

Introduced by

Senators J. Lee, Schaible

Representative Weisz

1 A BILL for an Act to create and enact two new sections to chapter 26.1-47 of the North Dakota
2 Century Code, relating to preferred provider arrangement requirements for insurance prior
3 authorization for air ambulance services; to amend and reenact section 26.1-47-01,
4 subsection 6 of section 26.1-47-02, and section 26.1-47-07 of the North Dakota Century Code,
5 relating to preferred provider organizations; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Section 26.1-47-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **26.1-47-01. Definitions.**

10 As used in this chapter, unless the context indicates otherwise:

- 11 1. "Air ambulance" means a specially equipped aircraft licensed by the state department
12 of health for transporting patients.
- 13 2. "Air ambulance provider" means a publicly or privately owned organization that is
14 licensed or applies for licensure by the state department of health to provide
15 transportation and care of patients by air ambulance.
- 16 3. "Authorized representative" means:
- 17 a. A person to which a covered person has given express written consent to
18 represent the covered person;
- 19 b. A person authorized by law to provide substituted consent for a covered person;
20 or
- 21 c. If a covered person is unable to provide consent, the covered person's treating
22 health care professional or a family member of the covered person.

- 1 5. "Balance billing" means the practice of an air ambulance provider billing for the
2 difference between the air ambulance provider's charge and the health care insurer's
3 allowed amount.
- 4 6. "Commissioner" means the insurance commissioner of the state of North Dakota.
- 5 ~~2-7.~~ "Covered person" means ~~any person~~ an individual on whose behalf the health care
6 insurer is obligated to pay for or provide health care services.
- 7 ~~3-8.~~ "Facility" means an institution or other immobile health care setting providing physical,
8 mental, or behavioral health care services.
- 9 9. "Health benefit plan" means the health insurance policy or subscriber agreement
10 between the covered person or the policyholder and the health care insurer which
11 defines the services covered.
- 12 ~~4-10.~~ "Health care insurer" includes an insurance company as defined in section 26.1-02-01,
13 a health service corporation as defined in section 26.1-17-01, a health maintenance
14 organization as defined in section 26.1-18.1-01, and a fraternal benefit society as
15 defined in section 26.1-15.1-02.
- 16 ~~5-11.~~ "Health care provider" means licensed providers of health care services in this state.
- 17 ~~6-12.~~ "Health care services" means services rendered or products sold by a health care
18 provider within the scope of the provider's license. The term includes hospital, medical,
19 surgical, dental, vision, chiropractic, and pharmaceutical services or products.
- 20 ~~7-13.~~ "Network" means a group of preferred providers providing services under a network
21 plan.
- 22 14. "Network plan" means a health benefit plan that requires a covered person to use, or
23 creates incentives, including financial incentives, for a covered person to use health
24 care providers managed by, owned by, under contract with, or employed by the health
25 care insurer.
- 26 15. "Preferred provider" means a duly licensed health care provider or group of providers
27 who have contracted with the health care insurer, under this chapter, to provide health
28 care services to covered persons under a health benefit plan.
- 29 ~~8-16.~~ "Preferred provider arrangement" means a contract between the health care insurer
30 and one or more health care providers which complies with all the requirements of this
31 chapter.

1 17. "Prior authorization" means confirmation by the covered person's health care insurer
2 that the air ambulance services sought to be provided by the air ambulance provider
3 meet the criteria for coverage under the covered person's health benefit plan as
4 defined by the provisions of the covered person's health benefit plan.

5 **SECTION 2. AMENDMENT.** Subsection 6 of section 26.1-47-02 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 6. A health care insurer may not penalize a provider because the provider, in good faith,
8 reports to state or federal authorities any act or practice by the health carrier ~~that~~care
9 insurer which jeopardizes patient health or welfare.

10 **SECTION 3. AMENDMENT.** Section 26.1-47-07 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **26.1-47-07. Penalty.**

13 The commissioner may levy an administrative penalty not to exceed ten thousand dollars
14 for a violation of this chapter. ~~Any person who violates this chapter is guilty of a class A-~~
15 ~~misdemeanor.~~

16 **SECTION 4.** A new section to chapter 26.1-47 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Preferred provider arrangements - Requirements for accessing air ambulance**
19 **providers.**

- 20 1. In addition to the other preferred provider arrangement requirements under this
21 chapter, a preferred provider arrangement must require the health care insurer and
22 health care provider comply with this section.
- 23 2. Before a health care provider arranges for air ambulance services for an individual the
24 health care provider knows to be a covered person, the health care provider shall
25 request a prior authorization from the covered person's health care insurer for the air
26 ambulance services to be provided to the covered person. If the health care provider is
27 unable to obtain prior authorization from the covered person's health care insurer:
- 28 a. The health care provider shall provide the covered person or the covered
29 person's authorized representative an out-of-network services written disclosure
30 stating the following:

- 1 (1) Certain air ambulance providers may be called upon to render care to the
2 covered person during the course of treatment;
- 3 (2) These air ambulance providers might not have contracts with the covered
4 person's health care insurer and are, therefore, considered to be out of
5 network;
- 6 (3) If these air ambulance providers do not have contracts with the covered
7 person's health care insurer, the air ambulance services will be provided on
8 an out-of-network basis;
- 9 (4) A description of the range of the charges for the out-of-network air
10 ambulance services for which the covered person may be responsible;
- 11 (5) A notification the covered person or the covered person's authorized
12 representative may agree to accept and pay the charges for the out-of-
13 network air ambulance services, contact the covered person's health care
14 insurer for additional assistance, or rely on other rights and remedies that
15 may be available under state or federal law; and
- 16 (6) A statement indicating the covered person or the covered person's
17 authorized representative may obtain a list of air ambulance providers from
18 the covered person's health care insurer which are preferred providers and
19 the covered person or the covered person's representative may request
20 those participating air ambulance providers be accessed by the health care
21 provider.
- 22 b. Before air ambulance services are accessed for the covered person, the health
23 care provider shall provide the covered person or the covered person's
24 authorized representative the written disclosure, as outlined by subdivision a and
25 obtain the covered person's or the covered person's authorized representative's
26 signature on the disclosure document acknowledging the covered person or the
27 covered person's authorized representative received the disclosure document
28 before the air ambulance services were accessed. If the health care provider is
29 unable to obtain the signature required under this subdivision, the health care
30 provider shall document the reason, which satisfies the requirement under this
31 subdivision.

- 1 3. This section does not:
- 2 a. Preclude a covered person from agreeing to accept and pay the charges for the
- 3 out-of-network services and not access the covered person's health care
- 4 insurer's out-of-network air ambulance billing process described under this
- 5 section.
- 6 b. Preclude a covered person from agreeing to accept and pay the bill received
- 7 from the out-of-network air ambulance provider or from not accessing the air
- 8 ambulance provider mediation process described under this section.
- 9 c. Regulate an out-of-network air ambulance provider's ability to charge certain fees
- 10 for services or to charge any amount of fee for services provided to a covered
- 11 person by the out-of-network air ambulance provider.
- 12 4. A health care insurer shall develop a program for payment of out-of-network air
- 13 ambulance bills submitted under this section. A health benefit plan may not be issued
- 14 in this state without the terms of the health benefit plan including the provisions of the
- 15 health care insurer's program for payment of out-of-network air ambulance bills.
- 16 a. A health care insurer may elect to pay out-of-network air ambulance provider bills
- 17 as submitted, or the health care insurer may elect to use the out-of-network air
- 18 ambulance provider mediation process described in subsection 5.
- 19 b. This section does not preclude a health care insurer and an out-of-network facility
- 20 air ambulance provider from agreeing to a separate payment arrangement.
- 21 5. A health care insurer shall establish an air ambulance provider mediation process for
- 22 payment of out-of-network air ambulance provider bills. A health benefit plan may not
- 23 be issued in this state if the terms of the health benefit plan do not include the
- 24 provisions of the health care insurer's air ambulance provider mediation process for
- 25 payment of out-of-network air ambulance provider bills.
- 26 a. A health care insurer's air ambulance provider mediation process must be
- 27 established in accordance with mediation standards recognized by the
- 28 department by rule.
- 29 b. If the health care insurer and the out-of-network air ambulance provider agree to
- 30 a separate payment arrangement or if the covered person agrees to accept and
- 31 pay the out-of-network air ambulance provider's charges for the out-of-network

- 1 services, compliance with the air ambulance provider mediation process is not
2 required.
- 3 c. A health care insurer shall maintain records on all requests for mediation and
4 completed mediation under this subsection for one year and, upon request of the
5 commissioner, submit a report to the commissioner in the format specified by the
6 commissioner.
- 7 6. The rights and remedies provided under this section to covered persons are in
8 addition to and may not pre-empt any other rights and remedies available to covered
9 persons under state or federal law.
- 10 7. The department shall enforce this section and shall report a violation of this section by
11 a facility to the state department of health.
- 12 8. This section does not apply to a policy or certificate of insurance, whether written on a
13 group or individual basis, which provides coverage limited to:
- 14 a. A specified disease, a specified accident, or accident-only coverage;
15 b. Credit;
16 c. Dental;
17 d. Disability;
18 e. Hospital;
19 f. Long-term care insurance as defined by chapter 26.1-45;
20 g. Vision care or any other limited supplemental benefit;
21 h. A medicare supplement policy of insurance, as defined by the commissioner by
22 rule or coverage under a plan through medicare;
23 i. Medicaid;
24 j. The federal employees health benefits program and any coverage issued as a
25 supplement to that coverage;
26 k. Coverage issued as supplemental to liability insurance, workers' compensation,
27 or similar insurance; and
28 l. Automobile medical payment insurance.
- 29 9. The commissioner may adopt rules to implement this section.

30 **SECTION 5.** A new section to chapter 26.1-47 of the North Dakota Century Code is created
31 and enacted as follows:

1 **Rules.**

2 If an action of Congress, the president of the United States, or a federal agency allows the
3 state to regulate the rates, routes, or services of air ambulance providers, the commissioner
4 may adopt rules consistent with the action taken.

5 **SECTION 6. EFFECTIVE DATE.** This Act becomes effective January 1, 2018.