Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003

HOUSE BILL NO. 1438
(Representative Price)
(Senator J. Lee)

AN ACT to create and enact a new subsection to section 25-01.3-01 and a new section to chapter 44-04 of the North Dakota Century Code, relating to definitions and duties to protect information; to amend and reenact section 23-01.3-02, subsection 1 of section 23-07-01.1, sections 23-07-02.1 and 23-07-02.2, subsections 6, 7, and 8 of section 23-07.5-01, section 23-07.5-02, subsection 1 of section 23-07.5-04, sections 23-07.5-06, 23-07.5-07, and 23-07.5-08, subsection 3 of section 23-07.7-02, sections 23-12-14, 23-16-09, 25-01.3-10, and 25-16-07, subsection 9 of section 26.1-04-03, section 28-01-46.1, subsections 6 and 9 of section 37-18-11, subsection 4 of section 43-15-01, subdivision n of subsection 1 of section 43-15-10, section 43-47-09, subsection 1 of section 44-04-18.1, and section 50-19-10 of the North Dakota Century Code, relating to the use and disclosure of health information, and persons to be tested and the timing of testing for the human immunodeficiency virus; to repeal sections 23-01.3-03, 23-07.5-03, and 23-07.5-05 of the North Dakota Century Code, relating to the disclosure of health information; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

23-01.3-02. Disclosure of protected health information - In general. Protected health information in possession of a public health authority may be disclosed only as authorized by this chapter or another law of this state explicitly authorizing the disclosure of that information, except that protected health information received or maintained under chapter 23-01.1 may be disclosed only as authorized by that chapter. Subject to section 23-01-15, subsection 1 of section 23-07-02.2, and any other requirements of this title, this chapter does not prohibit a public health authority from disclosing protected health information for use in a biomedical research project approved by an institutional review board or ~~public~~ a privacy board or protected health information that has been transformed to protect the identity of the patient through coding or encryption if the information is disclosed for use in an epidemiological or statistical study.

SECTION 2. AMENDMENT. Subsection 1 of section 23-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~All physicians and other medical professionals~~ A physician or other health care provider may report immediately to the department of transportation in writing, the name, date of birth, and address of every ~~person~~ individual fourteen years of age or over coming before them for examination, attendance, care, or treatment ~~when~~ if there is reasonable cause to believe that ~~such person~~ the individual due to physical or mental reason is incapable of safely operating a motor vehicle or diagnosed as a case of a disorder defined as characterized by lapses of consciousness, gross physical or mental impairments, and the report is necessary to prevent or lessen a serious and imminent threat to the health or safety of the individual or the public.

SECTION 3. AMENDMENT. Section 23-07-02.1 of the North Dakota Century Code is amended and reenacted as follows:

23-07-02.1. Reports of human immunodeficiency virus infection - Penalty. Every attending physician treating an individual known by the physician to have a diagnosis of human

immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, shall make a report on that individual to the state department of health. A person treating an individual known to have human immunodeficiency virus infection in a hospital, a clinic, a sanitarium, the physical custody of the department of corrections and rehabilitation, a regional or local correctional facility or juvenile detention center, the North Dakota youth correctional center, or other private or public institution shall make a report on that individual to the facility administrator or the facility administrator's designee. Further ~~release~~ disclosure of information on any individual known to have human immunodeficiency virus infection may only be provided to medical personnel providing direct care to the individual or as otherwise authorized by law. The designated official shall, if satisfied that the report is valid, make a report to the department on each individual having a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, unless the diagnosed individual's attending physician has made such a report. The reports required under this section must contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or designated official making the report. Failure by a facility to designate an official to whom reports must be made is an infraction. Any person who in good faith complies with this section is immune from civil and criminal liability for any action taken in compliance with this section.

SECTION 4. AMENDMENT. Section 23-07-02.2 of the North Dakota Century Code is amended and reenacted as follows:

23-07-02.2. Confidentiality of reports. A report required by section 23-07-02.1 and held by the state department of health is ~~strictly~~ confidential information. The information may not be ~~released~~ disclosed, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except that:

1. ~~Release~~ Disclosure may be made of medical or ~~epidemiologic~~ epidemiological information for statistical purposes in a manner such that no individual person can be identified;

2. ~~Release~~ Disclosure may be made of medical or ~~epidemiologic~~ epidemiological information to the extent necessary to enforce section 23-07-02.1 and this section and related rules concerning the treatment, control, and investigation of human immunodeficiency virus infection by public health officials; or

3. ~~Release~~ Disclosure may be made of medical or ~~epidemiologic~~ epidemiological information to medical personnel to the extent necessary to protect the health or life of any individual.

No officer or employee of the state department of health may be examined in any judicial, executive, legislative, or other proceeding regarding the existence or content of any individual's report retained by the department under section 23-07-02.1.

SECTION 5. AMENDMENT. Subsections 6, 7, and 8 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

6. "Informed consent for testing ~~or disclosure~~" means the written ~~consent on an informed consent form by an individual to the administration of a test to that~~ permission of an individual to be tested for the presence of ~~an antibody to~~ the human immunodeficiency virus ~~or to the disclosure to a specified person of the results of a test administered to the consenting individual~~.

7. "Informed consent form" means a printed document on which an individual may signify that individual's ~~informed consent for testing~~ permission to be tested for the presence of ~~an antibody to~~ the human immunodeficiency virus ~~or authorize the disclosure of any test results obtained~~.

8. "Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no

physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician.

SECTION 6. AMENDMENT. Section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-02. Informed consent for testing ~~or disclosure~~ - Exception.

1. Except when testing ~~and disclosure~~ is otherwise provided for by law, a health care provider, blood bank, blood center, or plasma center may not subject a person to a test for the presence of ~~an antibody to~~ the human immunodeficiency virus unless the subject of the test, the parent or legal guardian or custodian of a minor who is the subject of the test, or the legal guardian of an incapacitated person who is the subject of the test, first provides informed consent for testing ~~or disclosure~~ as provided under subsection 2.

2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of ~~an antibody to~~ the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:

   a. The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.

   b. A statement of explanation that the test results may be disclosed as ~~provided under subsection 1 of section 23-07.5-05 and either a listing of the persons or circumstances specified under subsection 1 of section 23-07.5-05 or a statement that the listing is available upon request~~ authorized by law.

   c. ~~Spaces~~ Space specifically designated for the ~~following purposes:~~

      ~~(1)~~ ~~The~~ signature of the person providing informed consent for the testing and the date on which the consent is signed~~; and~~

      ~~(2)~~ ~~The name of any person to whom the test results may be disclosed, if any; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective~~.

3. A health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and who has had a significant exposure with the patient may subject the patient's blood to a test for the presence of the human immunodeficiency virus, without the patient's consent, if all of the following apply:

   a. A sample of the patient's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.

   b. The ~~patient's~~ personal physician of the individual exposed, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The certification must accompany the request for testing and disclosure.

   c. The patient is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.

d. Before testing, the patient is informed, while competent and conscious, that the patient's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to ~~no one including~~ the patient ~~without the patient's consent, except to~~, the individual who has had a significant exposure, and any other person as authorized by law; that if the individual who has had a significant exposure knows the identity of the patient, that individual may not disclose the patient's identity to any other person except for the purpose of having the test performed; and that a record of the test results may be placed in the individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the patient's identity. ~~A person who discloses the identity of a patient under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C felony.~~ Each individual who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that individual's understanding that the individual may not disclose the ~~information~~ patient's identity and that disclosing the information constitutes a class C felony.

4. A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:

a. A sample of the provider's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.

b. A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.

c. The provider or a person rendering aid under chapter 32-03.1 is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.

d. Before testing, the provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to ~~no one including~~ the provider ~~without the provider's consent, except to the patient~~, the individual who has had a significant exposure, and any other person as authorized by law; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. ~~A person who discloses the identity of the provider or otherwise breaches the confidentiality requirements of this subsection is guilty of a class C felony.~~ Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating ~~that~~ the patient's understanding that the patient may not disclose the ~~information~~ provider's identity and that disclosing the information constitutes a class C felony.

5. If a person who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a person who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received that person, collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the person who experienced the significant exposure. If a

facility that received the person who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct the testing, the facility shall provide the physician providing care for the exposed emergency medical services provider, health care provider, or person who rendered aid under chapter 32-03.1 testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the person who experienced the significant exposure.

6. Any testing done pursuant to subsection 3, 4, or 5 ~~may~~ must be conducted in ~~the most~~ a reasonably expedient manner ~~possible~~. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing the patient or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the person to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within five days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

   a. The patient or provider has been requested to consent to testing and has refused to be tested and a sample of the patient's or provider's blood is not available to be used to test for the human immunodeficiency virus;

   b. The court finds probable cause to believe that the person petitioning for the testing has had a significant exposure with the person to be tested;

   c. The petition substitutes a pseudonym for the true name of the person to be tested;

   d. The court provides the person to be tested with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;

   e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and

   f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

7. ~~A person~~ An exposed individual may request two tests of the test subject after a significant exposure. ~~The first~~ Each test may be requested ~~within ten days after a significant exposure, and the second test may be requested not earlier than five months, nor~~ as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than ~~six~~ nine months~~,~~ after a significant exposure. The ~~tested person~~ test subject must provide a blood sample within twenty-four hours after the first request and within seventy-two hours after the second request, subject to the provisions of this chapter.

8. A health care provider who subjects a patient to a significant exposure must notify the patient of the exposure. A health care provider witnessing a significant exposure may report the exposure pursuant to any appropriate facility or employer guidelines ~~that~~ to

which the provider may be subject. The knowing failure to inform a patient of a significant exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.

SECTION 7. AMENDMENT. Subsection 1 of section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Obtain from the test subject; the subject's parent, legal guardian, or custodian if the subject is a minor; or the test subject's legal guardian if the subject is incapacitated, informed consent for testing ~~or disclosure~~, unless testing ~~and procedures for disclosure are~~ is otherwise ~~provided~~ authorized by law.

SECTION 8. AMENDMENT. Section 23-07.5-06 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-06. Expanded disclosure of test results prohibited. A person to whom the results of a test for ~~the presence of an antibody to~~ the human immunodeficiency virus have been disclosed under ~~subsection 1 of section 23-07.5-05~~ this chapter may not disclose the test results except as ~~provided under that subsection~~ authorized by law.

SECTION 9. AMENDMENT. Section 23-07.5-07 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-07. Civil liability. Any person who violates section ~~23-07.5-02, subsection 1 of section 23-07.5-05, or section~~ 23-07.5-06 is liable to the subject of the test for actual damages and costs plus exemplary damages. ~~The plaintiff in an action under this section has the burden of proving by preponderance of the evidence that a violation occurred under section 23-07.5-02, subsection 1 of section 23-07.5-05, or section 23-07.5-06.~~ A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

SECTION 10. AMENDMENT. Section 23-07.5-08 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-08. Penalty. A person who ~~intentionally~~ knowingly discloses the results of a blood test in violation of ~~subsection 1 of section 23-07.5-05 and thereby causes bodily or psychological harm to the subject of the test~~ this chapter is guilty of a class C felony, if the offense is committed with intent to disclose the identity of the individual who was tested.

SECTION 11. AMENDMENT. Subsection 3 of section 23-07.7-02 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Notwithstanding section 23-07.5-03, the~~ The laboratory shall send a copy of the test results to the physicians designated in the court order, who shall then release the test results to the defendant or alleged juvenile offender and each requesting victim as designated in the court order. The court order must be served on the physicians before any test. The laboratory also shall send a copy of test results that indicate exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, or other sexually transmitted diseases to the state department of health.

SECTION 12. 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, "~~medical~~ health care provider" means a licensed individual or licensed facility providing health care services. ~~This section applies to every medical provider unless expressly provided otherwise by law.~~ Upon the ~~written~~ request of a

~~medical~~ health care provider's patient or any person authorized by a patient, the ~~medical~~ provider shall~~:~~

~~a.~~ ~~Provide~~ provide a free copy of a patient's ~~medical~~ health care records to a ~~medical~~ 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 ~~medical~~ health care to another ~~medical~~ health care provider for the continuation of ~~medical~~ treatment.

~~b. Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense.~~

~~2. a. Except as specified in section 26.1-36-12.4 or subsection 3, a written medical records release is valid for the period of time specified in the release or three years, whichever is shorter.~~

~~b. A patient or any person authorized by the patient may revoke a medical records release at any time by providing written notification to the medical provider.~~

~~3. Notwithstanding the period of validity under subdivision a of subsection 2, a signed medical records release authorizes a medical provider to forward a patient's medical records to another medical provider during the period of time necessary to complete the patient's course of treatment and to conclude all medical and financial aspects of the case.~~

~~4. It is not a prohibited practice as defined in chapter 26.1-04 for health insurance companies with participating provider agreements to require that subscribers or members are responsible for providing the insurer copies of medical records used for claims processing when using nonparticipating providers.~~

SECTION 13. AMENDMENT. Section 23-16-09 of the North Dakota Century Code is amended and reenacted as follows:

23-16-09. Information confidential. Information other than reports relating to vital statistics received by the state department of health through inspection or otherwise, authorized under this chapter are confidential and may not be disclosed publicly except in a proceeding involving the question of license. ~~In the case of hospitals and related institutions providing maternity care, no~~ No agent of the state department of health or of any board of health, ~~nor the licensee under the provisions of this chapter~~ may disclose ~~the contents of case records~~ individually identifiable health information of such an institution obtained in the course of a survey or inspection except~~:~~

~~1. In~~ in a judicial or administrative proceeding~~;~~

~~2. To legally constituted health or social agencies specifically interested in the patients; and~~

~~3. To persons having direct interest in the well-being of the patient, or her infant, and who are in a position to serve their interests should that be necessary~~ in response to an order of a court or administrative tribunal.

SECTION 14. A new subsection to section 25-01.3-01 of the North Dakota Century Code is created and enacted as follows:

"Individually identifiable health information" and "personal representative" have the meaning set forth in title 45, Code of Federal Regulations, part 160, section 103 and part 164, section 5-02, subsection g, respectively.

SECTION 15. AMENDMENT. Section 25-01.3-10 of the North Dakota Century Code is amended and reenacted as follows:

25-01.3-10. Confidentiality and privileged information.

1. All ~~documents, records, information, memoranda, reports, complaints, or written or nonwritten communication~~ information relating to an individual with a disability, including individually identifiable health information, that is in the possession of the committee, project, or any advocate ~~relating to an identified or identifiable person with developmental disabilities or mental illness are~~ is confidential and ~~are~~ is not subject to disclosure, except:

   a. ~~When release is consented to in writing by all persons~~ If an authorization for disclosure is given in writing by each individual with ~~developmental disabilities or mental illnesses identified or identifiable in the documents, records, information, memoranda, reports, complaints, or written or nonwritten communications~~ a disability who may be identifiable from the information, or that individual's personal representative;

   b. In a judicial proceeding when ordered by the presiding judge;

   c. To ~~officers of the law~~ a law enforcement officer for a law enforcement purpose, a health oversight agency, or, ~~in~~ at the discretion of the committee, to any other legally constituted board or agency serving the interests of ~~persons with mental illness or developmental disabilities~~ an individual with a disability for any other purpose authorized by this chapter, or any other state or federal law; or

   d. To the parents of a minor who is an eligible person under sections 25-01.3-01 through 25-01.3-12 or legal guardians of the person with ~~mental illness or developmental~~ a disability except that no information may be ~~released~~ disclosed to ~~the~~ a person with mental illness who is the subject of the information when such ~~release~~ a disclosure is prohibited by state or federal law.

2. Unless ordered by a court of competent jurisdiction, the name of ~~a person~~ an individual who in good faith makes a report or complaint may not be ~~released or~~ disclosed by the committee or the project.

SECTION 16. AMENDMENT. Section 25-16-07 of the North Dakota Century Code is amended and reenacted as follows:

25-16-07. Records of treatment or care center confidential. ~~No~~ Except as otherwise authorized by law, no agent of the department of human services or the superintendent of the developmental center at westwood park, Grafton or the licensee or their agents or employees may disclose the contents of the individual records of a treatment or care center for developmentally disabled persons, nor of the reports received ~~therefrom~~ from them, except:

1. In a judicial proceeding when ordered by the presiding judge;

2. To ~~officers of the law~~ a law enforcement official for a law enforcement purpose or any other legally constituted boards or agencies serving the interests of the residents for treatment, payment, or health care operations, to arrange, facilitate, or coordinate service to any such person; or

3. To the parents or legal guardians of the resident.

SECTION 17. AMENDMENT. Subsection 9 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

9. Unfair claim settlement practices. Committing any of the following acts, if done without just cause and if performed with a frequency indicating a general business practice:

   a. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue.

b. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under insurance policies.

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear.

e. Compelling insureds to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.

f. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

g. Attempting settlement or compromise of claims on the basis of applications which were altered without notice to, or knowledge or consent of, insureds.

h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed one was entitled by reference to written or printed advertising material accompanying or made a part of an application.

i. Attempting to delay the investigation or payment of claims by requiring an insured and the insured's physician to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

j. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss has been completed.

k. Refusing payment of claims solely on the basis of the insured's request to do so without making an independent evaluation of the insured's liability based upon all available information.

l. Providing coverage under a policy issued under chapter 26.1-45 or 26.1-36.1 for confinement to a nursing home and refusing to pay a claim when a person is covered by such a policy and the person's physician ordered confinement pursuant to the terms of the policy for care other than custodial care. Custodial care means care which is primarily for the purpose of meeting personal needs without supervision by a registered nurse or a licensed practical nurse.

m. Failure to use the standard health insurance proof of loss and claim form or failure to pay a health insurance claim as required by section 26.1-36-37.1.

<u>It is not a prohibited practice for a health insurance company with participating provider agreements to require that a subscriber or member using a nonparticipating provider be responsible for providing the insurer a copy of medical records used for claims processing.</u>

SECTION 18. AMENDMENT. Section 28-01-46.1 of the North Dakota Century Code is amended and reenacted as follows:

28-01-46.1. Waiver of privilege for health care providers and informal discussion. A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider, as defined in section 32-42-01, or a health care facility, on the person's own behalf or in a representative capacity, waives in that action any privilege existing under rule 503 of the North Dakota Rules of Evidence, as to any medical records, opinions, or other

information in the possession of any other health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. The waiver must permit all defendants to the action, and their attorneys or authorized representatives, to examine the medical records, opinions, or other information and informally participate in a discussion with the health care provider, if the provider consents, regarding the medical records, opinions, or other information that appear reasonably calculated to lead to the discovery of admissible evidence as to any element of the action or the defense of the action. Any statements made by a health care provider during an informal discussion are not admissible, directly or by reference in direct or cross-examination of any witness, in any administrative, civil, or criminal proceeding. However, this section does not render inadmissible any statements obtained from the health care provider in discovery or any legal proceedings independent of the informal discussion which are otherwise admissible in the administrative, civil, or criminal proceeding.

The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. This requirement is satisfied if the defendant's attorney serves a written notice on the plaintiff's attorney at least fifteen days prior to the informal discussion stating the time, date, and location of the informal discussion. If the plaintiff's attorney, after consultation with the defendant's attorney, is unable to attend the discussion at the time or on the date specified in the notice or at some other agreed-upon date and time, the court in which the action is pending shall, upon motion of any party before the date specified in the notice, hold a scheduling conference to set a date and time for the informal discussion that will best serve the convenience of the parties and the health care provider and the interests of justice. Appropriate ~~medical~~ authorizations permitting access to the written medical record, informal discussion, and testimony at a deposition or trial must be provided by the party commencing the action ~~upon request from any other party to the action~~ at the time the action is commenced. If the party commencing the action fails to provide appropriate authorizations at the time the action is commenced, the health care provider or health care facility may use other means to obtain the records such as by subpoena or by seeking a court order. If alternative means to obtain a patient's records are used, the court shall award reasonable costs incurred by the health care provider or health care facility in obtaining those records, including reasonable attorney's fees.

SECTION 19. AMENDMENT. Subsection 6 of section 37-18-11 of the North Dakota Century Code is amended and reenacted as follows:

6. Medical information may be disclosed as follows:

   a. ~~Information~~ Except as otherwise required by law, information contained in medical records on file ~~may~~ shall be ~~released~~ disclosed to the ~~veteran~~ resident on request~~, except information contained in the medical record which would prove injurious to his physical or mental health, in which case the information will be released only to his duly authorized representative~~.

   b. Information contained in medical records of ~~veterans~~ residents and beneficiaries pertaining to medical history, diagnosis, findings, or treatment may be disclosed directly to physicians and hospitals ~~upon request and the submission of a written authorization from the veteran or beneficiary, or in the event he is incompetent, from his duly authorized representative~~ for treatment, payment, and health care operations, and as otherwise authorized by law. This information ~~will be released only with the consent of the patient and on the condition that it~~ is to be treated as ~~a privileged communication~~ confidential information. ~~However, such~~ This information also may be ~~released~~ disclosed without the consent of the ~~veteran~~ resident or ~~his~~ the resident's personal representative when a request for ~~such~~ the information is received from the veterans' administration, the United States public health service, the superintendent of a state hospital, a commissioner or head of a state department of mental hygiene, or head of a state, county, or city health department and the disclosure is required by law, or for the purpose of treatment, payment, or health care operations.

SECTION 20. AMENDMENT. Subsection 9 of section 37-18-11 of the North Dakota Century Code is amended and reenacted as follows:

9. ~~Members~~ Subject to the limitations of any other law, members of the legislative assembly may be furnished such information contained in department files as may be requested for official use.

SECTION 21. AMENDMENT. Subsection 4 of section 43-15-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Confidential information" means individually identifiable health information maintained by the pharmacist in the patient's records or which is communicated to the patient as part of a patient counseling~~, which is privileged and may be released only to the patient or, as the patient directs, to those practitioners and other pharmacists where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being, and to such other persons or governmental agencies authorized by law to receive such confidential information~~.

SECTION 22. AMENDMENT. Subdivision n of subsection 1 of section 43-15-10 of the North Dakota Century Code is amended and reenacted as follows:

n. ~~Divulges or reveals~~ Discloses confidential information to ~~an unauthorized~~ any person, except as authorized by law.

SECTION 23. AMENDMENT. Section 43-47-09 of the North Dakota Century Code is amended and reenacted as follows:

43-47-09. Confidentiality. Except as ~~provided in chapter 50-25.1~~ authorized by law, no person licensed under this chapter may be required to disclose any information acquired in rendering counseling services without the consent of the person who received the counseling services.

SECTION 24. AMENDMENT. Subsection 1 of section 44-04-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and, except as otherwise authorized by law, may not be ~~released~~ used or disclosed without the written ~~consent~~ authorization of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.

SECTION 25. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Business associate - Duty to protect information.

1. As used in this section, "business associate" has the meaning set forth in title 45, Code of Federal Regulations, part 160, section 103.

2. If a public entity is acting as a business associate of another public entity, the entity acting as a business associate shall comply with all the requirements applicable to a business associate under title 45, Code of Federal Regulations, part 164, section 504, subsection e, paragraph 2.

SECTION 26. AMENDMENT. Section 50-19-10 of the North Dakota Century Code is amended and reenacted as follows:

50-19-10. Records of maternity home confidential. ~~No~~ Except as otherwise authorized by law, no agent of the state department of health or the department, or the licensee, under this chapter,

may disclose the contents of the records of a maternity home for unmarried mothers nor of the reports received ~~therefrom~~ from them, except:

1. In a judicial or administrative proceeding ~~when ordered by the presiding judge~~ in response to an order of a court or administrative tribunal; or

2. ~~To officers of the law or other legally constituted boards or agencies serving the interests of the patient or her infant.~~ For a law enforcement purpose to a law enforcement official or a health oversight agency for oversight activities authorized by law.

SECTION 27. REPEAL. Sections 23-01.3-03, 23-07.5-03, and 23-07.5-05 of the North Dakota Century Code are repealed.

SECTION 28. EFFECTIVE DATE. This Act is effective April 14, 2003.

SECTION 29. 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-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1438 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 87 Nays 0 Absent 7

_____	_____
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 0 Absent 2

_____	_____
President of the Senate	Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

_____
Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

_____
Secretary of State