

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2047

Introduced by

Legislative Council

(Transportation Committee)

1 A BILL for an Act to amend and reenact sections 23-12-14, 26.1-41-01, 26.1-41-09, 26.1-41-11,
2 26.1-41-12, and 26.1-41-19 of the North Dakota Century Code, relating to medical records and
3 no-fault motor vehicle insurance; and to repeal section 26.1-41-17 of the North Dakota Century
4 Code, relating to equitable allocation of losses.

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

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

8 **23-12-14. Copies of medical records.**

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

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

23 **26.1-41-01. Definitions.** As used in this chapter:

- 1 1. "Accidental bodily injury" means bodily injury, sickness, or disease, including death
2 resulting therefrom, arising out of the operation of a motor vehicle, and excluding
3 injury as the result of an individual entering or alighting from a stopped motor
4 vehicle if the injury is not caused by another motor vehicle, and which is accidental
5 as to the person claiming basic or optional excess no-fault benefits.
- 6 2. "Basic no-fault benefits" means benefits for economic loss resulting from
7 accidental bodily injury. The maximum amount of basic no-fault benefits payable
8 for all economic loss incurred and resulting from accidental bodily injury to any one
9 person as the result of any one accident may not exceed thirty thousand dollars,
10 regardless of the number of persons entitled to the benefits or the number of basic
11 no-fault insurers obligated to pay the benefits. Basic no-fault benefits payable may
12 not exceed one hundred fifty dollars per week per person prorated for any lesser
13 period for work loss or survivors' income loss, or three thousand five hundred
14 dollars for funeral, cremation, and burial expenses.
- 15 3. "Basic no-fault insurer" means an insurer or a qualified self-insurer.
- 16 4. "Bus" means:
 - 17 a. Any motor vehicle owned by a public or governmental agency and operated
18 for the transportation of children to or from school or privately owned and
19 operated for compensation for the transportation of children to or from school.
 - 20 b. Any motor vehicle owned by a charitable, religious, educational, or
21 governmental corporation or organization designed for carrying more than ten
22 passengers and used for the transportation of persons not for compensation.
 - 23 c. Any motor vehicle owned by a political subdivision and operated as part of a
24 public transit system in which all or a portion of the costs of operation are
25 subsidized by the political subdivision or the federal government.
- 26 5. "Dependent survivors" means the surviving spouse of a deceased injured person if
27 residing in the deceased's household at the time of the deceased's death, and
28 other persons receiving support from the deceased injured person at the time of
29 the deceased's death which would qualify them as dependents of the deceased for
30 federal income tax purposes under the federal Internal Revenue Code. The
31 dependency of a surviving spouse terminates upon remarriage.

- 1 6. "Disability" means the inability to engage in substantially all of the injured person's
2 usual and customary daily activities.
- 3 7. "Economic loss" means medical expenses, rehabilitation expenses, work loss,
4 replacement services loss, survivors' income loss, survivors' replacement services
5 loss, and funeral, cremation, and burial expenses.
- 6 8. "Injured person" means ~~a person~~ an individual who sustains accidental bodily
7 injury.
- 8 9. "Medical expenses" means ~~reasonable~~ usual and customary charges incurred for
9 reasonable and necessary medical, surgical, diagnostic, x-ray, dental, prosthetic,
10 ambulance, hospital, or professional nursing services or services for remedial
11 treatment and care ~~rendered in accordance with a recognized religious healing~~
12 ~~method.~~ Medical expenses do not include that:
- 13 a. The portion of the charge for a room in any hospital, clinic, convalescent or
14 nursing home, extended care facility, or any similar facility in excess of the
15 reasonable and customary charge for semiprivate accommodations unless
16 intensive care is medically needed.
- 17 b. Charges for drugs sold without a prescription.
- 18 c. Charges for experimental treatments.
- 19 d. Charges for medically unproven treatments.
- 20 10. "Motor vehicle" means a vehicle having more than three load-bearing wheels, of a
21 kind required to be registered under the laws of this state relating to motor
22 vehicles, designed primarily for operation upon the public streets, roads, and
23 highways, and driven by power other than muscular power, and includes a trailer
24 drawn by or attached to such a vehicle.
- 25 11. "Noneconomic loss" means pain, suffering, inconvenience, and other
26 nonpecuniary damage recoverable under the tort law of this state.
- 27 12. "Occupying" means to be in or upon a motor vehicle ~~or engaged in the immediate~~
28 ~~act of entering into or alighting from the motor vehicle.~~
- 29 13. "Operation of a motor vehicle" means operation, maintenance, or use of a motor
30 vehicle as a vehicle. Operation of a motor vehicle does not include conduct within
31 the course of a business of repairing, servicing, or otherwise maintaining a motor

- 1 ~~vehicles~~ vehicle unless the injury occurs off the business premises, or conduct in
2 the course of loading and unloading the vehicle unless the injury occurs while
3 occupying it the motor vehicle.
- 4 14. "Owner" means the person in whose name the motor vehicle has been registered.
5 If ownership has been transferred, but the registration record has not been
6 changed, "owner" means the person, other than a lienholder, to whom ownership
7 has been transferred. If no registration is in effect at the time of an accident
8 involving the motor vehicle, "owner" means the person, other than a lienholder,
9 who holds the legal title to the motor vehicle. If the motor vehicle is the subject of
10 a security agreement with the debtor having the right to possession, a lease with
11 an option to purchase with the lessee having the right to possession, or a lease
12 with a term of six months or more with the lessee having the right to possession,
13 "owner" means the debtor or lessee.
- 14 15. "Pedestrian" means any ~~person~~ individual not occupying any vehicle designed to
15 be driven or drawn by power other than muscular power.
- 16 16. "Rehabilitation expense" means the cost of a procedure or treatment for
17 rehabilitation or a course of rehabilitative occupational training if the procedure,
18 treatment, or training is reasonable and appropriate for the particular case, its cost
19 is reasonable in relation to its probable rehabilitative effects, and it is likely to
20 contribute substantially to medical or occupational rehabilitation.
- 21 17. "Relative" means any of the following residing in the same household as the
22 owner: ~~a person~~ an individual related to the owner by blood, marriage, or adoption,
23 or a foster child. ~~A person~~ An individual resides in the same household if that
24 ~~person~~ individual usually makes a home in the same family unit, even though
25 temporarily living elsewhere.
- 26 18. "Replacement services loss" means expenses not exceeding fifteen dollars per
27 day in obtaining ordinary and necessary services from others not members of the
28 injured person's household in lieu of those that the injured person would have
29 performed had the injured person not been injured, not for income but for the
30 benefit of the injured person or the injured person's household. Replacement
31 services loss does not include any loss after the death of an injured person.

- 1 19. "Secured motor vehicle" means a motor vehicle with respect to which the security
2 required by this chapter was in effect at the time of its involvement in the accident
3 resulting in accidental bodily injury.
- 4 20. "Secured person" means the owner, operator, or occupant of a secured motor
5 vehicle, and any other person legally responsible for the acts or omissions of the
6 owner, operator, or occupant.
- 7 21. "Serious Injury" means an accidental bodily injury which results in death,
8 dismemberment, serious and permanent disfigurement or disability beyond sixty
9 days, or medical expenses in excess of two thousand five hundred dollars. For the
10 purposes of determining whether the amount of medical expenses exceeds the
11 two thousand five hundred dollar threshold, expenses for diagnostic testing are not
12 included. An injured person who is furnished the services in subsection 9 without
13 charge or at less than the ~~average reasonable~~ usual and customary charge for the
14 service in this state is deemed to have sustained a serious injury if a court
15 determines that the ~~fair and reasonable~~ usual and customary value of the services
16 exceeds two thousand five hundred dollars.
- 17 22. "Survivors' income loss" means loss sustained after an injured person's death by
18 dependent survivors during their dependency and consisting of the loss of the
19 contributions they would have received for their support from the decedent out of
20 income from work the decedent would normally have performed had the decedent
21 not died.
- 22 23. "Survivors' replacement services loss" means expenses, not to exceed fifteen
23 dollars per day after the injured person's death, by dependent survivors in
24 obtaining ordinary and necessary services from others not members of the
25 decedent's household in lieu of the services the decedent would have performed
26 not for income but for the benefit of the decedent's household.
- 27 24. "Work loss" means eighty-five percent of loss of income from work an injured
28 person who would normally be employed in gainful activity during the period of
29 disability would have performed had the person not been injured, reduced by any
30 income from substitute work actually performed by the injured person or by income
31 the injured person would have earned in available appropriate substitute work that

1 the injured person was capable of performing but unreasonably failed to
2 undertake. Work loss does not include any loss after death of an injured person.

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

5 **26.1-41-09. Payment of basic and optional excess no-fault benefits.**

- 6 1. Basic and optional excess no-fault benefits are payable monthly for economic loss
7 sustained by an injured person or dependent survivors or incurred on the injured
8 person's behalf by the injured person's spouse, relatives, or guardian. A basic
9 no-fault insurer may pay basic or optional excess no-fault benefits when due to the
10 above persons who it believes have sustained or incurred the economic loss or at
11 its option to the person rendering, for a charge, the services for which the benefits
12 are payable. If the injured person dies, a basic no-fault insurer may pay the
13 benefits due directly to those entitled to the benefits without the appointment of a
14 personal representative and unless a court directs otherwise, may pay all benefits
15 for survivors' income loss or replacement services loss to the surviving spouse for
16 the use and benefit of all dependent survivors. A basic no-fault insurer's payments
17 made in good faith in accordance with this chapter discharges its liability to the
18 extent of the payments unless the basic no-fault insurer has been notified in writing
19 of the claim of some other person prior to the making of any of the payments.
- 20 2. Basic and optional excess no-fault benefits are overdue if not paid within thirty
21 days after the basic no-fault insurer receives reasonable proof of the fact and the
22 amount of loss sustained, except that the basic no-fault insurer may accumulate
23 claims for periods not exceeding one month, and the benefits are not overdue if
24 paid within twenty days after the period of accumulation. If reasonable proof is not
25 supplied as to the entire claim, the amount supported by reasonable proof is
26 overdue if not paid within thirty days after the proof is received by the basic no-fault
27 insurer. Any part or all of the remainder of the claim that is later supported by
28 reasonable proof is overdue if not paid within thirty days after proof is received by
29 the basic no-fault insurer. Payment is deemed made on the date of mailing. All
30 overdue payments must bear interest at the judgment rate of ~~eighteen percent per~~
31 ~~annum~~ allowed in section 28-20-34.

- 1 3. Neither the injured person nor a basic no-fault insurer is required to pay for
2 services billed more than one hundred eighty days after the date of treatment.

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

5 **26.1-41-11. Mental and physical examinations.**

- 6 1. Whenever the mental or physical condition of ~~a person~~ an individual is material to
7 any claim that has been or may be made for past or future basic or optional excess
8 no-fault benefits, the ~~person~~ individual shall submit to mental or physical
9 examination by a physician designated by the basic no-fault insurer at a
10 reasonably convenient location. Basic no-fault insurers are authorized to include
11 reasonable provisions of this nature in policies providing basic or excess no-fault
12 benefits.
- 13 2. If an individual refuses to submit to a mental or physical examination, a court at the
14 request of the insurer may enter an order requiring the individual to submit to the
15 examination. If the court finds that the individual failed to appear for the
16 examination without good cause, the court shall order the insured to reimburse the
17 insurer for any reasonably demonstrable cancellation charges for the examination.

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

20 **26.1-41-12. Discovery of facts about an injured person.**

- 21 1. Every employer or claimant, if a written request is made by a basic no-fault insurer
22 against whom a claim has been made, shall furnish forthwith, in a form approved
23 by the insurance commissioner, a sworn statement of the earnings, since the time
24 of the accidental bodily injury and for a twelve-month period before the injury, of
25 the ~~person~~ individual upon whose injury the claim is based.
- 26 2. Every physician, coroner or medical officer, hospital, clinic, or other medical
27 institution providing, before or after an accidental bodily injury upon which a claim
28 for basic or optional excess no-fault benefits is based, any products, services, or
29 accommodations in relation to the injury, or in relation to a condition claimed to be
30 connected with the injury, if requested in writing to do so by the basic no-fault
31 insurer against whom the claim has been made, shall:

- 1 a. Promptly furnish a written report of the history, condition, treatment, and dates
2 and costs of treatment.
- 3 b. Permit the inspection and copying of its records regarding the history,
4 condition, treatment, and dates and costs of treatment.
- 5 c. Promptly furnish autopsy reports.
- 6 3. In the event of any dispute regarding a basic no-fault insurer's right to discovery of
7 facts about an injured person's earnings or about history, condition, treatment, and
8 dates and costs of such treatment, a court of record may enter an order for such
9 discovery as justice requires.
- 10 4. A person may not charge more than twenty dollars for the first twenty-five pages
11 and seventy-five cents per page for every page beyond twenty-five pages for
12 providing a copy of medical records provided to a basic no-fault insurer pursuant to
13 this chapter. This charge includes any administrative fee, retrieval fee, and
14 postage expense.

15 **SECTION 6. AMENDMENT.** Section 26.1-41-19 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **26.1-41-19. Limitation of actions.**

- 18 1. If no basic or optional excess no-fault benefits have been paid for loss, an action
19 for the benefits may not be commenced ~~not~~ later than ~~two years~~ one year after the
20 injured person suffers the loss and either knows, or in the exercise of reasonable
21 diligence should know, that the loss was caused by the accident, or ~~not~~ later than
22 ~~four~~ two years after the accident, whichever is earlier. If basic or optional excess
23 no-fault benefits have been paid for loss, an action for recovery of further benefits
24 for the loss by either the same or another claimant may not be commenced ~~not~~
25 later than ~~four~~ two years after the last payment of benefits.
- 26 2. If no basic or optional excess no-fault benefits have been paid to the decedent or
27 dependent survivors, an action for benefits for survivors' income loss and
28 replacement services loss and funeral and burial expenses may be commenced
29 not later than two years after the death or six years after the accident from which
30 death results, whichever is earlier. If survivors' income loss and replacement
31 services loss benefits have been paid to any dependent survivor, an action for

1 recovery of further survivors' income loss or replacement services loss benefits by
2 either the same or another claimant may be commenced not later than six years
3 after the last payment of benefits. If basic or optional excess no-fault benefits have
4 been paid for loss suffered by an injured person before the injured person's death
5 resulting from the injury, an action for recovery of survivors' income loss or
6 replacement services loss benefits may be commenced not later than two years
7 after the death or six years after the last payment of benefits, whichever is earlier.

8 3. ~~Except as~~ Unless subsection 1 or 2 prescribes a longer period, an action by a
9 claimant on an assigned claim which has been timely presented may be
10 commenced not later than sixty days after the claimant received written notice of
11 rejection of the claim by the basic no-fault insurer to which it was assigned.

12 4. The time period limitations prescribed in this section govern all actions for basic
13 and optional excess no-fault benefits under this chapter notwithstanding any
14 limitation prescribed elsewhere in the laws of this state.

15 **SECTION 7. REPEAL.** Section 26.1-41-17 of the North Dakota Century Code is
16 repealed.