail ~~bondsmen~~ bond agents.

**SECTION 3. AMENDMENT.** Section 26.1-26.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26.6-03. Persons disqualified as bail ~~bondsmen~~ bond agents - Penalty.** The following persons or classes may not be bail ~~bondsmen~~ bond agents and may not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, committing magistrates, magistrate court judges, sheriffs, deputy sheriffs and constables, or any person having the power to arrest or having anything to do with the control of federal, state, county, or municipal prisoners. A violation of this section is a class B misdemeanor.

**SECTION 4. AMENDMENT.** Section 26.1-26.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26.6-04. Qualification and license as bail ~~bondsman~~ bond agent - Pledge of property as security - Penalty.** No A person may not act in the capacity of a bail ~~bondsman~~ bond agent or perform any of the functions, duties, or powers prescribed for a bail bondsman bond agent under ~~the provisions of this chapter~~ unless that person is qualified and licensed as provided in this chapter. However, ~~none of the provisions of this section does not~~ prohibit any individual from pledging real or other property as security for a bail bond in judicial proceedings if the ~~person~~ individual does not receive, or is not promised, money or other things of value therefor. Violation of this section is a class B misdemeanor.

**SECTION 5. AMENDMENT.** Section 26.1-26.6-05 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26.6-05. Violations - Penalties.**

1. The commissioner may suspend, revoke, or refuse to continue, issue, or renew any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:
  - a. Recommending any particular attorney at law to handle the case in which the bail ~~bondsman~~ bond agent has caused a bond to be issued under ~~the terms~~ of this chapter.
  - b. Forging the name of another to a bond or application for bond.
  - c. Soliciting business in or about any place for prisoners or confined, arraigned, or in custody.
  - d. Paying a fee or rebate, or giving or promising anything of value to a jailer, trustee, police officer or officer of the law, or any other person who has power to arrest or hold in custody or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or entreatment thereof, or to secure, delay, or other advantage. This subdivision does not apply to a jailer, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant.
  - e. Paying a fee or rebating or giving anything of value to an attorney in bail bond matters, except in defense of any action on a bond.
  - f. Accepting anything of value from a principal other than a premium. Provided, the ~~bondsman~~ bail bond agent may accept collateral security or other indemnity from the principal which must be returned immediately upon final termination of liability on the bond. Such collateral security or other indemnity required by the ~~bondsman~~ bail bond agent must be reasonable in relation to the amount of the bond.
  - g. ~~Willful failure~~ Willfully failing to return collateral security to the principal when the principal is entitled ~~thereto~~ to the security.
  - h. Knowingly employing a person whose insurance producer license has been revoked, suspended, or denied in this or any other state.
  - i. Knowingly or intentionally executing a bail bond without collecting in full a premium ~~therefor for the bond~~, at the premium rate as filed with and approved by the commissioner.
  - j. Failing to pay any forfeiture as directed by a court and as required by this ~~title~~ chapter.
2. A bail ~~bondsman~~ bond agent or bail bond agency may not advertise as or hold itself out to be a surety company.

3. A bail ~~bondsman~~ bond agent may not sign nor countersign any blank in any bond, nor give up power of attorney to or otherwise authorize, anyone to countersign the bail ~~bondsman's~~ bond agent's name to bonds.
4. When a ~~bondsman~~ bail bond agent accepts collateral, the ~~bondsman~~ bail bond agent shall give a written receipt for the collateral and this receipt must contain a full description of the collateral received in the terms of redemption. The ~~bondsman~~ bail bond agent shall keep copies of all receipts of the bonds to be placed in business to be available to the commissioner for the commissioner's review.
5. The provisions and penalties under this section are in addition to those provided under chapter 26.1-26.

**SECTION 6. AMENDMENT.** Section 26.1-26.6-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26.6-06. Access to jails.** Every person who holds a valid bail ~~bondsman~~ bond agent license issued by the insurance commissioner is entitled to equal access to the jails of the state for the purpose of making bond, subject to the provisions of this chapter and the rules adopted in the manner provided by law. Jail personnel, law enforcement officers, and court personnel may not suggest, recommend, advise, or promote a particular ~~bondsman~~ bail bond agent. Each jail shall furnish a space convenient to the telephones in the booking area to be used to hold business cards of ~~bondsmen~~ bail bond agents.

**SECTION 7. AMENDMENT.** Section 26.1-26.6-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26.6-07. Surrender of defendant prior to breach.** At any time before there has been a breach of the undertaking in any type of bail provided herein, the surety or ~~bondsman~~ bail bond agent may surrender the defendant, or the defendant may surrender, to the official to whose custody the defendant would have been given had the defendant been committed. The defendant may be surrendered without the return of premium for the bond if the defendant has been guilty of nonpayment of premium, changing address without notifying the ~~bondsman~~ bail bond agent, self-concealment, or leaving the jurisdiction of the court without the permission of the ~~bondsman~~ bail bond agent, or of violating the defendant's contract with the ~~bondsman~~ bail bond agent in any way that does harm to the ~~bondsman~~ bail bond agent, or the surety, or violates the obligation to the court. For the purpose of surrendering the defendant, the surety may arrest the defendant before the forfeiture of the undertaking, or by written authority endorsed on a certified copy of the undertaking, may empower any peace officer to make arrest, first paying the lawful fees therefor.

**SECTION 8. AMENDMENT.** Section 26.1-26.6-08 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26.6-08. Maximum commission or fee.** A professional ~~bondsman~~ bail bond agent may not charge a premium, commission, or fee for a bond in an amount more than ten percent of the amount of bail furnished by the ~~bondsman~~ bail bond agent, or seventy-five dollars, whichever is greater.

**SECTION 9. AMENDMENT.** Section 26.1-26.6-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26.6-09. Failure to appear.** If a defendant fails to appear for a scheduled court appearance, the clerk of court shall notify the ~~bondsman~~ bail bond agent. If the ~~bondsman~~ bail bond agent returns the defendant to the jurisdiction of the court, the ~~bondsman may petition~~ bail bond agent may petition the court for a return of the forfeiture. If the ~~bondsman~~ bail bond agent returns the defendant to the jurisdiction of the court within six months of receiving notice of the failure to appear, the court shall return at least fifty percent of the forfeiture upon petition by the bondsman, less five percent for court costs bail bond agent. If the ~~bondsman~~ bail bond agent returns the defendant to the jurisdiction of the court beyond six months of receiving notice of the failure to appear, the court may return the forfeiture upon receipt of a petition from the ~~bondsman~~ bail bond agent, less five percent for court costs.

Approved March 30, 2005

Filed March 31, 2005

## CHAPTER 268

### SENATE BILL NO. 2187

(Senators Krebsbach, Grindberg, Schobinger)  
(Representatives Carlson, Price, Ruby)

## THIRD-PARTY ADMINISTRATORS

AN ACT to create and enact section 26.1-27-03.1 of the North Dakota Century Code, relating to bond requirements for third-party administrators; to amend and reenact section 26.1-27-03 of the North Dakota Century Code, relating to fees for acting as a third-party administrator and the penalties for acting without a third-party administrator license; to repeal section 26.1-27-04 of the North Dakota Century Code, relating to the waiver of third-party registration requirements; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 26.1-27-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-27-03. Certificate of ~~registration~~ authority required - Penalty.**

- ~~No~~ A person, including a person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with life, annuity, or health coverage provided by a self-funded plan, may not act as or hold oneself out to be an administrator in this state, for the kinds of business for which the person is acting as an administrator, without a certificate of ~~registration~~ authority issued by the commissioner. Any person violating this subsection is guilty of a class ~~B misdemeanor~~ C felony.
- All applications must be accompanied by a filing fee of ~~twenty-five~~ one hundred dollars.
- The commissioner shall issue a certificate unless the commissioner after due notice and hearing determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within five years.
- The administrator shall pay an annual renewal fee of ~~twenty-five~~ fifty dollars to maintain the certificate.
- After notice and hearing, the commissioner may revoke a certificate or fine the administrator not more than ten thousand dollars, or both, or the commissioner may suspend a certificate, or fine the administrator not more than five thousand dollars, or both, upon finding that either the administrator violated section 26.1-27-05 and subsection 4 of section 26.1-27-06 and also violated subsection 1, 2, or 3 of section 26.1-27-06 or section 26.1-27-07, 26.1-27-08, 26.1-27-10, 26.1-27-11, or 26.1-27-12, or the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

**SECTION 2.** Section 26.1-27-03.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-27-03.1. Bond or insurance requirement.** An administrator that administers or will administer self-insured plans in this state shall maintain a surety bond or proof of insurance satisfactory to the commissioner for the use and benefit of the commissioner for covered persons who have remitted premiums or insurance charges or other moneys to the administrator in the course of the administrator's business in the greater of the following amounts:

1. One hundred thousand dollars; or
2. Ten percent of the aggregate total amount of administered coverage under the plans handled in this state.

**SECTION 3. REPEAL.** Section 26.1-27-04 of the North Dakota Century Code is repealed.

Approved April 22, 2005

Filed April 25, 2005

## CHAPTER 269

### HOUSE BILL NO. 1332

(Representatives N. Johnson, Devlin, Keiser, Price)  
(Senators Fischer, J. Lee)

## PHARMACY BENEFITS MANAGEMENT REGULATION

AN ACT to create and enact a new section to chapter 26.1-27 and chapter 26.1-27.1 of the North Dakota Century Code, relating to regulation of pharmacy benefits management; and to provide for a legislative council study.

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

**SECTION 1.** A new section to chapter 26.1-27 of the North Dakota Century Code is created and enacted as follows:

**Pharmacy benefits manager.** A pharmacy benefits manager, as defined under section 26.1-27.1-01, is an administrator for purposes of this chapter.

**SECTION 2.** Chapter 26.1-27.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-27.1-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Covered entity" means a nonprofit hospital or a medical service corporation; a health insurer; a health benefit plan; a health maintenance organization; a health program administered by the state in the capacity of provider of health coverage; or an employer, a labor union, or other entity organized in the state which provides health coverage to covered individuals who are employed or reside in the state. The term does not include a self-funded plan that is exempt from state regulation pursuant to the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.]; a plan issued for coverage for federal employees; or a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, medicare supplement, disability income, long-term care, or other limited-benefit health insurance policy or contract.
2. "Covered individual" means a member, a participant, an enrollee, a contractholder, a policyholder, or a beneficiary of a covered entity who is provided health coverage by the covered entity. The term includes a dependent or other individual provided health coverage through a policy, contract, or plan for a covered individual.
3. "De-identified information" means information from which the name, address, telephone number, and other variables have been removed in accordance with requirements of title 45, Code of Federal Regulations, part 164, section 512, subsections (a) or (b).
4. "Generic drug" means a drug that is chemically equivalent to a brand name drug for which the patent has expired.

5. "Labeler" means a person that has been assigned a labeler code by the federal food and drug administration under title 21, Code of Federal Regulations, part 207, section 20, and that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale.
6. "Payment received by the pharmacy benefits manager" means the aggregate amount of the following types of payments:
  - a. A rebate collected by the pharmacy benefits manager which is allocated to a covered entity;
  - b. An administrative fee collected from the manufacturer in consideration of an administrative service provided by the pharmacy benefits manager to the manufacturer;
  - c. A pharmacy network fee; and
  - d. Any other fee or amount collected by the pharmacy benefits manager from a manufacturer or labeler for a drug switch program, formulary management program, mail service pharmacy, educational support, data sales related to a covered individual, or any other administrative function.
7. "Pharmacy benefits management" means the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals; the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals; or the providing of any of the following services with regard to the administration of the following pharmacy benefits:
  - a. Claims processing, retail network management, and payment of claims to a pharmacy for prescription drugs dispensed to a covered individual;
  - b. Clinical formulary development and management services; or
  - c. Rebate contracting and administration.
8. "Pharmacy benefits manager" means a person that performs pharmacy benefits management. The term includes a person acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity. The term does not include a public self-funded pool or a private single-employer self-funded plan that provides benefits or services directly to its beneficiaries. The term does not include a health carrier licensed under title 26.1 if the health carrier is providing pharmacy benefits management to its insureds.
9. "Rebate" means a retrospective reimbursement of a monetary amount by a manufacturer under a manufacturer's discount program with a pharmacy benefits manager for drugs dispensed to a covered individual.
10. "Utilization information" means de-identified information regarding the quantity of drug prescriptions dispensed to members of a health plan during a specified time period.

**26.1-27.1-02. Licensing.** A person may not perform or act as a pharmacy benefits manager in this state unless that person holds a certificate of registration as an administrator under chapter 26.1-27.

**26.1-27.1-03. Disclosure requirements.**

1. A pharmacy benefits manager shall disclose to the commissioner any ownership interest of any kind with:
  - a. Any insurance company responsible for providing benefits directly or through reinsurance to any plan for which the pharmacy benefits manager provides services.
  - b. Any parent company, subsidiary, or other organization that is related to the provision of pharmacy services, the provision of other prescription drug or device services, or a pharmaceutical manufacturer.
2. A pharmacy benefits manager shall notify the commissioner in writing within five business days of any material change in the pharmacy benefits manager's ownership.

**26.1-27.1-04. Prohibited practices.**

1. A pharmacy benefits manager shall comply with chapter 19-02.1 regarding the substitution of one prescription drug for another.
2. A pharmacy benefits manager may not require a pharmacist or pharmacy to participate in one contract in order to participate in another contract. The pharmacy benefits manager may not exclude an otherwise qualified pharmacist or pharmacy from participation in a particular network if the pharmacist or pharmacy accepts the terms, conditions, and reimbursement rates of the pharmacy benefits manager's contract.

**26.1-27.1-05. Contents of pharmacy benefits management agreement - Requirements.**

1. A pharmacy benefits manager shall offer to a covered entity options for the covered entity to contract for services that must include:
  - a. A transaction fee without a sharing of a payment received by the pharmacy benefits manager;
  - b. A combination of a transaction fee and a sharing of a payment received by the pharmacy benefits manager; or
  - c. A transaction fee based on the covered entity receiving all the benefits of a payment received by the pharmacy benefits manager.
2. The agreement between the pharmacy benefits manager and the covered entity must include a provision allowing the covered entity to have audited the pharmacy benefits manager's books, accounts, and records, including de-identified utilization information, as necessary to confirm that the benefit of a payment received by the pharmacy benefits manager is being shared as required by the contract.

**26.1-27.1-06. Examination of insurer-covered entity.**

1. During an examination of a covered entity as provided for in chapter 26.1-03, 26.1-17, or 26.1-18.1, the commissioner shall examine any contract between the covered entity and a pharmacy benefits manager and any related record to determine if the payment received by the pharmacy benefits manager which the covered entity received from the pharmacy benefits manager has been applied toward reducing the covered entity's rates or has been distributed to covered individuals.
2. To facilitate the examination, the covered entity shall disclose annually to the commissioner the benefits of the payment received by the pharmacy benefits manager received under any contract with a pharmacy benefits manager and shall describe the manner in which the payment received by the pharmacy benefits manager is applied toward reducing rates or is distributed to covered individuals.
3. Any information disclosed to the commissioner under this section is considered a trade secret under chapter 47-25.1.

**26.1-27.1-07. Rulemaking authority.** The commissioner shall adopt rules as necessary before implementation of this chapter.

**SECTION 3. PHARMACY BENEFITS MANAGEMENT INDUSTRY - LEGISLATIVE COUNCIL STUDY.** The legislative council shall study, during the 2005-06 interim, the pharmacy benefits management industry, including the extent of competition in the marketplace for health insurance and prescription drugs; whether protecting the confidentiality of trade secret or proprietary information has a positive or negative impact on prescription drug prices; the ownership interest or affiliation between insurance companies and pharmacy benefits management companies and whether such relationships are good for the consumer; the impact of disclosure of information regarding relationships between pharmacy benefits management companies and their customers; the use of various cost-containment methods by pharmacy benefits managers, including the extent to which pharmacy benefits managers promote the use of generic drugs; the actual impact of the use of pharmacy benefits management techniques on community pharmacies; the impact of mail service pharmacies on consumers and community pharmacies; the impact of generic and brand name drugs in formulary development, drug switches and mail order operations, as well as spread pricing, data sales and manufacturers rebates and discounts; the price consumers actually pay for prescription drugs in North Dakota; and consideration of the legality of imposing statutory restrictions on pharmacy benefits managers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved May 4, 2005  
Filed May 4, 2005

## CHAPTER 270

### HOUSE BILL NO. 1208

(Representatives Carlson, Horter, Price)  
(Senators Brown, Fischer, J. Lee)

## HEALTH SAVINGS ACCOUNTS

AN ACT to amend and reenact subdivision d of subsection 2 of section 26.1-36-08 and paragraph 4 of subdivision f of subsection 2 of section 26.1-36-09 of the North Dakota Century Code, relating to excluding high-deductible health plans from mental health and substance abuse mandates in order to meet federal requirements for tax qualification of health savings accounts.

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

**SECTION 1. AMENDMENT.** Subdivision d of subsection 2 of section 26.1-36-08 of the North Dakota Century Code is amended and reenacted as follows:

- d. In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of twenty visits for services covered under this section in any calendar year, provided the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or the treatment services are provided within the scope of licensure by a licensed addiction counselor. The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five visits in any calendar year, and may not establish a copayment greater than twenty percent for the remaining visits. The deductible limitation of this subdivision does not apply to a high-deductible health plan used to establish a health savings account pursuant to and as defined in section 223 of the Internal Revenue Code [26 U.S.C. 223].

**SECTION 2. AMENDMENT.** Paragraph 4 of subdivision f of subsection 2 of section 26.1-36-09 of the North Dakota Century Code is amended and reenacted as follows:

- (4) The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five hours in any calendar year, and may not establish a copayment greater than twenty percent for the remaining hours. The deductible limitation of this paragraph does not apply to a high-deductible health plan used to establish a health savings account pursuant to and as defined in section 223 of the Internal Revenue Code [26 U.S.C. 223].

## CHAPTER 271

### SENATE BILL NO. 2282 (Senators Brown, Heitkamp, Lyson) (Representatives Nelson, Price)

## INSURANCE INDEPENDENT EXTERNAL REVIEW

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to accident and health insurance issuer independent external review requirements.

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

**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

**Independent external review.** Every insurance company, nonprofit health service corporation, and health maintenance organization that offers an accident and health line of insurance shall establish and implement an independent external review mechanism to review and determine whether medical care rendered under the line of insurance was medically necessary and appropriate to the claim as submitted by the provider. For purposes of this section, "independent external review" means a review conducted by the North Dakota health care review, inc., another peer review organization meeting the requirements of section 1152 of the Social Security Act, or any person designated by the commissioner to conduct an independent external review. A determination made by the independent external reviewer is binding on the parties. Costs associated with the independent external review are the responsibility of the nonprevailing party.

Approved April 6, 2005

Filed April 6, 2005

## CHAPTER 272

### SENATE BILL NO. 2094

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

## INSURANCE TERRORISM EXCLUSION

AN ACT to amend and reenact section 26.1-39-06 of the North Dakota Century Code, relating to excluding commercial insurance coverage for loss by fire or other perils caused directly or indirectly by terrorism; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 26.1-39-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-39-06. Standard fire insurance policy.** No fire insurance contract or policy, including a renewal, may be made, issued, used, or delivered by any insurer or by any insurance producer or representative of the insurer on property in this state other than such as conform in all particulars as to blanks, size of type, context, provisions, agreements, and conditions with the 1943 standard fire insurance policy of the state of New York, a copy of which must be filed in the office of the commissioner as the standard policy for this state. The cancellation provisions contained in the standard policy are superseded to the extent sections 26.1-39-10 through 26.1-39-21 are inconsistent with the provisions. No other or different provision, agreement, condition, or clause may be made a part of the contract or policy or be endorsed on the contract or policy or delivered with the contract or policy, except as follows:

1. The name of the insurer, its location and place of business, the date of its incorporation or organization, and the state or county under which the insurer is organized, the amount of paid-up capital stock, whether it is a stock or mutual company, the names of its officers, the number and the date of the policy, and appropriate company emblems may be printed on policies issued on property in this state; provided, however, that any insurer organized under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.
2. Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions may not be inconsistent with or a waiver of any of the provisions or conditions of the standard policy, may be written upon or attached or appended to any policy issued on property in this state. Appropriate forms of contracts, supplemental contracts, or endorsements, by which the interest in the property described is insured against one or more of the perils which the insurer is empowered to assume, may be used in connection with the standard policy. The forms of contracts, supplemental contracts, or endorsements attached or printed on the policy may contain provisions and stipulations inconsistent with the standard policy if applicable only

to the other perils. The first page of the standard policy may be rearranged to provide space for the listing of rates and premiums for coverages insured under the policy or under endorsements attached or printed on the policy, and such other data as may be included for duplication on daily reports for office records.

3. An insurer, if entitled to do business in this state, may with the approval of the commissioner, if not already included in the standard form as filed with the commissioner, print on its policies any provision which it is required by law to insert in the policies if the provision is not in conflict with the laws of this state or the United States, or of the provisions of the standard policy, but the provision must be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: "Provisions required by law to be stated in this policy", and must be a part of the policy.
4. A commercial insurance policy providing coverage for fire insurance in accordance with this section may exclude coverage for loss by fire insured against if the fire is caused directly or indirectly by terrorism.
5. There may be endorsed in writing on the outside of any policy the name, with the word "Producer or Producers" and place of business, of any insurance producer or producers. There may also be added, with the approval of the commissioner, a statement of the group of companies with which the insurer is financially affiliated.
- ~~6.~~ 6. When two or more insurers, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the head line of each policy the fact of the severalty of the contract; also the proportion of premiums to be paid to each insurer and the proportion of liability which each insurer agrees to assume. And in the printed conditions of the policy the necessary change may be made from the singular to plural number, when reference is had to the insurers issuing such policy.
- ~~6.~~ 7. With the approval of the commissioner, a combined farm policy may be used, the fire portion of which must be substantially in accord with the standard policy.
- ~~7.~~ 8. The standard policy is an interest policy and must be so construed as to at all times protect the interest, whatever it may be, of any named insured. Provided, however, that a five-day grace period is allowed after the execution of any written instrument transferring interest in insured property during which full protection must be granted under the terms of the policy.
- ~~8.~~ 9. In case of other coverage on the same peril, the liability of each insurer may not be for any greater amount or proportion of the loss than the ratio such insurance bears to the valid and collectible whole insurance covering the property against the peril involved.
- ~~9.~~ 10. No contract or policy issued under this section may contain a limitation of less than three years for the bringing of any suit or action under the contract or policy.

- ~~40.~~ 11. This section does not apply to inland marine, ocean marine, or automobile insurance.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 25, 2005

Filed March 25, 2005

## CHAPTER 273

### SENATE BILL NO. 2096

(Transportation Committee)

(At the request of the Insurance Commissioner)

## AUTOMOBILE WARRANTY CONTRACTS

AN ACT to amend and reenact section 26.1-40-18 of the North Dakota Century Code, relating to automobile warranty contracts and requirements relating to contractual liability insurance for warranty providers.

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

**SECTION 1. AMENDMENT.** Section 26.1-40-18 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-40-18. Automobile warranties construed.**

1. An automobile dealer or a third-party administrator who issues an automobile warranty contract, automobile mechanical breakdown contract, or automobile service contract shall maintain a policy of insurance which provides coverage for the dealer's or administrator's contractual obligation.
2. The policy must be issued by an insurer licensed, registered, or otherwise authorized to do business in this state. From the time the policy is filed with the commissioner:
  - a. The insurer shall maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile;  
or
  - b. The insurer shall maintain surplus as to policyholders and paid-in capital of between fifteen million dollars and ten million dollars, demonstrate to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile.

Approved April 19, 2005

Filed April 20, 2005

## CHAPTER 274

### SENATE BILL NO. 2047

(Legislative Council)  
(Transportation Committee)

## NO-FAULT INSURANCE MODIFICATIONS

AN ACT to amend and reenact sections 23-12-14, 26.1-41-01, 26.1-41-09, 26.1-41-11, and 26.1-41-12 of the North Dakota Century Code, relating to medical records and no-fault motor vehicle insurance; and to repeal section 26.1-41-17 of the North Dakota Century Code, relating to equitable allocation of losses.

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

**SECTION 1. AMENDMENT.** Section 23-12-14 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-12-14. Copies of medical records.**

1. As used in this section, "health care provider" means a licensed individual or licensed facility providing health care services. Upon the request of a health care provider's patient or any person authorized by a patient, the provider shall provide a free copy of a patient's health care records to a health care provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's health care to another health care provider for the continuation of treatment.
2. Except as provided in subsection 1, upon the request for medical records with the signed authorization of the patient, the health care provider shall provide medical records at a charge of no more than twenty dollars for the first twenty-five pages and seventy-five cents per page after twenty-five pages. This charge includes any administration fee, retrieval fee, and postage expense.

**SECTION 2. AMENDMENT.** Section 26.1-41-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-41-01. Definitions.** As used in this chapter:

1. "Accidental bodily injury" means bodily injury, sickness, or disease, including death resulting therefrom, arising out of the operation of a motor vehicle, and excluding injury as the result of an individual entering or alighting from a stopped motor vehicle if the injury is not caused by another motor vehicle, and which is accidental as to the person claiming basic or optional excess no-fault benefits.
2. "Basic no-fault benefits" means benefits for economic loss resulting from accidental bodily injury. The maximum amount of basic no-fault benefits payable for all economic loss incurred and resulting from accidental bodily injury to any one person as the result of any one accident may not exceed thirty thousand dollars, regardless of the number of persons

entitled to the benefits or the number of basic no-fault insurers obligated to pay the benefits. Basic no-fault benefits payable may not exceed one hundred fifty dollars per week per person prorated for any lesser period for work loss or survivors' income loss, or three thousand five hundred dollars for funeral, cremation, and burial expenses.

3. "Basic no-fault insurer" means an insurer or a qualified self-insurer.
4. "Bus" means:
  - a. Any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.
  - b. Any motor vehicle owned by a charitable, religious, educational, or governmental corporation or organization designed for carrying more than ten passengers and used for the transportation of persons not for compensation.
  - c. Any motor vehicle owned by a political subdivision and operated as part of a public transit system in which all or a portion of the costs of operation are subsidized by the political subdivision or the federal government.
5. "Dependent survivors" means the surviving spouse of a deceased injured person if residing in the deceased's household at the time of the deceased's death, and other persons receiving support from the deceased injured person at the time of the deceased's death which would qualify them as dependents of the deceased for federal income tax purposes under the federal Internal Revenue Code. The dependency of a surviving spouse terminates upon remarriage.
6. "Disability" means the inability to engage in substantially all of the injured person's usual and customary daily activities.
7. "Economic loss" means medical expenses, rehabilitation expenses, work loss, replacement services loss, survivors' income loss, survivors' replacement services loss, and funeral, cremation, and burial expenses.
8. "Injured person" means ~~a person~~ an individual who sustains accidental bodily injury.
9. "Medical expenses" means ~~reasonable~~ reasonable usual and customary charges incurred for reasonable and necessary medical, surgical, diagnostic, x-ray, dental, prosthetic, ambulance, hospital, or professional nursing services or services for remedial treatment and care ~~rendered in accordance with a recognized religious healing method~~. Medical expenses do. Usual and customary charges do not include ~~that~~:
  - a. The portion of the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility, or any similar facility in excess of the reasonable and customary charge for semiprivate accommodations unless intensive care is medically needed.

- b. Charges for drugs sold without a prescription.
  - c. Charges for experimental treatments.
  - d. Charges for medically unproven treatments.
10. "Motor vehicle" means a vehicle having more than three load-bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.
  11. "Noneconomic loss" means pain, suffering, inconvenience, and other nonpecuniary damage recoverable under the tort law of this state.
  12. "Occupying" means to be in or upon a motor vehicle ~~or engaged in the immediate act of entering into or alighting from the motor vehicle.~~
  13. "Operation of a motor vehicle" means operation, maintenance, or use of a motor vehicle as a vehicle. Operation of a motor vehicle does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining a motor vehicles vehicle unless the injury occurs off the business premises, or conduct in the course of loading and unloading the vehicle unless the injury occurs while occupying ~~it~~ the motor vehicle.
  14. "Owner" means the person in whose name the motor vehicle has been registered. If ownership has been transferred, but the registration record has not been changed, "owner" means the person, other than a lienholder, to whom ownership has been transferred. If no registration is in effect at the time of an accident involving the motor vehicle, "owner" means the person, other than a lienholder, who holds the legal title to the motor vehicle. If the motor vehicle is the subject of a security agreement with the debtor having the right to possession, a lease with an option to purchase with the lessee having the right to possession, or a lease with a term of six months or more with the lessee having the right to possession, "owner" means the debtor or lessee.
  15. "Pedestrian" means any ~~person~~ individual not occupying any vehicle designed to be driven or drawn by power other than muscular power.
  16. "Rehabilitation expense" means the cost of a procedure or treatment for rehabilitation or a course of rehabilitative occupational training if the procedure, treatment, or training is reasonable and appropriate for the particular case, its cost is reasonable in relation to its probable rehabilitative effects, and it is likely to contribute substantially to medical or occupational rehabilitation.
  17. "Relative" means any of the following residing in the same household as the owner: ~~a person~~ an individual related to the owner by blood, marriage, or adoption, or a foster child. ~~A person~~ An individual resides in the same household if that ~~person~~ individual usually makes a home in the same family unit, even though temporarily living elsewhere.

18. "Replacement services loss" means expenses not exceeding fifteen dollars per day in obtaining ordinary and necessary services from others not members of the injured person's household in lieu of those that the injured person would have performed had the injured person not been injured, not for income but for the benefit of the injured person or the injured person's household. Replacement services loss does not include any loss after the death of an injured person.
19. "Secured motor vehicle" means a motor vehicle with respect to which the security required by this chapter was in effect at the time of its involvement in the accident resulting in accidental bodily injury.
20. "Secured person" means the owner, operator, or occupant of a secured motor vehicle, and any other person legally responsible for the acts or omissions of the owner, operator, or occupant.
21. "Serious Injury" means an accidental bodily injury which results in death, dismemberment, serious and permanent disfigurement or disability beyond sixty days, or medical expenses in excess of two thousand five hundred dollars. An injured person who is furnished the services in subsection 9 without charge or at less than the ~~average reasonable~~ usual and customary charge for the service in this state is deemed to have sustained a serious injury if a court determines that the ~~fair and reasonable~~ usual and customary value of the services exceeds two thousand five hundred dollars.
22. "Survivors' income loss" means loss sustained after an injured person's death by dependent survivors during their dependency and consisting of the loss of the contributions they would have received for their support from the decedent out of income from work the decedent would normally have performed had the decedent not died.
23. "Survivors' replacement services loss" means expenses, not to exceed fifteen dollars per day after the injured person's death, by dependent survivors in obtaining ordinary and necessary services from others not members of the decedent's household in lieu of the services the decedent would have performed not for income but for the benefit of the decedent's household.
24. "Work loss" means eighty-five percent of loss of income from work an injured person who would normally be employed in gainful activity during the period of disability would have performed had the person not been injured, reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work that the injured person was capable of performing but unreasonably failed to undertake. Work loss does not include any loss after death of an injured person.

**SECTION 3. AMENDMENT.** Section 26.1-41-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-41-09. Payment of basic and optional excess no-fault benefits.**

1. Basic and optional excess no-fault benefits are payable monthly for economic loss sustained by an injured person or dependent survivors or incurred on the injured person's behalf by the injured person's spouse,

relatives, or guardian. A basic no-fault insurer may pay basic or optional excess no-fault benefits when due to the above persons who it believes have sustained or incurred the economic loss or at its option to the person rendering, for a charge, the services for which the benefits are payable. If the injured person dies, a basic no-fault insurer may pay the benefits due directly to those entitled to the benefits without the appointment of a personal representative and unless a court directs otherwise, may pay all benefits for survivors' income loss or replacement services loss to the surviving spouse for the use and benefit of all dependent survivors. A basic no-fault insurer's payments made in good faith in accordance with this chapter discharges its liability to the extent of the payments unless the basic no-fault insurer has been notified in writing of the claim of some other person prior to the making of any of the payments.

2. Basic and optional excess no-fault benefits are overdue if not paid within thirty days after the basic no-fault insurer receives reasonable proof of the fact and the amount of loss sustained, except that the basic no-fault insurer may accumulate claims for periods not exceeding one month, and the benefits are not overdue if paid within twenty days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after the proof is received by the basic no-fault insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after proof is received by the basic no-fault insurer. Payment is deemed made on the date of mailing. All overdue payments must bear interest at the judgment rate of eighteen percent per annum allowed in section 28-20-34.
3. Neither the injured person nor a basic no-fault insurer is required to pay for services billed more than one hundred eighty days after the date of treatment.

**SECTION 4. AMENDMENT.** Section 26.1-41-11 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-41-11. Mental and physical examinations.**

1. Whenever the mental or physical condition of a person an individual is material to any claim that has been or may be made for past or future basic or optional excess no-fault benefits, the person individual shall submit to mental or physical examination by a physician designated by the basic no-fault insurer at a reasonably convenient location. Basic no-fault insurers are authorized to include reasonable provisions of this nature in policies providing basic or excess no-fault benefits.
2. If an individual refuses to submit to a mental or physical examination, a court at the request of the insurer may enter an order requiring the individual to submit to the examination. If the court finds that the individual failed to appear for the examination without good cause, the court shall order the insured to reimburse the insurer for any reasonably demonstrable cancellation charges for the examination.

**SECTION 5. AMENDMENT.** Section 26.1-41-12 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-41-12. Discovery of facts about an injured person.**

1. Every employer or claimant, if a written request is made by a basic no-fault insurer against whom a claim has been made, shall furnish forthwith, in a form approved by the insurance commissioner, a sworn statement of the earnings, since the time of the accidental bodily injury and for a twelve-month period before the injury, of the ~~person~~ individual upon whose injury the claim is based.
2. Every physician, coroner or medical officer, hospital, clinic, or other medical institution providing, before or after an accidental bodily injury upon which a claim for basic or optional excess no-fault benefits is based, any products, services, or accommodations in relation to the injury, or in relation to a condition claimed to be connected with the injury, if requested in writing to do so by the basic no-fault insurer against whom the claim has been made, shall:
  - a. Promptly furnish a written report of the history, condition, treatment, and dates and costs of treatment.
  - b. Permit the inspection and copying of its records regarding the history, condition, treatment, and dates and costs of treatment.
  - c. Promptly furnish autopsy reports.
3. In the event of any dispute regarding a basic no-fault insurer's right to discovery of facts about an injured person's earnings or about history, condition, treatment, and dates and costs of such treatment, a court of record may enter an order for such discovery as justice requires.
4. A person may not charge more than twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five pages for providing a copy of medical records provided to a basic no-fault insurer pursuant to this chapter. This charge includes any administrative fee, retrieval fee, and postage expense.

**SECTION 6. REPEAL.** Section 26.1-41-17 of the North Dakota Century Code is repealed.

Approved April 22, 2005  
Filed April 25, 2005

## CHAPTER 275

### HOUSE BILL NO. 1376

(Representatives Price, Kreidt, Nottestad, Weisz)  
(Senators Brown, Dever)

## DISCOUNT MEDICAL PLAN AND CARD MARKETERS

AN ACT to create and enact chapter 26.1-53 of the North Dakota Century Code, relating to duties of providers and marketers of discount medical plans and cards; and to declare an emergency.

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

**SECTION 1.** Chapter 26.1-53 of the North Dakota Century Code is created and enacted as follows:

**26.1-53-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Discount medical plan" means any card, program, device, or mechanism that is not insurance which purports to offer discounts or access to discounts from a provider without recourse to the discount medical plan.
2. "Discount medical plan organization" means a person that, in exchange for fees, dues, charges, or other consideration, provides access for plan members to a discount medical plan.
3. "Marketer" means a person that markets, promotes, sells, or distributes a discount medical plan.
4. "Medical services" means any care, service, or treatment of illness or dysfunction of, or injury to, the human body, including physician care, inpatient care, hospital surgical services, emergency services, ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and laboratory services. The term does not include pharmaceutical supplies or prescriptions.
5. "Member" means any person that pays fees, dues, charges, or other consideration for the right to receive the benefits of a discount medical plan.
6. "Provider" means any person that is contracted, directly or indirectly, with a discount medical plan organization to provide medical services to members.
7. "Provider network" means a person that negotiates on behalf of more than one provider with a discount medical plan organization to provide medical services to members.

**26.1-53-02. Prohibited activities of a discount medical plan organization or marketer.** A discount medical plan organization may not:

1. Use in its advertisements, marketing material, brochures, and discount cards the term "insurance" except as otherwise provided under this chapter.
2. Use in its advertisements, marketing material, brochures, and discount cards the terms "health plan", "coverage", "copay", "copayments", "preexisting conditions", "guaranteed issue", "premium", "PPO", "preferred provider organization", or other terms in a manner that could reasonably mislead a person into believing the discount medical plan is insurance.
3. Pay providers any fees for medical services, unless the organization is an authorized third-party administrator.

#### **26.1-53-03. Disclosures.**

1. A discount medical plan organization or marketer shall disclose clearly and conspicuously in writing to any prospective member and on any advertisements, marketing materials, or brochures relating to a discount medical plan:
  - a. That the plan is not an insurance policy.
  - b. That the plan provides discounts at certain health care providers for medical services.
  - c. That the plan member is obligated to pay for all health care services but will receive a discount from those health care providers that have contracted with the discount medical plan organization.
  - d. The name, address, and telephone number of the discount medical plan organization and the marketer.
  - e. The cancellation and refund rights provided under section 26.1-53-08.
2. Any advertisements, marketing materials, or brochures relating to a discount medical plan which are transmitted to the public through the internet or television must state that the plan is not an insurance policy and that the plan provides discounts at certain health care providers for medical services.
3. The discount medical plan organization or marketer in solicitations conducted through telemarketing shall disclose orally to prospective members the required disclosures provided under subsection 1.

#### **26.1-53-04. Provider agreements.**

1. All providers offering medical services to members under a discount medical plan shall provide such services pursuant to a written agreement with the discount medical plan organization. The agreement may be entered directly by the provider or by a provider network to which the provider belongs.
2. A provider agreement must provide the following:

- a. A list of the services and products to be provided at a discount.
  - b. The amount or amounts of the discounts or, alternatively, a fee schedule that reflects the provider's discounted rates.
  - c. That the provider will not charge members more than the discounted rates.
3. A provider agreement between a discount medical plan organization and a provider network must require that the provider network have written agreements with the provider network's providers which:
    - a. Comply with subsection 2.
    - b. Authorize the provider network to contract with the discount medical plan organization on behalf of the provider.
    - c. Require the provider network to maintain an up-to-date list of the provider network's contracted providers and to provide that list on a quarterly basis to the discount medical plan organization.
  4. The discount medical plan organization shall maintain a copy of each active provider agreement and provide copies of the agreements to the commissioner, upon written request.

**26.1-53-05. Provider name listing.** Each discount medical plan organization shall maintain an up-to-date list of the names and addresses of the providers with which the discount medical plan organization has contracted, and the discounts provided by those providers, on a web site on the internet, the address of which must be prominently displayed on all the discount medical plan organization advertisements, marketing materials, brochures, and discount cards. This section applies to those providers with which the discount medical plan organization has contracted directly, as well as those that are members of a provider network with which the discount medical plan organization has contracted.

**26.1-53-06. Marketing of discount medical plans.**

1. All advertisements, marketing materials, brochures, and discount cards used by marketers must be approved in writing for such use by the discount medical plan organization.
2. The discount medical plan organization must have an executed written agreement with a marketer before the marketer's marketing, promoting, selling, or distributing the discount medical plan.

**26.1-53-07. Disclosure of bundling of discount medical plans with insurance products.** If a marketer or discount medical plan organization solicits, markets, or sells a discount medical plan together with any insurance product, the marketer or organization shall disclose clearly and conspicuously that the plan is not insurance.

**26.1-53-08. Cancellation and refunds.**

1. A discount medical plan shall permit members to cancel at any time. If cancellation occurs within thirty days of the member receiving written notice of cancellation rights, the discount medical plan shall provide

within thirty days of notice of cancellation a full refund to the canceling member, except for a nominal fee associated with the enrollment cost up to a maximum of fifty dollars. In the event of cancellation of the membership by either party, if a discount medical plan charges for a time period in excess of one month, the plan shall make a pro rata refund to the member.

2. The discount medical plan organization or marketer shall provide the member with written notice of cancellation rights within ten business days of purchase. The notice of cancellation rights must be clearly and conspicuously disclosed and must include instructions for the member to cancel the plan. The instructions must be made available to the commissioner upon request.
3. Cancellation occurs when notice of cancellation is given to the discount medical plan organization or marketer.
4. Notice of cancellation is deemed given when delivered in hand, deposited in a mailbox, properly addressed and postage prepaid, or e-mailed to the e-mail address of the discount medical plan organization or marketer.

**26.1-53-09. Enforcement - Powers - Remedies - Penalties.** The commissioner or the attorney general may enforce this chapter. The attorney general, in enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter is deemed a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties under chapter 51-15, or otherwise provided by law.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 2005  
Filed April 13, 2005