

Sixty-first  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1204

Introduced by

Representatives Keiser, Klemin, Weisz

Senator J. Lee

1 A BILL for an Act to create and enact a new section to chapter 26.1-36 and a new section to  
2 chapter 54-52.1 of the North Dakota Century Code, relating to health insurance coverage for  
3 medical services related to intoxication; to amend and reenact subsection 2 of section  
4 26.1-36-04 of the North Dakota Century Code, relating to health insurance coverage of injuries  
5 caused by intoxication or the use of narcotics or incurred in the commission of a crime; and to  
6 provide a statement of legislative intent.

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

8 **SECTION 1. AMENDMENT.** Subsection 2 of section 26.1-36-04 of the North Dakota  
9 Century Code is amended and reenacted as follows:

- 10 2. Except as provided in subsection 3, ~~no~~ an accident and health insurance policy  
11 delivered or issued for delivery to any person in this state may not contain  
12 provisions respecting the matters described in this subsection unless the  
13 provisions in the policy are not less favorable in any respect to the insured or the  
14 beneficiary.
- 15 a. A provision that if the insured is injured or contracts sickness after having  
16 changed occupation to one classified by the insurer as more hazardous than  
17 that stated in the policy or while doing for compensation anything pertaining to  
18 an occupation so classified, the insurer will pay only such portion of the  
19 indemnities provided in the policy as the premium paid would have purchased  
20 at the rates and within the limits fixed by the insurer for the more hazardous  
21 occupation. If the insured changes occupation to one classified by the insurer  
22 as less hazardous than that stated in the policy, the insurer, upon receipt of  
23 proof of the change of occupation, will reduce the premium rate accordingly,  
24 and will return the excess pro rata unearned premium from the date of

- 1 change of occupation or from the policy anniversary date immediately  
2 preceding receipt of proof, whichever is the more recent. The provision must  
3 provide that the classification of occupational risk and the premium rates will  
4 be such as have been last filed by the insurer ~~prior to~~ before the occurrence  
5 of the loss for which the insurer is liable or ~~prior to~~ before date of proof of  
6 change in occupation with the state official having supervision of insurance in  
7 the state where the insured resided at the time the policy was issued; but if  
8 the filing was not required, then the classification of occupational risk and the  
9 premium rates will be those last made effective by the insurer in such state  
10 ~~prior to~~ before the occurrence of the loss or ~~prior to~~ before the date of proof of  
11 change in occupation.
- 12 b. A provision that if the age of the insured has been misstated, all amounts  
13 payable under the policy will be such as the premium paid would have  
14 purchased at the correct age.
- 15 c. A provision that if an accident or health or accident and health policy or  
16 policies previously issued by the insurer to the insured are in force  
17 concurrently therewith, making the aggregate indemnity for the type of  
18 coverage or coverages, in excess of the maximum limit of indemnity or  
19 indemnities, the excess insurance is void and all premiums paid for the  
20 excess will be returned to the insured or to the insured's estate. In lieu of this  
21 type of provision, the policy may provide that insurance effective at any one  
22 time on the insured under the policy and a like policy or policies in the insurer  
23 is limited to the one such policy elected by the insured, the insured's  
24 beneficiary, or the insured's estate, as the case may be, and the insurer will  
25 return all premiums paid for all other such policies.
- 26 d. A provision that upon the payment of a claim under the policy, any premium  
27 then due and unpaid or covered by any note or written order may be  
28 deducted ~~therefrom~~ from the payment.
- 29 e. Subject to chapter 26.1-36.4, a provision that the insurer may cancel the  
30 policy at any time by written notice delivered to the insured, or mailed to the  
31 insured's last address as shown by the records of the insurer, stating when,

1 not less than five days thereafter, the cancellation is effective; and after the  
2 policy has been continued beyond its original term the insured may cancel the  
3 policy at any time by written notice delivered or mailed to the insurer, effective  
4 upon receipt or on such later date as may be specified in the notice. The  
5 provision must provide that in the event of cancellation, the insurer will return  
6 promptly the unearned portion of any premium paid, and, if the insured  
7 cancels, the earned premium will be computed by the use of the short-rate  
8 table last filed in the state where the insured resided when the policy was  
9 issued. The provision must provide that if the insurer cancels, the earned  
10 premium shall be computed pro rata. The provision must provide that  
11 cancellation is without prejudice to any claim originating prior to the effective  
12 date of cancellation.

13 f. A provision that any provision of the policy which, on its effective date, is in  
14 conflict with the statutes of the state in which the insured resides on such date  
15 is amended to conform to the minimum requirements of such statutes.

16 g. A provision that the insurer is not liable for any loss to which a contributing  
17 cause was the insured's commission of or attempt to commit a felony or to  
18 which a contributing cause was the insured's being engaged in an illegal  
19 occupation.

20 h. ~~A provision that the insurer is not liable for any loss sustained or contracted in~~  
21 ~~consequence of the insured's being intoxicated or under the influence of any~~  
22 ~~narcotic unless administered on the advice of a physician.~~

23 i. A provision that after the loss-of-time benefit of the policy has been payable  
24 for ninety days, such benefit will be adjusted, as provided ~~below~~ under this  
25 subdivision, if the total amount of unadjusted loss-of-time benefits provided in  
26 all valid loss-of-time coverage upon the insured should exceed a percentage  
27 of the insured's earned income as provided in the policy; provided, however,  
28 that if the information contained in the application discloses that the total  
29 amount of loss-of-time benefits under the policy and under all other valid  
30 loss-of-time coverage expected to be effective upon the insured in  
31 accordance with the application for this policy exceeded an alternative

1 percentage of the insured's earned income as provided in the policy, at the  
2 time of the application, such higher percentage will be used in place of the  
3 original percentage provided.

4 (1) The provision must provide that the adjusted loss-of-time benefit under  
5 the policy for any month will be only such proportion of the loss-of-time  
6 benefit otherwise payable under the policy as ~~(4)~~ (a) the product of the  
7 insured's earned income and the original percent, or, if higher, the  
8 alternative percentage, bears to ~~(2)~~ (b) the total amount of loss-of-time  
9 benefits payable for such month under the policy and all other valid  
10 loss-of-time coverage on the insured, without giving effect to the  
11 "overinsurance provision" in this or any other coverage, less in both ~~(4)~~  
12 (a) and ~~(2)~~ (b) any amount of loss-of-time benefits payable under other  
13 valid loss-of-time coverage which does not contain an "overinsurance  
14 provision".

15 (2) The provision must provide that in making the computation, all benefits  
16 and earnings will be converted to a consistent basis weekly if the  
17 loss-of-time benefit of the policy is payable weekly, or monthly if the  
18 benefit is payable monthly, or otherwise, based upon the time period. If  
19 the numerator of the foregoing ratio is zero or is negative, no benefit is  
20 payable.

21 (3) The provision must provide that in no event does the provision operate  
22 to reduce the total combined amount of loss-of-time benefits for such  
23 month payable under the policy and all other valid loss-of-time  
24 coverage below the lesser of three hundred dollars and the total  
25 combined amount of loss-of-time benefits determined without giving  
26 effect to any "overinsurance provision", nor operate to increase the  
27 amount of benefits payable under the policy above the amount which  
28 would have been paid in the absence of the provision, nor take into  
29 account or operate to reduce any benefit other than the loss-of-time  
30 benefit.

31 (4) The provision must provide that:

- 1                   (4) (a) "Earned income", except when otherwise specified, means the  
2   greater of the monthly earnings of the insured at the time  
3   disability commences and the insured's average monthly  
4   earnings for a period of two years immediately preceding the  
5   commencement of the disability, and does not include any  
6   investment income or any other income not derived from the  
7   insured's vocational activities.
- 8                   (2) (b) "Overinsurance provision" includes this type of provision and any  
9   other provision with respect to any loss-of-time coverage which  
10   may have the effect of reducing an insurer's liability if the total  
11   amount of loss-of-time benefits under all coverage exceeds a  
12   stated relationship to the insured's earnings.
- 13                   (5) This type of provision may be included only in a policy ~~which~~ that  
14   provides a loss-of-time benefit which may be payable for at least  
15   fifty-two weeks, which is issued on the basis of selective underwriting of  
16   each individual application, and for which the application includes a  
17   question designed to elicit information necessary either to determine  
18   the ratio of the total loss-of-time benefits of the insured to the insured's  
19   earned income or to determine that such ratio does not exceed the  
20   percentage of earnings, not less than sixty percent, selected by the  
21   insurer and inserted in lieu of the blank factor above. The insurer may  
22   require, as part of the proof of claim, the information necessary to  
23   administer this provision. If the application indicates that other  
24   loss-of-time coverage is to be discontinued, the amount of such other  
25   coverage must be excluded in computing the alternative percentage in  
26   the first sentence of the overinsurance provision. The policy must  
27   include a definition of "valid loss-of-time coverage" which may include  
28   coverage provided by governmental agencies and by organizations  
29   subject to regulation by insurance law and by insurance departments of  
30   this or any other state or of any other country or subdivision thereof,  
31   coverage provided for the insured pursuant to any disability benefits

1 statute or any workforce safety and insurance or employer's liability  
2 statute, benefits provided by labor-management trustee plans or union  
3 welfare plans or by employer or employee benefit organizations, or by  
4 salary continuance or pension programs, and any other coverage the  
5 inclusion of which may be approved.

6 **SECTION 2.** A new section to chapter 26.1-36 of the North Dakota Century Code is  
7 created and enacted as follows:

8 **Medical services related to intoxication.** An insurance company, nonprofit health  
9 service corporation, or health maintenance organization may not deliver, issue, execute, or  
10 renew any major medical expense policy on a group, blanket, franchise, or association basis  
11 unless the policy, contract, or evidence of coverage provides benefits, of the same type offered  
12 under the policy or contract for illnesses, for health services to any individual covered under the  
13 policy or contract for injury or illness resulting from any loss sustained or contracted in the  
14 consequence of the insured's being intoxicated or under the influence of any narcotic.

15 **SECTION 3.** A new section to chapter 54-52.1 of the North Dakota Century Code is  
16 created and enacted as follows:

17 **Insurance to cover medical services related to intoxication.** The board shall  
18 provide medical benefits coverage under a contract for insurance pursuant to section  
19 54-52.1-04 or under a self-insurance plan pursuant to section 54-52-04.2 for medical services  
20 related to intoxication in the same manner as provided for under section 2 of this Act.

21 **SECTION 4. LEGISLATIVE INTENT.** This Act is not a mandate of health insurance  
22 coverage of services under section 54-03-28.