

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1127

Introduced by

Representative Keiser

(At the request of the Insurance Commissioner)

1 A BILL for an Act to create and enact two new sections to chapter 26.1-36 of the North Dakota
2 Century Code, relating to health carrier external appeals and internal claims and appeals
3 procedures; to amend and reenact sections 26.1-03-01, 26.1-26.4-01, and 26.1-36-44 of the
4 North Dakota Century Code, relating to limitation on health insurance company risks, utilization
5 review, and independent external reviews; to provide for application; to provide an effective
6 date; and to declare an emergency.

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

8 **SECTION 1. AMENDMENT.** Section 26.1-03-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **26.1-03-01. Limitation on risks acceptable by company.**

11 An insurance company transacting an insurance business in this state may not expose itself
12 to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and
13 surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess
14 is reinsured. An insurance company offering group or individual insurance that is subject to the
15 lifetime or annual benefit limit restrictions of the Patient Protection and Affordable Care
16 Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010
17 [Pub. L. 111-152], is not subject to this section.

18 **SECTION 2. AMENDMENT.** Section 26.1-26.4-01 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **26.1-26.4-01. Purpose and scope.**

21 This chapter applies to grandfathered health plans unless a health care insurer or utilization
22 review agent determines to extend the protections of section 5 of this Act to a grandfathered
23 plan. "Grandfathered health plan" has the meaning stated in the Patient Protection and

1 Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education
2 Reconciliation Act of 2010 [Pub. L. 111-152]. The purpose of this chapter is to:

- 3 1. Promote the delivery of quality health care in a cost-effective manner;
- 4 2. Assure that utilization review agents adhere to reasonable standards for conducting
5 utilization review;
- 6 3. Foster greater coordination and cooperation between health care providers and
7 utilization review agents;
- 8 4. Improve communications and knowledge of benefits among all parties concerned
9 before expenses are incurred; and
- 10 5. Ensure that utilization review agents maintain the confidentiality of medical records in
11 accordance with applicable laws.

12 **SECTION 3. AMENDMENT.** Section 26.1-36-44 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **26.1-36-44. Independent external review.**

15 This section applies to grandfathered health plans. "Grandfathered health plan" has the
16 meaning stated in the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended
17 by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]. Every insurance
18 company, nonprofit health service corporation, and health maintenance organization that offers
19 an accident and health line of insurance shall establish and implement an independent external
20 review mechanism to review and determine whether medical care rendered under the line of
21 insurance was medically necessary and appropriate to the claim as submitted by the provider.
22 For purposes of this section, "independent external review" means a review conducted by the
23 North Dakota health care review, inc., another peer review organization meeting the
24 requirements of section 1152 of the Social Security Act, or any person designated by the
25 commissioner to conduct an independent external review. A determination made by the
26 independent external reviewer is binding on the parties. Costs associated with the independent
27 external review are the responsibility of the nonprevailing party. A provider may not use an
28 independent external review under this section unless the provider first has exhausted all
29 internal appeal processes offered by the insurance company, nonprofit health service
30 corporation, or health maintenance organization. The insurance commissioner shall take steps
31 necessary to ensure compliance with this section. If federal laws or rules relating to

1 independent external review are amended, repealed, or otherwise changed, the insurance
2 commissioner shall adopt rules to ensure the independent external review procedure is in
3 compliance with and substantively equivalent to the federal requirements.

4 **SECTION 4.** A new section to chapter 26.1-36 of the North Dakota Century Code is created
5 and enacted as follows:

6 **External appeals procedures.**

7 An insurance company, nonprofit health services corporation, or health maintenance
8 organization may not deliver, issue, execute, or renew any health insurance policy, health
9 service contract, or evidence of coverage on an individual, group, blanket, franchise, or
10 association basis unless the policy, contract, or evidence of coverage meets the minimum
11 requirements of 42 U.S.C. 300gg-19 and complies with 29 U.S.C. 1133, 29 CFR 2560.503-1;
12 42 U.S.C. 300gg-19, 26 CFR 54.9815-2719T; 29 U.S.C. 1185d, 29 CFR 2590.715-2719; and
13 26 U.S.C. 9815, 45 CFR 147.136. The insurance commissioner may take steps necessary to
14 ensure compliance with this section. If federal laws or rules relating to external appeals are
15 amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to
16 ensure the external appeals procedure is in compliance with and substantively equivalent to the
17 federal requirements.

18 **SECTION 5.** A new section to chapter 26.1-36 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Internal claims and appeals procedures.**

21 An insurance company, nonprofit health services corporation, or health maintenance
22 organization may not deliver, issue, execute, or renew any health insurance policy, health
23 service contract, or evidence of coverage on an individual, group, blanket, franchise, or
24 association basis unless the policy, contract, or evidence of coverage meets the minimum
25 requirements of 42 U.S.C. 300gg-19 and complies with 29 U.S.C. 1133, 29 CFR 2560.503-1;
26 42 U.S.C. 300gg-19, 26 CFR 54.9815-2719T; 29 U.S.C. 1185d, 29 CFR 2590.715-2719; and
27 26 U.S.C. 9815, 45 CFR 147.136. The insurance commissioner may take steps necessary to
28 ensure compliance with this section. If federal laws or rules relating to internal claims and
29 appeals are amended, repealed, or otherwise changed, the insurance commissioner shall adopt
30 rules to ensure the internal claims and appeals procedure is in compliance with and
31 substantively equivalent to the federal requirements.

1 **SECTION 6. APPLICATION.** The citations to federal laws and rules in this Act refer to the
2 versions in effect on the effective date of this Act. In carrying out the requirements of this Act,
3 the insurance commissioner shall provide regular updates to the legislative management during
4 the 2011-12 interim. The commissioner shall submit proposed legislation to the legislative
5 management for consideration at a special legislative session if the commissioner is required by
6 federal law to implement any program or requirement before January 1, 2013. For any program
7 or requirement that must be implemented between January 1, 2013, and January 1, 2014, the
8 commissioner shall submit proposed legislation to the legislative management before
9 October 15, 2012.

10 **SECTION 7. EFFECTIVE DATE.** This Act becomes effective on July 1, 2011.

11 **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.