

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1376  
(Representatives Price, Kreidt, Nottestad, Weisz)  
(Senators Brown, Dever)

AN ACT to create and enact chapter 26.1-53 of the North Dakota Century Code, relating to duties of providers and marketers of discount medical plans and cards; and to declare an emergency.

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

**SECTION 1.** Chapter 26.1-53 of the North Dakota Century Code is created and enacted as follows:

**26.1-53-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Discount medical plan" means any card, program, device, or mechanism that is not insurance which purports to offer discounts or access to discounts from a provider without recourse to the discount medical plan.
2. "Discount medical plan organization" means a person that, in exchange for fees, dues, charges, or other consideration, provides access for plan members to a discount medical plan.
3. "Marketer" means a person that markets, promotes, sells, or distributes a discount medical plan.
4. "Medical services" means any care, service, or treatment of illness or dysfunction of, or injury to, the human body, including physician care, inpatient care, hospital surgical services, emergency services, ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and laboratory services. The term does not include pharmaceutical supplies or prescriptions.
5. "Member" means any person that pays fees, dues, charges, or other consideration for the right to receive the benefits of a discount medical plan.
6. "Provider" means any person that is contracted, directly or indirectly, with a discount medical plan organization to provide medical services to members.
7. "Provider network" means a person that negotiates on behalf of more than one provider with a discount medical plan organization to provide medical services to members.

**26.1-53-02. Prohibited activities of a discount medical plan organization or marketer.** A discount medical plan organization may not:

1. Use in its advertisements, marketing material, brochures, and discount cards the term "insurance" except as otherwise provided under this chapter.
2. Use in its advertisements, marketing material, brochures, and discount cards the terms "health plan", "coverage", "copay", "copayments", "preexisting conditions", "guaranteed issue", "premium", "PPO", "preferred provider organization", or other terms in a manner that could reasonably mislead a person into believing the discount medical plan is insurance.

3. Pay providers any fees for medical services, unless the organization is an authorized third-party administrator.

**26.1-53-03. Disclosures.**

1. A discount medical plan organization or marketer shall disclose clearly and conspicuously in writing to any prospective member and on any advertisements, marketing materials, or brochures relating to a discount medical plan:
  - a. That the plan is not an insurance policy.
  - b. That the plan provides discounts at certain health care providers for medical services.
  - c. That the plan member is obligated to pay for all health care services but will receive a discount from those health care providers that have contracted with the discount medical plan organization.
  - d. The name, address, and telephone number of the discount medical plan organization and the marketer.
  - e. The cancellation and refund rights provided under section 26.1-53-08.
2. Any advertisements, marketing materials, or brochures relating to a discount medical plan which are transmitted to the public through the internet or television must state that the plan is not an insurance policy and that the plan provides discounts at certain health care providers for medical services.
3. The discount medical plan organization or marketer in solicitations conducted through telemarketing shall disclose orally to prospective members the required disclosures provided under subsection 1.

**26.1-53-04. Provider agreements.**

1. All providers offering medical services to members under a discount medical plan shall provide such services pursuant to a written agreement with the discount medical plan organization. The agreement may be entered directly by the provider or by a provider network to which the provider belongs.
2. A provider agreement must provide the following:
  - a. A list of the services and products to be provided at a discount.
  - b. The amount or amounts of the discounts or, alternatively, a fee schedule that reflects the provider's discounted rates.
  - c. That the provider will not charge members more than the discounted rates.
3. A provider agreement between a discount medical plan organization and a provider network must require that the provider network have written agreements with the provider network's providers which:
  - a. Comply with subsection 2.
  - b. Authorize the provider network to contract with the discount medical plan organization on behalf of the provider.
  - c. Require the provider network to maintain an up-to-date list of the provider network's contracted providers and to provide that list on a quarterly basis to the discount medical plan organization.

4. The discount medical plan organization shall maintain a copy of each active provider agreement and provide copies of the agreements to the commissioner, upon written request.

**26.1-53-05. Provider name listing.** Each discount medical plan organization shall maintain an up-to-date list of the names and addresses of the providers with which the discount medical plan organization has contracted, and the discounts provided by those providers, on a web site on the internet, the address of which must be prominently displayed on all the discount medical plan organization advertisements, marketing materials, brochures, and discount cards. This section applies to those providers with which the discount medical plan organization has contracted directly, as well as those that are members of a provider network with which the discount medical plan organization has contracted.

**26.1-53-06. Marketing of discount medical plans.**

1. All advertisements, marketing materials, brochures, and discount cards used by marketers must be approved in writing for such use by the discount medical plan organization.
2. The discount medical plan organization must have an executed written agreement with a marketer before the marketer's marketing, promoting, selling, or distributing the discount medical plan.

**26.1-53-07. Bundling discount medical plans with insurance products prohibited.** If a marketer or discount medical plan organization solicits, markets, or sells a discount medical plan together with any insurance product, the marketer or organization shall disclose clearly and conspicuously that the plan is not insurance.

**26.1-53-08. Cancellation and refunds.**

1. A discount medical plan shall permit members to cancel at any time. If cancellation occurs within thirty days of the member receiving written notice of cancellation rights, the discount medical plan shall provide within thirty days of notice of cancellation a full refund to the canceling member, except for a nominal fee associated with the enrollment cost up to a maximum of fifty dollars. In the event of cancellation of the membership by either party, if a discount medical plan charges for a time period in excess of one month, the plan shall make a pro rata refund to the member.
2. The discount medical plan organization or marketer shall provide the member with written notice of cancellation rights within ten business days of purchase. The notice of cancellation rights must be clearly and conspicuously disclosed and must include instructions for the member to cancel the plan. The instructions must be made available to the commissioner upon request.
3. Cancellation occurs when notice of cancellation is given to the discount medical plan organization or marketer.
4. Notice of cancellation is deemed given when delivered in hand, deposited in a mailbox, properly addressed and postage prepaid, or e-mailed to the e-mail address of the discount medical plan organization or marketer.

**26.1-53-09. Enforcement - Powers - Remedies - Penalties.** The commissioner or the attorney general may enforce this chapter. The attorney general, in enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter is deemed a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties under chapter 51-15, or otherwise provided by law.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1376 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:      Yeas          91                  Nays          0                  Absent        3

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:      Yeas          46                  Nays          0                  Absent        1

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State