

**FIRST ENGROSSMENT**

**ENGROSSED HOUSE BILL NO. 1216**

Introduced by

Representatives Karls, Hagert, Kiefert, Wagner

Senators Boschee, Dever, Sorvaag

1 A BILL for an Act to create and enact a new section to chapter 26.1-36 of the North Dakota  
2 Century Code, relating to out-of-pocket expenses for prescription drugs; and to amend and  
3 reenact section 26.1-36.6-03 of the North Dakota Century Code, relating to self-insurance  
4 health care plans.

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

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

8 **Out-of-pocket expenses - Prescription drugs.**

9 1. As used in this section:

- 10 a. "Cost-sharing" means any coinsurance or copayment under a health benefit plan.
- 11 b. "Enrollee" means an individual entitled to prescription drug coverage under a  
12 health benefit plan.
- 13 c. "Grandfathered health plan" has the meaning stated in the Patient Protection and  
14 Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and  
15 Education Reconciliation Act of 2010 [Pub. L. 111-152]. The term includes the  
16 public employees retirement system uniform group insurance program's  
17 grandfathered preferred provider organization plan.
- 18 d. "Health benefit plan" has the same meaning as provided under section  
19 26.1-36.3-01.
- 20 e. "Prescription drug" means a drug for which a prescription is required:  
21 (1) Without a generic equivalent; or

1                   (2) With a generic equivalent and the enrollee has obtained access to the drug  
2                   through prior authorization, a step therapy protocol, or the health care  
3                   insurer's expectations and appeals process.

4           2.   a. Except as provided under subsection 4, to the extent permitted by federal law  
5                   and regulation, an insurer may not deliver, issue, execute, or renew a health  
6                   benefit plan providing prescription drug coverage unless when calculating an  
7                   enrollee's overall contribution to any out-of-pocket maximum or any cost-sharing  
8                   requirement for a prescription drug under the health benefit plan, the health  
9                   benefit plan provides for the inclusion of any amount paid by the enrollee or paid  
10                  on behalf of the enrollee by another individual.

11               b. The health benefit plan may not vary the out-of-pocket maximum or cost-sharing  
12                  requirement, or otherwise design benefits in a manner that takes into account the  
13                  availability of a cost-sharing assistance program for a prescription drug.

14               c. An amount paid by a cost-sharing assistance program for a prescription drug  
15                  may apply to an enrollee's copayment but may not apply to the annual deductible  
16                  or out-of-pocket maximum. An enrollee shall notify the insurer of any cost-sharing  
17                  assistance used to reduce a copayment.

18           3. If application of this section would result in ineligibility of a health benefit plan that is a  
19                  qualified high-deductible health plan to qualify as a health savings account under  
20                  section 223 of the Internal Revenue Code [26 U.S.C. 223], the requirements of this  
21                  section do not apply with respect to the deductible of the health benefit plan until after  
22                  the enrollee has satisfied the minimum deductible under section 26 U.S.C. 223.

23           4. This section does not apply to a grandfathered health plan.

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

26           **26.1-36.6-03. Self-insurance health plans - Requirements. (Effective through July 31,**  
27 **2025)**

28           1. The following policy provisions apply to a self-insurance health plan or to the  
29                  administrative services only or third-party administrator, and are subject to the  
30                  jurisdiction of the commissioner: sections 26.1-36-03, 26.1-36-03.1, 26.1-36-05,  
31                  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,

1 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,  
2 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46.

3 2. The following health benefit provisions applicable to a group accident and health  
4 insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are  
5 subject to the jurisdiction of the commissioner: sections 26.1-36-06, 26.1-36-06.1,  
6 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,  
7 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,  
8 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,  
9 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,  
10 26.1-36-23.1, and 26.1-36-43. Section 54-52.1-04.18 applies to a self-insurance health  
11 plan and is subject to the jurisdiction of the commissioner.

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

13 1. The following policy provisions apply to a self-insurance health plan or to the  
14 administrative services only or third-party administrator, and are subject to the  
15 jurisdiction of the commissioner: sections 26.1-36-03, 26.1-36-03.1, 26.1-36-05,  
16 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,  
17 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,  
18 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46.

19 2. The following health benefit provisions applicable to a group accident and health  
20 insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are  
21 subject to the jurisdiction of the commissioner: sections 26.1-36-06, 26.1-36-06.1,  
22 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,  
23 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,  
24 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,  
25 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,  
26 26.1-36-23.1, and 26.1-36-43. Section 1 of this Act applies to a self-insurance health  
27 plan and is subject to the jurisdiction of the commissioner.