

February 9, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2306

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact sections 26.1-30-22 and 26.1-30-23 of the North Dakota Century Code, relating to premium rate requirements and rate filing procedures for accident and health insurance; and to amend and reenact sections 26.1-18.1-15, 26.1-30-19, and 26.1-30-21 of the North Dakota Century Code, relating to health maintenance organization rate filings and insurance rate filing procedures.

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

**SECTION 1. AMENDMENT.** Section 26.1-18.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-18.1-15. Filing requirements for rating information.**

1. ~~No~~ A premium rate may not be used until ~~either~~ a schedule of premium rates or methodology for determining premium rates has been filed with and approved by the commissioner.
2. ~~Either a~~ A specific schedule of premium rates; or a methodology for determining premium rates; must be established in accordance with actuarial principles for various categories of enrollees, provided that the premium applicable to an enrollee may not be individually determined based on the status of the enrollee's health. ~~However, the premium rates may not be excessive, inadequate, or unfairly discriminatory.~~ A certification by a qualified actuary or other qualified person acceptable to the commissioner as to the appropriateness of the use of the methodology, based on reasonable assumptions, ~~shall~~ must accompany the filing along with adequate supporting information.
3. The commissioner shall approve the schedule of premium rates or methodology for determining premium rates if the requirements of subsection 2 and the requirements of sections 26.1-30-22 and 26.1-30-23 are met. The procedures set forth in sections ~~26.1-30-20 26.1-30-22 and 26.1-30-24~~ 26.1-30-23 govern the approval and disapproval of rating information required to be filed under this section.

**SECTION 2. AMENDMENT.** Section 26.1-30-19 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-30-19. Policy forms to be filed with and approved by commissioner.**

1. ~~No~~ An insurance policy, contract, agreement, or rate schedule may not be issued or delivered in this state until the form of that policy, contract, agreement, or rate schedule has been filed with and approved by the commissioner.
2. ~~No~~ A life insurance policy, certificate, contract, or agreement or annuity contract may not be issued for delivery or delivered to any person in this state nor may any application, rider, or endorsement be used in connection therewith until the form thereof has been filed with and approved by the commissioner and is in compliance with chapters 26.1-33, 26.1-34, 26.1-35, and 26.1-37.

3. ~~No~~ An insurance policy, certificate, contract, or agreement or notice of proposed insurance against loss or expense from the sickness, bodily injury, or death by accident of the insured may not be issued for delivery or delivered to any person in this state nor may any application, rider, or endorsement be used in connection therewith until the form thereof and the classification of risks and the premium rates, or in the case of cooperatives or assessment companies the estimated costs pertaining thereto, have been filed with and approved by the commissioner. A form must be disapproved if the benefits ~~provided are unreasonable in relation to the premium charge or if the benefits~~ do not comply with chapters 26.1-36 and 26.1-37. Sections 26.1-30-22 and 26.1-30-23 apply to rate filings required under this subsection.
4. ~~No~~ A casualty or fire and property insurance policy, certificate, contract, or agreement may not be issued for delivery or delivered to any person in this state nor may any application, rider, or endorsement be used in connection therewith until the form thereof has been filed and approved by the commissioner to the extent rates are filed and approved pursuant to chapter 26.1-25.

**SECTION 3. AMENDMENT.** Section 26.1-30-21 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-30-21. Disapproval of form by commissioner - Notice and hearing.**

1. ~~If~~ Except as otherwise provided, if the commissioner disapproves any form, the commissioner shall notify the company or organization ~~which~~ that filed the form within sixty days after filing or within the additional period provided for in section 26.1-30-20 and provide written notice of disapproval of the form, specifying the reasons for disapproval and stating that a hearing may be requested in writing within forty-five days. ~~No~~ A company or organization may not issue any insurance policy in the form ~~which~~ that has been disapproved. If a hearing is requested, the commissioner may suspend or postpone the effective date of disapproval.
2. ~~The commissioner may~~ Except as otherwise provided, at any time after a hearing of which not less than twenty days' written notice has been given to the insurer, ~~the commissioner may~~ withdraw approval of any form if ~~if~~ the form contains a provision ~~which~~ that is unjust, unfair, inequitable, misleading, or deceptive, or on any of the grounds stated in this title. It is unlawful for the insurer to issue the form or use ~~if~~ the form in connection with any policy after the effective date of withdrawal of approval. The notice of any hearing called under this subsection must specify the matters to be considered at the hearing and any decision affirming disapproval or directing withdrawal of approval under this section must be in writing and must specify the reasons for the decision.

**SECTION 4.** Section 26.1-30-22 of the North Dakota Century Code is created and enacted as follows:

**26.1-30-22. Accident and health insurance - Premium rate requirements.**

1. Premium rates associated with any insurance policy, certificate, contract, or agreement or notice of proposed insurance against loss or expense from the sickness, bodily injury, or death by accident of the insured may not be issued for delivery or delivered to any person in this state nor may any application, rider, or endorsement be used in connection with such a policy, certificate, contract, agreement, or notice until the classification of risks and premium rates, or in the case of cooperatives or assessment companies

the estimated costs pertaining thereto, have been filed with and approved by the commissioner as provided under section 26.1-30-23.

2. For purposes of this section, premium rates:
  - a. Must cover reasonably anticipated claims;
  - b. Must cover reasonable costs of operation and overhead expenses;
  - c. Must be reasonable in relation to benefits provided;
  - d. For an insurer subject to section 26.1-17-33.1, notwithstanding the prohibition of use of risk-based capital information for ratemaking as defined in section 26.1-03.1-08, must maintain a risk-based capital margin between six hundred percent and seven hundred fifty percent based on the risk-based capital instructions defined in chapter 26.1-03.1;
  - e. May not be excessive;
  - f. May not be inadequate, unless mutually agreed by the insurer and the commissioner; and
  - g. May not be unfairly discriminatory.
3. Reliance on the risk-based capital instructions under chapter 26.1-03.1 for establishing reasonable premium rates does not waive the confidentiality protection and other restrictions.
4. Except as otherwise provided, as used in this section:
  - a. "Excessive rates" means rates that are projected to not meet the minimum loss ratios specified in section 26.1-36-37.2.
  - b. "Inadequate rate" means a rate that is projected to return benefits to group policyholders in the aggregate of more than ninety percent of premium received and to return benefits to individual policyholders in the aggregate of more than eighty-five percent of premium received.
  - c. "Unfairly discriminatory rate" means a rate established in violation of subsection 7 of section 26.1-04-03.

**SECTION 5.** Section 26.1-30-23 of the North Dakota Century Code is created and enacted as follows:

**26.1-30-23. Accident and health insurance - Procedure for use of premium rates filed with commissioner - Appeals.**

1. Except as otherwise provided or except upon receipt of written approval by the commissioner, a premium rate or a rate schedule required to be filed under this section may not be issued, nor may any application, rider, or endorsement be used in connection with such a rate or rate schedule, until the expiration of forty-five days following the filing of the rate or rate schedule with the commissioner. The commissioner may extend the forty-five-day period for an additional period, not to exceed fifteen days, if the commissioner provides written notice to the insurer within the initial forty-five-day period. The written notice must advise the insurer that the additional time is necessary for the commissioner to consider the filing. If the applicable time period for consideration of a premium rate filing by the commissioner expires without a written response as required under

subsection 2, the filing is deemed approved until the next time the same rate filing for the associated insurance policy, certificate, contract, agreement, or rate schedule, or any associated application, rider, or endorsement, is submitted to the commissioner for review.

2. The commissioner shall review the premium rate filing, including additional information requested related to the rate filing, and shall provide a written response that:
  - a. Approves the premium rate schedule as filed;
  - b. Disapproves the premium rate schedule as filed, and which includes the specific actuarial basis and reasons for the denial, and which is accompanied by the actuarial analysis used in making the determination by the commissioner; or
  - c. Disapproves the submitted premium rate schedule as filed and approves an alternative rate schedule, and which includes the specific actuarial basis and reasons for the alternate rate schedule, and which is accompanied by the actuarial analysis used in making the determination by the commissioner.
3. If the commissioner disapproves the rate schedule or approves an alternative rate schedule, as part of the written response the commissioner shall notify the insurer that the insurer may request an administrative hearing by filing a written request within fifteen days of the written response.
4. If the insurer requests a hearing under subsection 3, the commissioner shall coordinate with the office of administrative hearings, in consultation with the insurer, to schedule an administrative hearing that must be conducted by an independent hearing officer within forty-five days of the hearing request. Upon a determination of just cause, the hearing officer may extend the forty-five-day deadline for no more than fifteen days.
5. The hearing officer shall issue a final decision within thirty days following completion of the administrative hearing and any posthearing briefs. The insurer and the commissioner have thirty days from the issuance of the final decision to file an appeal with the district court."

Renumber accordingly