

Introduced by

Senator Barta

1 A BILL for an Act to create and enact a new section to chapter 19-02.1 of the North Dakota
2 Century Code, relating to step therapy protocol exceptions; and to amend and reenact section
3 26.1-36.6-03 of the North Dakota Century Code, relating to self-insurance health plans.

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

5 **SECTION 1.** A new section to chapter 19-02.1 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Step therapy protocol exceptions.**

8 1. As used in this section:

9 a. "Step therapy protocol" has the same meaning as in section 19-02.1-16.3.

10 b. "Step therapy protocol exception" means a step therapy protocol is overridden in
11 favor of coverage of the prescription drug selected by a health care professional
12 as provided in subsection 2.

13 2. A health carrier, health benefit plan, pharmacy benefits manager, or utilization review
14 agent, shall approve a request for a step therapy protocol exception if:

15 a. The prescription drug required under the step therapy protocol is contraindicated
16 according to the drug manufacturer's prescribing information for the drug.

17 b. Due to a documented adverse event with previous use or a documented medical
18 condition, including a comorbid condition, the prescription drug is likely to:

19 (1) Cause an adverse reaction to a covered individual;

20 (2) Decrease the ability of a covered individual to achieve or maintain
21 reasonable functional ability in performing daily activities; or

22 (3) Cause physical or mental harm to a covered individual.

- 1 c. The prescription drug required under the step therapy protocol is expected to be
2 ineffective based on the known clinical characteristics of the covered individual,
3 including the individual's adherence to or compliance with the plan of care, and:
4 (1) The known characteristics of the prescription drug regimen as described in
5 peer-reviewed literature or in the manufacturer's prescribing information for
6 the drug;
7 (2) The health care professional's medical judgment based on clinical practice
8 guidelines or peer-reviewed journals; or
9 (3) The covered individual's documented experience with the prescription drug
10 regimen.
11 d. While under the covered individual's current or previous health benefit plan, for a
12 period of time to allow for a positive treatment outcome, the covered individual
13 had a trial of a therapeutically equivalent dose of the prescription drug under a
14 step therapy protocol, and that trial was discontinued by the covered individual's
15 health care professional due to lack of effectiveness.
16 e. While under the covered individual's current or previous health benefit plan, the
17 covered individual received a positive therapeutic outcome on a prescription drug
18 selected by the covered individual's health care professional for the medical
19 condition under consideration.
20 3. A health carrier, health benefit plan, pharmacy benefits manager, or utilization review
21 agent, shall:
22 a. If the prescription drug is a covered prescription drug under the covered
23 individual's health benefit plan, upon approval of a request supporting a step
24 therapy protocol exception, authorize coverage for the prescription drug selected
25 by the covered individual's health care professional.
26 b. Except as provided in subdivision c, within five calendar days after the receipt of
27 a request supporting a step therapy protocol exception, make a determination to
28 approve or deny the request.
29 c. Within seventy-two hours after the receipt of an emergency or urgent care
30 request supporting a step therapy protocol exception, make a determination to
31 approve or deny the request.

- 1 4. If a health carrier, health plan, pharmacy benefits manager, or utilization review agent
2 fails to respond to a request supporting a step therapy protocol exception as provided
3 in subdivisions b or c of subsection 3, the request is deemed approved.

4 **SECTION 2. AMENDMENT.** Section 26.1-36.6-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-36.6-03. Self-insurance health plans - Requirements. (Effective through July 31,**
7 **2025)**

- 8 1. The following policy provisions apply to a self-insurance health plan or to the
9 administrative services only or third-party administrator, and are subject to the
10 jurisdiction of the commissioner: sections 26.1-36-03, 26.1-36-03.1, 26.1-36-05,
11 26.1-36-10, 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14,
12 26.1-36-17, 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38,
13 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46.
- 14 2. The following health benefit provisions applicable to a group accident and health
15 insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are
16 subject to the jurisdiction of the commissioner: sections 26.1-36-06, 26.1-36-06.1,
17 26.1-36-07, 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2,
18 26.1-36-09.3, 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9,
19 26.1-36-09.10, 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14,
20 26.1-36-09.15, 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22,
21 26.1-36-23.1, and 26.1-36-43. Section 54-52.1-04.18 applies to a self-insurance health
22 plan and is subject to the jurisdiction of the commissioner.

23 **Self-insurance health plans - Requirements. (Effective after July 31, 2025)**

- 24 1. The following policy provisions apply to a self-insurance health plan or to the
25 administrative services only or third-party administrator, and are subject to the
26 jurisdiction of the commissioner: sections 26.1-36-03, 26.1-36-03.1, 26.1-36-05,
27 26.1-36-10, 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14,
28 26.1-36-17, 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38,
29 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46.
- 30 2. The following health benefit provisions applicable to a group accident and health
31 insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are

1 subject to the jurisdiction of the commissioner: sections 26.1-36-06, 26.1-36-06.1,
2 26.1-36-07, 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2,
3 26.1-36-09.3, 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9,
4 26.1-36-09.10, 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14,
5 26.1-36-09.15, 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22,
6 26.1-36-23.1, and 26.1-36-43. Section 1 of this Act applies to a self-insurance health
7 plan and is subject to the jurisdiction of the commissioner.