# CHAPTER 45-06-06.1
# REGULATION TO IMPLEMENT THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT


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**45-06-06.1-01. Definitions.**

As used in this chapter:

1. "Associate member of an employee organization" means any individual who participates in an employee benefit plan (as defined in 29 U.S.C. 1002(1)) that is a multiemployer plan (as defined in 29 U.S.C. 1002(37A)), other than the following:

   a. An individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or

   b. An individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan or of a related plan.

2. "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

3. "Preexisting condition exclusion" means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the effective date of coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

4. "Risk characteristic" means the health status, claims experience, duration ofcoverage, health status-related factor, or any similar characteristic related to the health status or experience of a small employer group or of any member of a small employer group.

5. "Risk load" means the percentage above the applicable base premium rate that is charged by a small employer carrier to a small employer to reflect the risk characteristics of the small employer group.

6. "Waiting period" means, with respect to a group health benefit plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

**History:** Effective August 1, 1994; amended effective December 1, 1997.
**General Authority:** NDCC 26.1-01-08
**Law Implemented:** NDCC 26.1-36.3

**45-06-06.1-02. Applicability and scope.**

1. Except as provided in section 45-06-06.1-13, this chapter applies to any health benefit plan, whether provided on a group or individual basis, which:

   a. Meets one or more of the conditions set forth in subdivisions a, b, and c of subsection 1 of North Dakota Century Code section 26.1-36.3-02; and

   b. Provides coverage to one or more employees of a small employer located in this state, without regard to whether the policy or certificate was issued in this state.

2. a. A carrier that provides individual health insurance policies to one or more of the employees of a small employer shall be considered a small employer carrier and is subject to the provisions of the Act and this chapter with respect to such policies if the small employer contributes directly or indirectly to the premiums for the policies and the carrier is aware or should have been aware of such contribution.

   b. In the case of a carrier that provides individual health insurance policies to one or more employees of a small employer, the small employer carrier is subject to subdivision b of subsection 1 of North Dakota Century Code section 26.1-36.3-06, relating to guaranteed issue of coverage, if:

      (1) The small employer has at least two employees;

      (2) The small employer contributes directly or indirectly to the premiums charged by the carrier; and

      (3) The carrier is aware or should have been aware of the contribution by the employer.

3. The provisions of the Act and this chapter apply to a health benefit plan provided to a small employer or to the employees of a small employer without regard to whether the health benefit plan is offered under or provided through a group policy or trust arrangement of any size sponsored by an association or discretionary group.

4. An individual health insurance policy is not subject to the provisions of the Act and this chapter solely because the policyholder elects a deduction under section 162(1) of the Internal Revenue Code.

5. a. If a small employer is issued a health benefit plan under the terms of the Act, the provisions of the Act and this chapter continue to apply to the health benefit plan in the case that the small employer subsequently employs less than two or more than fifty eligible employees. Within sixty days of becoming aware that the employer has less than two or more than fifty eligible employees but no later than the anniversary date of the employer's health benefit plan, a carrier providing coverage to such an employer shall notify the employer that the protections provided under the Act and this chapter shall cease to apply to the employer if such employer fails to renew its current health benefit plan or elects to enroll in a different health benefit plan.

b. (1) If a health benefit plan is issued to an employer that is not a small employer as defined in the Act, but subsequently the employer becomes a small employer, due to the loss or change of work status of one or more employees, the terms of the Act shall not apply to the health benefit plan. The carrier providing a health benefit plan to such an employer shall not become a small employer carrier under the terms of the Act solely because the carrier continues to provide coverage under the health benefit plan to the employer.

(2) Within sixty days of becoming aware that the employer is a "small employer" as that term is defined in subsection 35 of North Dakota Century Code section 26.1-36.1-01, a carrier providing coverage to an employer described in paragraph 1 shall notify the employer of the options and protections available to the employer under the Act, including the employer's option to purchase a small employer health benefit plan from any small employer carrier.

6. a. (1) If a small employer has employees in more than one state, the provisions of the Act and this chapter shall apply to a health benefit plan issued to the small employer if:

(a) The majority of eligible employees of such small employer are employed in this state; or

(b) If no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(2) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in paragraph 1, the provisions of the subdivision shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

b. If a health benefit plan is subject to the Act and this chapter, the provisions of the Act and this chapter shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

7. A carrier that is not operating as a small employer carrier in this state shall not become subject to the provisions of the Act and this chapter solely because a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

**History:** Effective August 1, 1994; amended effective September 12, 1994; December 1, 1997.
**General Authority:** NDCC 26.1-01-08
**Law Implemented:** NDCC 26.1-36.3

**45-06-06.1-03. Establishment of classes of business.**

1. A small employer carrier that establishes more than one class of business pursuant to the provisions of North Dakota Century Code section 26.1-36.3-03 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

a. A description of each criterion employed by the carrier or any of its agents for determining membership in the class of business;

b. A statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in North Dakota Century Code section 26.1-36.3-03; and

c. A statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

2. A carrier may not directly or indirectly use group size as a criterion for establishing eligibility for a health benefit plan or for a class of business.

**History:** Effective August 1, 1994.
**General Authority:** NDCC 26.1-01-08, 26.1-36.3-03
**Law Implemented:** NDCC 26.1-36.3-03

**45-06-06.1-04. Transition for assumptions of business from another carrier.**

1. a. A small employer carrier shall not transfer or assume the entire insurance obligation or risk of a health benefit plan covering a small employer in this state unless:

(1) The transaction has been approved, to the extent required by law, by the insurance supervisory official of the state of domicile of the assuming carrier;

(2) The transaction has been approved to the extent required by law by the insurance supervisory official of the state of domicile of the ceding carrier; and

(3) The transaction otherwise meets the requirements of this section.

b. A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation or risk of one or more small employer health benefit plans from another carrier shall make a filing for approval with the commissioner at least sixty days prior to the date of the proposed assumption. The commissioner may approve the transaction if the commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this chapter. The commissioner shall not approve the transaction until at least thirty days after the date of the filing; except that, if the ceding carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

c. (1) The filing required under subdivision b shall:

(a) Describe the class of business, including any eligibility requirements, of the ceding carrier from which the health benefit plans will be ceded;

(b) Describe whether the assuming carrier will maintain the assumed health benefit plans as a separate class of business pursuant to subsection 3 or will incorporate them into an existing class of business pursuant to subsection 4. If the assumed health benefit plans will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

(c) Describe whether the health benefit plans being assumed are currently available for purchase by small employers;

(d) Describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

(e) Describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

(f) Describe any other potential material effects of the assumption on the coverage provided to the small employers covered by the health benefit plans to be assumed; and

(g) Include any other information required by the commissioner.

(2) A domestic small employer carrier required to make a filing under subdivision b shall also make an informational filing with the commissioner of each state in which there are small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under subdivision b and shall include at least the information specified in paragraph 1 for the small employer health benefit plans in that state.

d. A small employer carrier shall not transfer or assume the entire insurance obligation or risk of a health benefit plan covering a small employer in this state unless it complies with the following provisions:

(1) The carrier has provided notice to the commissioner at least sixty days prior to the date of the proposed assumption. The notice shall contain the information specified in subdivision c for the health benefit plans covering small employers in this state.

(2) If the assumption of a class of business would result in the assuming small employer carrier being out of compliance with the limitations related to premium rates contained in subdivision a of subsection 1 of North Dakota Century Code section 26.1-36.3-04, the assuming carrier shall make a filing with the commissioner pursuant to subsection 3 of North Dakota Century Code section 26.1-36.3-04 seeking suspension of the application of subdivision a of subsection 1 of section 26.1-36.3-04.

(3) An assuming carrier seeking suspension of the application of subdivision a of subsection 1 of North Dakota Century Code section 26.1-36.3-04 shall not complete the assumption of health benefit plans covering small employers in this state unless the commissioner grants the suspension requested pursuant to paragraph 2.

(4) Unless a different period is approved by the commissioner, a suspension of the application of subdivision a of subsection 1 of North Dakota Century Code section 26.1-36.3-04, with respect to an assumed class of business, shall be for no more than fifteen months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to twelve months if the anniversary date occurs within three months of the date of assumption of the class of business.

2. a. Except as provided in subdivision b, a small employer carrier shall not cede or assume the entire insurance obligation or risk for a small employer health benefit plan unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

b. A small employer carrier may cede less than an entire class of business to an assuming carrier if:

(1) One or more small employers in the class have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which a small employer has rejected the proposed cession; or

(2) After a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interest of the small employers insured in that class of business.

3. Except as provided in subsection 4, a small employer carrier that assumes one or more health benefit plans from another carrier shall maintain such health benefit plans as a separate class of business.

4. A small employer carrier that assumes one or more health benefit plans from another carrier may exceed the limitation contained in subsection 2 of North Dakota Century Code section 26.1-36.3-03, relating to the maximum number of classes of business a carrier may establish, due solely to such assumption for a period of up to fifteen months after the date of the assumption, provided that the carrier complies with the following provisions:

   a. Upon assumption of the health benefit plans, such health benefit plans shall be maintained as a separate class of business. During the fifteen-month period following the assumption, each of the assumed small employer health benefit plans shall be transferred by the assuming small employer carrier into a single class of business operated by the assuming small employer carrier. The assuming small employer carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

   b. The transfers authorized in subdivision a shall occur with respect to each small employer on the anniversary date of the small employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to twelve months if the anniversary date occurs within three months of the date of assumption of the class of business.

   c. A small employer carrier making a transfer pursuant to subdivision a may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

   d. The premium rate for an assumed small employer health benefit plan shall not be modified by the assuming small employer carrier until the health benefit plan is transferred pursuant to subdivision a. Upon transfer, the assuming small employer carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

   e. During the fifteen-month period provided in this subsection, the transfer of small employer health benefit plans from the assumed class of business in accordance with this subsection shall not be considered a violation of the first sentence of subsection 2 of North Dakota Century Code section 26.1-36.3-04.

5. An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan or with respect to any health benefit plan subsequently offered to a small employer covered by such an assumed health benefit plan that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

6. The commissioner may approve a longer period of transition upon application of a small employer carrier. The application shall be made within sixty days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

7. Nothing in this section or in the Act is intended to:

   a. Reduce or diminish any legal or contractual obligation or requirement, including any obligation provided by law, of the ceding or assuming carrier related to the transaction;

   b. Authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

   c. Reduce or diminish the protections related to an assumption reinsurance transaction provided by law.

**History:** Effective August 1, 1994.
**General Authority:** NDCC 26.1-01-08, 26.1-36.3-03
**Law Implemented:** NDCC 26.1-36.3-03

**45-06-06.1-05. Restrictions relating to premium rates.**

1. This section applies only to a health benefit plan offered by a small employer who employed an average of at least two but not more than twenty-five eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

2. a. A small employer carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to small employers by the small employer carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a small employer carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

   b. (1) A small employer carrier shall not modify the rating method used in the rate manual for a class of business until the change has been approved as provided in this paragraph. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this chapter.

      (2) A carrier may modify the rating method for a class of business only with prior approval of the commissioner. A carrier requesting to change the rating method for a class of business shall make a filing with the commissioner at least thirty days prior to the proposed date of the change. The filing shall contain at least the following information:

         (a) The reasons the change in rating method is being requested;

         (b) A complete description of each of the proposed modifications to the rating method;

         (c) A description of how the change in rating method would affect the premium rates currently charged to small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals and a description of the types of groups or individuals whose premium rates may change by more than ten percent due to the proposed change in rating method, not generally including increases in premium rates applicable to all small employers in a health benefit plan;

         (d) A certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(e) A certification from a qualified actuary that the proposed change in rating method would not produce premium rates for small employers that would be in violation of North Dakota Century Code section 26.1-36.3-04.

(3) For the purpose of this section a change in rating method means:

(a) A change in the number of case characteristics used by a small employer carrier to determine premium rates for health benefit plans in a class of business;

(b) A change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) A change in the method of allocating expenses among health benefit plans in a class of business; or

(d) [1] A change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any small employer that exceeds ten percent.

[2] For the purpose of item 1, a change in a rating factor shall mean the cumulative change with respect to such factor considered over a twelve-month period. If a small employer carrier changes rating factors with respect to more than one case characteristic in a twelve-month period, the carrier shall consider the cumulative effect of all such changes in applying the ten percent test under item 1.

3. a. The rate manual developed pursuant to subsection 2 shall specify the case characteristics and rate factors to be applied by the small employer carrier in establishing premium rates for the class of business.

b. A small employer carrier may not use case characteristics other than those specified in subdivision j of subsection 1 of North Dakota Century Code section 26.1-36.3-04 without the prior approval of the commissioner. A small employer carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under subdivision b of subsection 2.

c. A small employer carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of a small employer.

d. The rate manual developed pursuant to subsection 2 shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

e. Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and shall not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan. A small employer carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical small employer groups vary only due to reasonable and objective differences in the design and benefits of the health benefit

plans and are not due to the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.

f. The rate manual developed pursuant to subsection 2 shall provide for premium rates to be developed in a two step process. In the first step, a base premium rate shall be developed for the small employer group without regard to any risk characteristics of the group. In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of North Dakota Century Code section 26.1-36.3-04, to reflect the risk characteristics of the group.

g. A premium charged to a small employer for a health benefit plan shall not include a separate application fee, underwriting fee, or any other separate fee or charge.

h. A small employer carrier shall allocate administrative expenses to the basic and standard health benefit plans on no less favorable of a basis than expenses are allocated to other health benefit plans in the class of business. The rate manual developed pursuant to subsection 2 shall describe the method of allocating administrative expenses to the health benefit plans in the class of business for which the manual was developed.

i. Each rate manual developed pursuant to subsection 2 shall be maintained by the carrier for a period of six years. Updates and changes to the manual shall be maintained with the manual.

j. The rate manual and rating practices of a small employer carrier shall comply with any guidelines issued by the commissioner.

4. If group size is used as a case characteristic by a small employer carrier, the highest rate factor associated with a group size classification shall not exceed the lowest rate factor associated with such a classification by more than twenty percent.

5. The restrictions related to changes in premium rates in subdivisions c and g of subsection 1 of North Dakota Century Code section 26.1-36.3-04 shall be applied as follows:

a. A small employer carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

b. (1) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of paragraph 3 of subdivision c of subsection 1 and paragraph 1 of subdivision g of subsection 1 of North Dakota Century Code section 26.1-36.3-04.

(2) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the small employer carrier is no longer enrolling new small employers for the purposes of subdivisions c and g of subsection 1 of North Dakota Century Code section 26.1-36.3-04.

c. If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than twenty percent, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for

the difference. The filing shall be made within thirty days of the beginning of the rating period.

d. A small employer carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

6. a. Except as provided in subdivisions b through d, a change in premium rate for a small employer shall produce a revised premium rate that is no more than the following:

(1) The base premium rate for the small employer, as shown in the rate manual as revised for the rating period, multiplied by;

(2) One plus the sum of:

(a) The risk load applicable to the small employer during the previous rating period; and

(b) Fifteen percent, prorated for periods of less than one year.

b. In the case of a health benefit plan into which a small employer carrier is no longer enrolling new small employers, a change in premium rate for a small employer shall produce a revised premium rate that is no more than the following:

(1) The base premium rate for the small employer, given its present composition and as shown in the rate manual in effect for the small employer at the beginning of the previous rating period, multiplied by;

(2) One plus the lesser of:

(a) The change in the base rate; or

(b) The percentage change in the new business premium for the most similar health benefit plan into which the small employer carrier is enrolling new small employers, multiplied by;

(3) One plus the sum of:

(a) The risk load applicable to the small employer during the previous rating period; and

(b) Fifteen percent, prorated for periods of less than one year.

c. In the case of a health benefit plan described in subdivision g of subsection 1 of North Dakota Century Code section 26.1-36.3-04, if the current premium rate for the health benefit plan exceeds the ranges set forth in subsection 1 of North Dakota Century Code section 26.1-36.3-04, the formulae set forth in subdivisions a and b will be applied as if the fifteen percent adjustment provided in subparagraph b of paragraph 2 of subdivision a and subparagraph b of paragraph 3 of subdivision b were a zero percent adjustment.

d. Notwithstanding the provisions of subdivisions a and b, a change in premium rate for a small employer shall not produce a revised premium rate that would exceed the limitations on rates provided in subdivision b of subsection 1 of North Dakota Century Code section 26.1-36.3-04.

7. a. A representative of a Taft-Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of

application of the provisions of subsection 1 of North Dakota Century Code section 26.1-36.3-04 with respect to such trust.

b. A request made under subdivision a shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(1) Adversely affect the participants and beneficiaries of the trust; and

(2) Require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

c. A waiver granted under subsection 3 of North Dakota Century Code section 26.1-36.3-04 shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

**History:** Effective August 1, 1994; amended effective December 1, 1997.
**General Authority:** NDCC 26.1-01-08, 26.1-36.3-04
**Law Implemented:** NDCC 26.1-36.3-04

**45-06-06.1-06. Requirement to insure entire groups.**

1. a. A small employer carrier that offers coverage to a small employer shall offer to provide coverage to each eligible employee and to each dependent of an eligible employee. Except as provided in subdivision b, the small employer carrier shall provide the same health benefit plan to each such employee and dependent.

b. A small employer carrier may offer the employees of a small employer the option of choosing among one or more health benefit plans, provided that each employee may choose any of the offered plans. Except as provided in subsection 3 of North Dakota Century Code section 26.1-36.3-06, with respect to exclusions for preexisting conditions, the choice among benefit plans may not be limited, restricted, or conditioned based upon the risk characteristics of the employees or their dependents.

2. a. A small employer carrier shall require each small employer that applies for coverage, as part of the application process, to provide a complete list of eligible employees and dependents of eligible employees as defined in subsections 12 and 13 of North Dakota Century Code section 26.1-36.3-01. The small employer carrier shall require the small employer to provide appropriate supporting documentation, such as the W-2 summary wage and tax form, or certification, to verify the information required under this subdivision.

b. A small employer carrier shall secure a waiver with respect to each eligible employee and each dependent of such an eligible employee who declines an offer of coverage under a health benefit plan provided to a small employer. The waiver shall be signed by the eligible employee, on behalf of such employee or the dependent of such employee, and shall certify that the individual who declined coverage was informed of the availability of coverage under the health benefit plan. The waiver form shall require that the reason for declining coverage be stated on the form and shall include a written warning of the penalties imposed on late enrollees. Waivers shall be maintained by the small employer carrier for a period of six years.

c. (1) A small employer carrier may not issue coverage to a small employer that refuses to provide the list required under subdivision a or a waiver required under subdivision b.

(2) (a) A small employer carrier shall not issue coverage to a small employer if the carrier, or a producer for such carrier, has reason to believe that the small employer has induced or pressured an eligible employee, or dependent of an eligible employee, to decline coverage due to the individual's risk characteristics.

(b) A producer shall notify a small employer carrier, prior to submitting an application for coverage with the carrier on behalf of a small employer, of any circumstances that would indicate that the small employer has induced or pressured an eligible employee, or dependent of an eligible employee, to decline coverage due to the individual's risk characteristics.

3. a. New entrants to a small employer group shall be offered an opportunity to enroll in the health benefit plan currently held by such group. A new entrant that does not exercise the opportunity to enroll in the health benefit plan within the period provided by the small employer carrier may be treated as a late enrollee by the carrier, provided that the period provided to enroll in the health benefit plan extends at least thirty days after the date the new entrant is notified of the entrant's opportunity to enroll. If a small employer carrier has offered more than one health benefit plan to a small employer group pursuant to subdivision b of subsection 1, the new entrant shall be offered the same choice of health benefit plans as the other members of the group.

b. A small employer carrier may not apply a waiting period, elimination period, or other similar limitation of coverage, other than an exclusion for preexisting medical conditions consistent with subdivision b of subsection 3 of North Dakota Century Code section 26.1-36.3-06, with respect to a new entrant that is longer than ninety days.

c. New entrants to a group shall be accepted for coverage by the small employer carrier without any restrictions or limitations on coverage related to the risk characteristics of the employees or their dependents, except that a carrier may exclude coverage for preexisting medical conditions, consistent with the provisions provided in subsection 3 of North Dakota Century Code section 26.1-36.3-06.

d. A small employer carrier may assess a risk load to the premium rate associated with a new entrant, consistent with the requirements of North Dakota Century Code section 26.1-36.3-04. The risk load shall be the same risk load charged to the small employer group immediately prior to acceptance of the new entrant into the group.

4. a. (1) In the case of an eligible employee or dependent of an eligible employee who, prior to the effective date of subsection 1 of North Dakota Century Code section 26.1-36.3-06,0was excluded from coverage or denied coverage by a small employer carrier in the process of providing a health benefit plan to an eligible small employer, as defined in subdivision c of subsection 1 of North Dakota Century Code section 26.1-36.3-06, the small employer carrier shall provide an opportunity for the eligible employee or dependent of such eligible employee to enroll in the health benefit plan currently held by the small employer.

(2) A small employer carrier may require an individual who requests enrollment under this subsection to sign a statement indicating that such individual sought coverage under the group contract other than as a late enrollee and that the coverage was not offered to the individual.

b. The opportunity to enroll must meet the following requirements:

(1) The opportunity to enroll shall begin September 1, 1994, and shall last for a period of at least three months.

(2) Eligible employees and dependents of eligible employees who are provided an opportunity to enroll pursuant to this subsection shall be treated as new entrants. Premium rates related to such individuals shall be set in accordance with subsection 3.

(3) The terms of coverage offered to an individual described in paragraph 1 ofsubdivision a may exclude coverage for preexisting medical conditions if the health benefit plan currently held by the small employer contains such an exclusion, provided that the exclusion period shall be reduced by the number of days between the date the individual was excluded or denied coverage and the date coverage is provided to the individual pursuant to this subsection.

(4) A small employer carrier shall provide written notice at least forty-five days prior to the opportunity to enroll provided in paragraph 1 of subdivision a to each small employer insured under a health benefit plan offered by such carrier. The notice shall clearly describe the rights granted under this subsection to employees and dependents who were previously excluded from or denied coverage and the process for enrollment of such individuals in the employer's health benefit plan.

**History:** Effective August 1, 1994; amended effective December 1, 1997; August 1, 2000.
**General Authority:** NDCC 26.1-01-08
**Law Implemented:** NDCC 26.1-36.3

**45-06-06.1-07. Consideration of industry.**

1. Except as provided in subsections 2 and 3, a small employer carrier may not consider the trade or occupation of the employees of a small employer or the industry or type of business in which the small employer is engaged in determining whether to issue or continue to provide coverage to the small employer.

2. A small employer carrier may use industry as a case characteristic in establishing premium rates, subject to subdivision f of subsection 1 of North Dakota Century Code section 26.1-36.3-04.

3. A small employer carrier may consider trade, occupation, or industry as part of the eligibility criteria for a class of business, subject to paragraph 2 of subdivision b of subsection 1 of North Dakota Century Code section 26.1-36.3-06.

**History:** Effective August 1, 1994.
**General Authority:** NDCC 26.1-01-08
**Law Implemented:** NDCC 26.1-36.3

**45-06-06.1-08. Application to reenter state.**

1. A carrier that has been prohibited from writing coverage for small employers in this state pursuant to subsection 2 of North Dakota Century Code section 26.1-36.3-05 may not resume offering health benefit plans to small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a small employer carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

2. In the case of a small employer carrier doing business in only one established geographic service area of the state, if the small employer carrier elects to nonrenew a health benefit plan under subdivision f of subsection 1 of North Dakota Century Code section 26.1-36.3-05, the small employer carrier shall be prohibited from offering health benefit plans to small employers in any part of the service area for a period of five years. In addition, the small employer carrier shall not offer health benefit plans to small employers in any other geographic area of the

state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

**History:** Effective August 1, 1994.
**General Authority:** NDCC 26.1-01-08
**Law Implemented:** NDCC 26.1-36.3-05

**45-06-06.1-09. Qualifying previous and qualifying existing coverage.**

Repealed effective December 1, 1997.

**45-06-06.1-10. Restrictive riders.**

1. A restrictive rider, endorsement, or other provision that would violate the provisions of paragraph 2 of subdivision e of subsection 3 of North Dakota Century Code section 26.1-36.3-06 and that was in force on the effective date of this chapter may not remain in force beyond the first anniversary date of the health benefit plan subject to the restrictive provision that follows the effective date of this chapter. A small employer carrier shall provide written notice to those small employers whose coverage will be changed pursuant to this subsection at least thirty days prior to the required change to the health benefit plan.

2. Except as permitted in subdivision b of subsection 3 of North Dakota Century Code section 26.1-36.3-06, a small employer carrier shall not modify or restrict a basic or standard health benefit plan in any manner for the purposes of restricting or excluding coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

3. Except as permitted in subdivision b of subsection 3 of North Dakota Century Code section 26.1-36.3-06, a small employer carrier shall not modify or restrict any health benefit plan with respect to any eligible employee or dependent of an eligible employee, through riders, endorsements, or otherwise, for the purpose of restricting or excluding the coverage or benefits provided to such employee or dependent for specific diseases, medical conditions, or services otherwise covered by the plan.

**History:** Effective August 1, 1994.
**General Authority:** NDCC 26.1-01-08
**Law Implemented:** NDCC 26.1-36.3-06

**45-06-06.1-11. Rules related to fair marketing.**

1. a. A small employer carrier shall actively market each of its health benefit plans to small employers in this state. A small employer carrier may not suspend the marketing or issuance of a health benefit plan unless the carrier has good cause and has received the prior approval of the commissioner.

   b. In marketing the basic and standard health benefit plans to small employers, a small employer carrier shall use at least the same sources and methods of distribution that it uses to market other health benefit plans to small employers. Any producer authorized by a small employer carrier to market health benefit plans to small employers in the state shall also be authorized to market the basic and standard health benefit plans.

2. a. A small employer carrier shall offer to any small employer that applies for or makes an inquiry regarding health insurance coverage from the small employer carrier all health benefit plans it actively markets to small employers. The offer shall be in writing and shall include at least the following information:

(1) A general description of the benefits contained in the health benefit plans being offered to small employers in this state; and

(2) Information describing how the small employer may enroll in the plans. The offer may be provided directly to the small employer or delivered through a producer.

b. In connection with the offering of any health insurance coverage to a small employer, a health insurance issuer is required to make reasonable disclosure to the employer, as a part of its solicitation and sales materials, of the availability of information described in this subsection; and upon request provide that information to the employer.

Subject to the above, the information that must be provided is the provisions of coverage relating to the following:

(1) The issuer's right to change premium rates and the factors that may affect changes in premium rates.

(2) Renewability of coverage.

(3) Any preexisting condition exclusion, including use of the alternative method of counting creditable coverage.

(4) The geographic areas served by HMOs.

c. (1) A small employer carrier shall provide a price quote to a small employer, directly or through an authorized producer, within ten working days of receiving a request for a quote and such information as is necessary to provide the quote. A small employer carrier shall notify a small employer, directly or through an authorized producer, within five working days of receiving a request for a price quote of any additional information needed by the small employer carrier to provide the quote.

(2) A small employer carrier may not apply more stringent or detailed requirements related to the application process for the basic and standard health benefit plans than are applied for other health benefit plans offered by the carrier.

3. The small group carrier shall not require a small employer to join or contribute to any association or group as a condition of being accepted for coverage by the small employer carrier, except that, if membership in an association or other group is a requirement for accepting a small employer into a particular health benefit plan, a small employer carrier may apply such requirement, subject to the requirements of paragraph 2 of subdivision b of subsection 1 of North Dakota Century Code section 26.1-36.3-06.

4. A small employer carrier may not require, as a condition to the offer or sale of a health benefit plan to a small employer, that the small employer purchase or qualify for any other insurance product or service.

5. a. Carriers offering individual and group health benefit plans in this state shall be responsible for determining whether the plans are subject to the requirements of the Act and this chapter. Carriers shall elicit the following information from applicants for such plans at the time of application:

(1) Whether or not any portion of the premium will be paid by or on behalf of a small employer, either directly or through wage adjustments or other means of reimbursement; and

(2) Whether or not the prospective policyholder, certificate holder, or any prospective insured individual intends to treat the health benefit plan as part of plan or program

under section 162 (other than section 162(1)), section 125, or section 106 of the United States Internal Revenue Code.

b. If a small employer carrier fails to comply with subdivision a, the small employer carrier shall be deemed to be on notice of any information that could reasonably have been attained if the small employer carrier had complied with subdivision a.

6. a. A small employer carrier shall file annually the following information with the commissioner related to health benefit plans issued by the small employer carrier to small employers in this state:

(1) The number of small employers that were issued health benefit plans in the previous calendar year, separated as to newly issued plans and renewals;

(2) The number of small employers that were issued the basic health benefit plan and the standard health benefit plan in the previous calendar year, separated as to newly issued plans and renewals and as to class of business;

(3) The number of small employer health benefit plans in force in each county or by zip code of the state as of December thirty-first of the previous calendar year;

(4) The number of small employer health benefit plans that were voluntarily not renewed by small employers in the previous calendar year;

(5) The number of small employer health benefit plans that were terminated or nonrenewed for reasons other than nonpayment of premium by the carrier in the previous calendar year; and

(6) The number of small employer health benefit plans that were issued to small employers that were uninsured for at least the three months prior to issue.

b. The information described in subdivision a shall be filed no later than March fifteenth of each year.

**History:** Effective August 1, 1994; amended effective December 1, 1997!meovs!x.
**General Authority:** NDCC 26.1-01-08
**Law Implemented:** NDCC 26.1-36.3-11

**45-06-06.1-12. Status of carriers as small employer carriers.**

1. A carrier shall not offer health benefit plans to small employers after January 1, 1994, or continue to provide coverage after September 1, 1994, under health benefit plans previously issued to small employers in this state, unless the filing provided pursuant to section 45-06-06-01 indicates the carrier intends to operate as a small employer carrier in this state.

2. If the filing made pursuant to section 45-06-06-01 indicates that a carrier does not intend to operate as a small employer carrier in this state, the carrier shall be precluded from operating as a small employer carrier in this state for a period of five years from the date of the filing. Upon a written request from such a carrier, the commissioner may reduce the period provided for in the previous sentence if the commissioner finds that permitting the carrier to operate as a small employer carrier would be in the best interests of the small employers in the state.

**History:** Effective August 1, 1994.
**General Authority:** NDCC 26.1-01-08, 26.1-36.3-07
**Law Implemented:** NDCC 26.1-36.3-07

**45-06-06.1-13. Restoration of coverage.**

1. a. Except as provided in subdivision b, a small employer carrier shall, as a condition of continuing to transact business in this state with small employers, offer to provide a health benefit plan as described in subsection 3 to any small employer whose coverage was terminated or not renewed by such small employer carrier after January 1, 1994.

   b. The offer required under subdivision a shall not be required with respect to a health benefit plan that was not renewed if:

      (1) The health benefit plan was not renewed for reasons permitted in subsection 1 of North Dakota Century Code section 26.1-36.3-05; or

      (2) The nonrenewal was a result of the small employer voluntarily electing coverage under a different health benefit plan.

2. The offer made under subsection 1 shall be made in accordance with paragraph 4 of subdivision b of subsection 4 of section 45-06-06.1-06. A small employer shall be given at least ninety days to accept an offer made pursuant to subsection 1.

3. A health benefit plan provided to a terminated small employer pursuant to subsection 1 shall meet the following conditions:

   a. The health benefit plan shall contain benefits that are identical to the benefits in the health benefit plan that was terminated or nonrenewed.

   b. The health benefit plan shall not be subject to any waiting periods, including exclusion periods for preexisting conditions, or other limitations on coverage that exceed those contained in the health benefit plan that was terminated or nonrenewed. In applying such exclusions or limitations, the health benefit plan shall be treated as if it were continuously in force from the date it was originally issued to the date that it is restored pursuant to this section and North Dakota Century Code section 26.1-36.3-12.

   c. The health benefit plan shall not be subject to any provision that restricts or excludes coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

   d. The health benefit plan shall provide coverage to all employees who are eligible employees as of the date the plan is restored. The carrier shall offer coverage to each dependent of such eligible employees.

   e. The premium rate for the health benefit plan shall be no more than the premium rate charged to the small employer on the date the health benefit plan was terminated or nonrenewed; provided that, if the number or case characteristics of the eligible employees or their dependents of the small employer has changed between the date the health benefit plan was terminated or nonrenewed and the date that it is restored, the carrier may adjust the premium rates to reflect any changes in case characteristics of the small employer. If the carrier has increased premium rates for other similar groups with similar coverage to reflect general increases in health care costs and utilization, the premium rate may further be adjusted to reflect the lowest such increase given to a similar group. The premium rate for the health benefit plan may not be increased to reflect any changes in risk characteristics of the small employer group until one year after the date the health benefit plan is restored. Any such increase shall be subject to the provisions of North Dakota Century Code section 26.1-36.3-04.

   f. A carrier may reinsure new entrants to the health benefit plan who enroll after the restoration of coverage.

**History:** Effective August 1, 1994.
**General Authority:** NDCC 26.1-01-08, 26.1-36.3-12
**Law Implemented:** NDCC 26.1-36.3-12

**45-06-06.1-14. Special enrollment periods.**

1. Employees losing other coverage. A group health plan shall permit an employee who is eligible, but not enrolled, for coverage (or a dependent of the employee if the dependent is eligible, but not enrolled) to enroll for coverage under the terms of the plan if each of the following conditions is met:

   a. The employee or dependent was covered under a group health plan at the time coverage was previously offered to the employee or dependent.

   b. The employee stated in writing at the time coverage was previously offered that coverage under a group health plan was the reason for declining enrollment, but only if the plan required such a statement at the time and provided the employee with notice of the requirement and its consequences.

   c. The employee's or dependent's coverage:

      (1) Was under a Consolidated Omnibus Budget Reconciliation Act continuation provision and the coverage was exhausted; or

      (2) If not under a Consolidated Omnibus Budget Reconciliation Act continuation provision, the coverage was terminated as a result of loss of eligibility for the coverage or because employer contributions toward the coverage were terminated.

   d. Under the terms of the plan, the employee requests enrollment not later than thirty days after the date of termination of the coverage or employer contribution.

2. For dependent beneficiaries. A group health plan shall provide for a "dependent special enrollment period" if:

   a. The group health plan makes coverage available with respect to dependents of an employee;

   b. The employee is a participant under the plan or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period; and

   c. A person becomes a dependent of the individual through marriage, birth, or adoption or placement for adoption.

3. For purposes of this section, a "dependent special enrollment period" is a period of not less than thirty days beginning on the later of:

   a. The date dependent coverage is made available; or

   b. The date of the marriage, birth, adoption, or placement for adoption.

   During the dependent special enrollment period, the dependent or, if not otherwise enrolled, the employee may be enrolled under the plan as a dependent of the employee. In the case of the birth or adoption of a child, the spouse of the employee may be enrolled as a dependent if the spouse is otherwise eligible for coverage.

4. If an employee seeks to enroll a dependent during the first thirty days of the dependent special enrollment period, the coverage of the dependent shall become effective:

a. In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

b. In the case of a dependent's birth, as of the date of birth; or

c. In the case of a dependent's adoption or placement for adoption, the date of adoption or placement for adoption.

**History:** Effective December 1, 2001.
**General Authority:** NDCC 28-32-02(1)
**Law Implemented:** NDCC 26.1-36.3