

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1127
(Representative Keiser)
(At the request of the Insurance Commissioner)

AN ACT to create and enact two new sections to chapter 26.1-36 of the North Dakota Century Code, relating to health carrier external appeals and internal claims and appeals procedures; to amend and reenact sections 26.1-03-01, 26.1-26.4-01, and 26.1-36-44 of the North Dakota Century Code, relating to limitation on health insurance company risks, utilization review, and independent external reviews; to provide for application; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-01. Limitation on risks acceptable by company.

An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured. An insurance company offering group or individual insurance that is subject to the lifetime or annual benefit limit restrictions of the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152], is not subject to this section.

SECTION 2. AMENDMENT. Section 26.1-26.4-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.4-01. Purpose and scope.

This chapter applies to grandfathered health plans unless a health care insurer or utilization review agent determines to extend the protections of section 5 of this Act to a grandfathered plan. "Grandfathered health plan" has the meaning stated in the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]. The purpose of this chapter is to:

1. Promote the delivery of quality health care in a cost-effective manner;
2. Assure that utilization review agents adhere to reasonable standards for conducting utilization review;
3. Foster greater coordination and cooperation between health care providers and utilization review agents;
4. Improve communications and knowledge of benefits among all parties concerned before expenses are incurred; and
5. Ensure that utilization review agents maintain the confidentiality of medical records in accordance with applicable laws.

SECTION 3. AMENDMENT. Section 26.1-36-44 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-44. Independent external review.

This section applies to grandfathered health plans. "Grandfathered health plan" has the meaning stated in the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]. Every insurance company, nonprofit health service corporation, and health maintenance organization that offers an accident and health line of insurance shall establish and implement an independent external review mechanism to review and determine whether medical care rendered under the line of insurance was medically necessary and appropriate to the claim as submitted by the provider. For purposes of this section, "independent external review" means a review conducted by the North Dakota health care review, inc., another peer review organization meeting the requirements of section 1152 of the Social Security Act, or any person designated by the commissioner to conduct an independent external review. A determination made by the independent external reviewer is binding on the parties. Costs associated with the independent external review are the responsibility of the nonprevailing party. A provider may not use an independent external review under this section unless the provider first has exhausted all internal appeal processes offered by the insurance company, nonprofit health service corporation, or health maintenance organization. The insurance commissioner shall take steps necessary to ensure compliance with this section. If federal laws or rules relating to independent external review are amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to ensure the independent external review procedure is in compliance with and substantively equivalent to the federal requirements.

SECTION 4. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

External appeals procedures.

An insurance company, nonprofit health services corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage meets the minimum requirements of 42 U.S.C. 300gg-19 and complies with 29 U.S.C. 1133, 29 CFR 2560.503-1; 42 U.S.C. 300gg-19, 26 CFR 54.9815-2719T; 29 U.S.C. 1185d, 29 CFR 2590.715-2719; and 26 U.S.C. 9815, 45 CFR 147.136. The insurance commissioner may take steps necessary to ensure compliance with this section. If federal laws or rules relating to external appeals are amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to ensure the external appeals procedure is in compliance with and substantively equivalent to the federal requirements.

SECTION 5. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Internal claims and appeals procedures.

An insurance company, nonprofit health services corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage meets the minimum requirements of 42 U.S.C. 300gg-19 and complies with 29 U.S.C. 1133, 29 CFR 2560.503-1; 42 U.S.C. 300gg-19, 26 CFR 54.9815-2719T; 29 U.S.C. 1185d, 29 CFR 2590.715-2719; and 26 U.S.C. 9815, 45 CFR 147.136. The insurance commissioner may take steps necessary to ensure compliance with this section. If federal laws or rules relating to internal claims and appeals are amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to ensure the internal claims and appeals procedure is in compliance with and substantively equivalent to the federal requirements.

SECTION 6. APPLICATION. The citations to federal laws and rules in this Act refer to the versions in effect on the effective date of this Act. In carrying out the requirements of this Act, the insurance commissioner shall provide regular updates to the legislative management during the 2011-12 interim. The commissioner shall submit proposed legislation to the legislative management for consideration at

a special legislative session if the commissioner is required by federal law to implement any program or requirement before January 1, 2013. For any program or requirement that must be implemented between January 1, 2013, and January 1, 2014, the commissioner shall submit proposed legislation to the legislative management before October 15, 2012.

SECTION 7. EFFECTIVE DATE. This Act becomes effective on July 1, 2011.

SECTION 8. 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 Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1127 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 92 Nays 0 Absent 2

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 45 Nays 2 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,
at _____ o'clock _____ M.

Secretary of State