

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

SENATE BILL NO. 2047
(Legislative Council)
(Transportation Committee)

AN ACT to amend and reenact sections 23-12-14, 26.1-41-01, 26.1-41-09, 26.1-41-11, and 26.1-41-12 of the North Dakota Century Code, relating to medical records and no-fault motor vehicle insurance; and to repeal section 26.1-41-17 of the North Dakota Century Code, relating to equitable allocation of losses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-14 of the North Dakota Century Code is amended and reenacted as follows:

23-12-14. Copies of medical records.

1. As used in this section, "health care provider" means a licensed individual or licensed facility providing health care services. Upon the request of a health care provider's patient or any person authorized by a patient, the provider shall provide a free copy of a patient's health care records to a health care provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's health care to another health care provider for the continuation of treatment.
2. Except as provided in subsection 1, upon the request for medical records with the signed authorization of the patient, the health care provider shall provide medical records at a charge of no more than twenty dollars for the first twenty-five pages and seventy-five cents per page after twenty-five pages. This charge includes any administration fee, retrieval fee, and postage expense.

SECTION 2. AMENDMENT. Section 26.1-41-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-01. Definitions. As used in this chapter:

1. "Accidental bodily injury" means bodily injury, sickness, or disease, including death resulting therefrom, arising out of the operation of a motor vehicle, and excluding injury as the result of an individual entering or alighting from a stopped motor vehicle if the injury is not caused by another motor vehicle, and which is accidental as to the person claiming basic or optional excess no-fault benefits.
2. "Basic no-fault benefits" means benefits for economic loss resulting from accidental bodily injury. The maximum amount of basic no-fault benefits payable for all economic loss incurred and resulting from accidental bodily injury to any one person as the result of any one accident may not exceed thirty thousand dollars, regardless of the number of persons entitled to the benefits or the number of basic no-fault insurers obligated to pay the benefits. Basic no-fault benefits payable may not exceed one hundred fifty dollars per week per person prorated for any lesser period for work loss or survivors' income loss, or three thousand five hundred dollars for funeral, cremation, and burial expenses.
3. "Basic no-fault insurer" means an insurer or a qualified self-insurer.
4. "Bus" means:

- a. Any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.
 - b. Any motor vehicle owned by a charitable, religious, educational, or governmental corporation or organization designed for carrying more than ten passengers and used for the transportation of persons not for compensation.
 - c. Any motor vehicle owned by a political subdivision and operated as part of a public transit system in which all or a portion of the costs of operation are subsidized by the political subdivision or the federal government.
5. "Dependent survivors" means the surviving spouse of a deceased injured person if residing in the deceased's household at the time of the deceased's death, and other persons receiving support from the deceased injured person at the time of the deceased's death which would qualify them as dependents of the deceased for federal income tax purposes under the federal Internal Revenue Code. The dependency of a surviving spouse terminates upon remarriage.
 6. "Disability" means the inability to engage in substantially all of the injured person's usual and customary daily activities.
 7. "Economic loss" means medical expenses, rehabilitation expenses, work loss, replacement services loss, survivors' income loss, survivors' replacement services loss, and funeral, cremation, and burial expenses.
 8. "Injured person" means ~~a person~~ an individual who sustains accidental bodily injury.
 9. "Medical expenses" means ~~reasonable usual and customary charges incurred for reasonable and necessary medical, surgical, diagnostic, x-ray, dental, prosthetic, ambulance, hospital, or professional nursing services or services for remedial treatment and care rendered in accordance with a recognized religious healing method. Medical expenses do.~~ Usual and customary charges do not include that:
 - a. The portion of the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility, or any similar facility in excess of the reasonable and customary charge for semiprivate accommodations unless intensive care is medically needed.
 - b. Charges for drugs sold without a prescription.
 - c. Charges for experimental treatments.
 - d. Charges for medically unproven treatments.
 10. "Motor vehicle" means a vehicle having more than three load-bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.
 11. "Noneconomic loss" means pain, suffering, inconvenience, and other nonpecuniary damage recoverable under the tort law of this state.
 12. "Occupying" means to be in or upon a motor vehicle ~~or engaged in the immediate act of entering into or alighting from the motor vehicle.~~
 13. "Operation of a motor vehicle" means operation, maintenance, or use of a motor vehicle as a vehicle. Operation of a motor vehicle does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining a motor vehicle unless

the injury occurs off the business premises, or conduct in the course of loading and unloading the vehicle unless the injury occurs while occupying ~~it~~ the motor vehicle.

14. "Owner" means the person in whose name the motor vehicle has been registered. If ownership has been transferred, but the registration record has not been changed, "owner" means the person, other than a lienholder, to whom ownership has been transferred. If no registration is in effect at the time of an accident involving the motor vehicle, "owner" means the person, other than a lienholder, who holds the legal title to the motor vehicle. If the motor vehicle is the subject of a security agreement with the debtor having the right to possession, a lease with an option to purchase with the lessee having the right to possession, or a lease with a term of six months or more with the lessee having the right to possession, "owner" means the debtor or lessee.
15. "Pedestrian" means any ~~person~~ individual not occupying any vehicle designed to be driven or drawn by power other than muscular power.
16. "Rehabilitation expense" means the cost of a procedure or treatment for rehabilitation or a course of rehabilitative occupational training if the procedure, treatment, or training is reasonable and appropriate for the particular case, its cost is reasonable in relation to its probable rehabilitative effects, and it is likely to contribute substantially to medical or occupational rehabilitation.
17. "Relative" means any of the following residing in the same household as the owner: ~~a person~~ an individual related to the owner by blood, marriage, or adoption, or a foster child. ~~A person~~ An individual resides in the same household if that ~~person~~ individual usually makes a home in the same family unit, even though temporarily living elsewhere.
18. "Replacement services loss" means expenses not exceeding fifteen dollars per day in obtaining ordinary and necessary services from others not members of the injured person's household in lieu of those that the injured person would have performed had the injured person not been injured, not for income but for the benefit of the injured person or the injured person's household. Replacement services loss does not include any loss after the death of an injured person.
19. "Secured motor vehicle" means a motor vehicle with respect to which the security required by this chapter was in effect at the time of its involvement in the accident resulting in accidental bodily injury.
20. "Secured person" means the owner, operator, or occupant of a secured motor vehicle, and any other person legally responsible for the acts or omissions of the owner, operator, or occupant.
21. "Serious Injury" means an accidental bodily injury which results in death, dismemberment, serious and permanent disfigurement or disability beyond sixty days, or medical expenses in excess of two thousand five hundred dollars. An injured person who is furnished the services in subsection 9 without charge or at less than the ~~average reasonable~~ usual and customary charge for the service in this state is deemed to have sustained a serious injury if a court determines that the ~~fair and reasonable~~ usual and customary value of the services exceeds two thousand five hundred dollars.
22. "Survivors' income loss" means loss sustained after an injured person's death by dependent survivors during their dependency and consisting of the loss of the contributions they would have received for their support from the decedent out of income from work the decedent would normally have performed had the decedent not died.
23. "Survivors' replacement services loss" means expenses, not to exceed fifteen dollars per day after the injured person's death, by dependent survivors in obtaining ordinary and necessary services from others not members of the decedent's household in lieu of the

services the decedent would have performed not for income but for the benefit of the decedent's household.

24. "Work loss" means eighty-five percent of loss of income from work an injured person who would normally be employed in gainful activity during the period of disability would have performed had the person not been injured, reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work that the injured person was capable of performing but unreasonably failed to undertake. Work loss does not include any loss after death of an injured person.

SECTION 3. AMENDMENT. Section 26.1-41-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-09. Payment of basic and optional excess no-fault benefits.

1. Basic and optional excess no-fault benefits are payable monthly for economic loss sustained by an injured person or dependent survivors or incurred on the injured person's behalf by the injured person's spouse, relatives, or guardian. A basic no-fault insurer may pay basic or optional excess no-fault benefits when due to the above persons who it believes have sustained or incurred the economic loss or at its option to the person rendering, for a charge, the services for which the benefits are payable. If the injured person dies, a basic no-fault insurer may pay the benefits due directly to those entitled to the benefits without the appointment of a personal representative and unless a court directs otherwise, may pay all benefits for survivors' income loss or replacement services loss to the surviving spouse for the use and benefit of all dependent survivors. A basic no-fault insurer's payments made in good faith in accordance with this chapter discharges its liability to the extent of the payments unless the basic no-fault insurer has been notified in writing of the claim of some other person prior to the making of any of the payments.
2. Basic and optional excess no-fault benefits are overdue if not paid within thirty days after the basic no-fault insurer receives reasonable proof of the fact and the amount of loss sustained, except that the basic no-fault insurer may accumulate claims for periods not exceeding one month, and the benefits are not overdue if paid within twenty days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after the proof is received by the basic no-fault insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after proof is received by the basic no-fault insurer. Payment is deemed made on the date of mailing. All overdue payments must bear interest at the judgment rate of eighteen percent per annum allowed in section 28-20-34.
3. Neither the injured person nor a basic no-fault insurer is required to pay for services billed more than one hundred eighty days after the date of treatment.

SECTION 4. AMENDMENT. Section 26.1-41-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-11. Mental and physical examinations.

1. Whenever the mental or physical condition of ~~a person~~ an individual is material to any claim that has been or may be made for past or future basic or optional excess no-fault benefits, the ~~person~~ individual shall submit to mental or physical examination by a physician designated by the basic no-fault insurer at a reasonably convenient location. Basic no-fault insurers are authorized to include reasonable provisions of this nature in policies providing basic or excess no-fault benefits.

2. If an individual refuses to submit to a mental or physical examination, a court at the request of the insurer may enter an order requiring the individual to submit to the examination. If the court finds that the individual failed to appear for the examination without good cause, the court shall order the insured to reimburse the insurer for any reasonably demonstrable cancellation charges for the examination.

SECTION 5. AMENDMENT. Section 26.1-41-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-12. Discovery of facts about an injured person.

1. Every employer or claimant, if a written request is made by a basic no-fault insurer against whom a claim has been made, shall furnish forthwith, in a form approved by the insurance commissioner, a sworn statement of the earnings, since the time of the accidental bodily injury and for a twelve-month period before the injury, of the ~~person~~ individual upon whose injury the claim is based.
2. Every physician, coroner or medical officer, hospital, clinic, or other medical institution providing, before or after an accidental bodily injury upon which a claim for basic or optional excess no-fault benefits is based, any products, services, or accommodations in relation to the injury, or in relation to a condition claimed to be connected with the injury, if requested in writing to do so by the basic no-fault insurer against whom the claim has been made, shall:
 - a. Promptly furnish a written report of the history, condition, treatment, and dates and costs of treatment.
 - b. Permit the inspection and copying of its records regarding the history, condition, treatment, and dates and costs of treatment.
 - c. Promptly furnish autopsy reports.
3. In the event of any dispute regarding a basic no-fault insurer's right to discovery of facts about an injured person's earnings or about history, condition, treatment, and dates and costs of such treatment, a court of record may enter an order for such discovery as justice requires.
4. A person may not charge more than twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five pages for providing a copy of medical records provided to a basic no-fault insurer pursuant to this chapter. This charge includes any administrative fee, retrieval fee, and postage expense.

SECTION 6. REPEAL. Section 26.1-41-17 of the North Dakota Century Code is repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2047.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 79 Nays 12 Absent 3

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