

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1154

Introduced by

Representative Keiser

Senators Klein, Vedaa

1 A BILL for an Act to create and enact chapter 26.1-36.9 and sections 26.1-47-02.2 and  
2 26.1-47-02.3 of the North Dakota Century Code, relating to prior authorization of dental  
3 services, dental networks, and payment of dental claims.

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

5 **SECTION 1.** Chapter 26.1-36.9 of the North Dakota Century Code is created and enacted  
6 as follows:

7 **26.1-36.9-01. Definitions.**

8 As used in this chapter:

- 9 1. "Dental benefit plan" means a benefits plan that pays or provides dental expense  
10 benefits for covered dental services and is delivered through a dental insurer.
- 11 2. "Dental insurer" means a dental insurance company, dental service corporation, or  
12 dental plan organization authorized to provide dental benefits.
- 13 3. "Dental provider" means a licensed provider of dental services in this state.
- 14 4. "Dental services" means services for the diagnosis, prevention, treatment, or cure of a  
15 dental condition, illness, injury, or disease.
- 16 5. "Prior authorization" means confirmation by the covered individual's dental benefit plan  
17 that the services sought to be provided by the dental provider meet the criteria for  
18 coverage under the covered individual's dental benefit plan as defined by the covered  
19 individual's dental benefit plan.

20 **26.1-36.9-02. Dental benefit plans - Prior authorization.**

21 A dental benefit plan may not deny a claim subsequently submitted by a dental provider for  
22 procedures specifically included in a prior authorization, unless at least one of the following  
23 circumstances applies for each procedure denied:

- 1       1. Benefit limitations, such as annual maximums and frequency limitations not applicable  
2       at the time of the prior authorization, are reached due to utilization after issuance of  
3       the prior authorization.
- 4       2. The documentation for the claim provided by the dental provider submitting the claim  
5       clearly fails to support the claim as originally authorized.
- 6       3. If, after the issuance of the prior authorization, new procedures are provided to the  
7       patient or a change in the condition of the patient occurs such that the prior authorized  
8       procedure would no longer be considered medically necessary, based on the  
9       prevailing standard of care.
- 10      4. If, after the issuance of the prior authorization, new procedures are provided to the  
11      patient or a change in the patient's condition occurs such that the prior authorized  
12      procedure would at that time require disapproval pursuant to the terms and conditions  
13      for coverage under the patient's plan in effect at the time the prior authorization was  
14      used.
- 15      5. The denial of the payment was due to one of the following:
  - 16      a. Another payor is responsible for payment.
  - 17      b. The dental provider already has been paid for the procedures identified on the  
18      claim.
  - 19      c. The claim was submitted fraudulently.
  - 20      d. The individual receiving the procedure was not eligible to receive the procedure  
21      on the date of service.

22       **SECTION 2.** Section 26.1-47-02.2 of the North Dakota Century Code is created and  
23   enacted as follows:

24       **26.1-47-02.2. Dental networks.**

- 25      1. As used in this section:
  - 26      a. "Affiliate" means a person that directly or indirectly through one or more  
27      intermediaries controls, or is under the control of, or is under common control  
28      with, the person specified.
  - 29      b. "Contracting entity" means a person that enters a direct contract with a dental  
30      provider for the delivery of dental services.

- 1           c. "Network" means a group of preferred dental providers providing services under  
2           a network plan.
- 3           d. "Network plan" means a dental benefit plan that requires a covered individual to  
4           use, or creates incentives, including financial incentives, for a covered individual  
5           to use a dental provider managed by, owned by, under contract with, or employed  
6           by the dental insurer.
- 7           e. "Third party" means an entity that is not a party to a contracting entity's dental  
8           provider network.
- 9           2. A contracting entity may grant a third party access to a dental provider network  
10           contract, or a provider's dental services or contractual discounts provided pursuant to  
11           a dental provider network contract, if all of the following are met:
- 12           a. The contract specifically states the contracting entity may enter an agreement  
13           with a third party allowing the third party to obtain the contracting entity's rights  
14           and responsibilities as if the third party were the contracting entity.
- 15           b. If the contracting entity is a dental insurer, the dental provider may opt out of the  
16           third-party access at the time the dental provider network contract was entered or  
17           renewed.
- 18           c. The contracting entity identifies, in writing or electronic form to the dental  
19           provider, all third parties in existence as of the date the contract is entered or  
20           renewed.
- 21           d. The contracting entity notifies dental network providers that a new third party is  
22           leasing or purchasing the network at least thirty days in advance of the  
23           relationship taking effect.
- 24           e. The contracting entity makes available a copy of the dental provider network  
25           contract relied on in the adjudication of a claim to a participating dental provider  
26           within thirty days of a request from the dental provider.
- 27           3. A dental provider's refusal to agree in writing to the third-party access to the dental  
28           provider network does not permit the contracting entity to end the contractual  
29           relationship with the dental provider.
- 30           4. The provisions of this section do not apply if access to a provider network contract is  
31           granted to a dental carrier or an entity operating in accordance with the same brand

1           licensee program as the contracting entity or to an entity that is an affiliate of the  
2           contracting entity.

3           **SECTION 3.** Section 26.1-47-02.3 of the North Dakota Century Code is created and  
4 enacted as follows:

5           **26.1-47-02.3. Postpayment of dental claims - Payment recovery limitations.**

6           1. As used in this section, "dental care provider" means a licensed provider of dental  
7           care services in this state.

8           2. Other than recovery for duplicate payments, a dental insurer, if engaging in  
9           overpayment recovery efforts, shall provide written notice to the dental care provider  
10           which identifies the error made in the processing or payment of the claim and justifies  
11           the overpayment recovery.

12           3. A dental insurer shall provide a dental care provider with the opportunity to challenge  
13           an overpayment recovery, including the sharing of claims information, and shall  
14           establish written policies and procedures for a dental care provider to follow to  
15           challenge an overpayment recovery.

16           4. A dental insurer may not initiate overpayment recovery efforts more than twelve  
17           months after the original payment for the claim was made. This time limit does not  
18           apply to overpayment recovery efforts that are:

19           a. Based on reasonable belief of fraud, abuse, or other intentional misconduct;

20           b. Required by, or initiated at the request of, a self-insured plan; or

21           c. Required by a state or federal government plan.