

Sixty-seventh  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1465

Introduced by

Representatives Westlind, Tveit, Weisz

1 A BILL ~~for an Act to create and enact section 26.1-36-12.7 of the North Dakota Century Code,~~  
 2 ~~relating to freedom of choice for health care services.~~for an Act to create and enact a new  
 3 section to chapter 23-12 of the North Dakota Century Code, relating to vaccine information; to  
 4 amend and reenact section 26.1-36-09.15 of the North Dakota Century Code, relating to  
 5 coverage of telehealth services; to provide for a legislative management study; and to declare  
 6 an emergency.

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

8 ~~SECTION 1. Section 26.1-36-12.7 of the North Dakota Century Code is created and~~  
 9 ~~enacted as follows:~~

10 ~~26.1-36-12.7. Freedom of choice for health care services.~~

11 ~~1. As used in this section:~~

12 ~~a. "Health care provider" includes an individual licensed under chapter 43-05,~~  
 13 ~~43-06, 43-12.1 as a registered nurse or as an advanced practice registered~~  
 14 ~~nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42,~~  
 15 ~~43-44, 43-45, 43-47, 43-58, or 43-60.~~

16 ~~b. "Policy" means a health insurance policy, contract, or evidence of coverage on a~~  
 17 ~~group, individual, blanket, franchise, or association basis.~~

18 ~~2. A health insurer, including the North Dakota Medicaid program, may not obstruct~~  
 19 ~~patient choice by excluding a health care provider licensed under the laws of this state~~  
 20 ~~from participating on the health insurer's panel of providers if the provider is located~~  
 21 ~~within the geographic coverage area of the health benefit plan and is willing and fully~~  
 22 ~~qualified to meet the terms and conditions of participation, as established by the health~~  
 23 ~~insurer.~~

1       **SECTION 1.** A new section to chapter 23-12 of the North Dakota Century Code is created  
2 and enacted as follows:

3       **Vaccine and infection information.**

4       1. Except as provided under sections 15.1-23-02, 23-01-05.3, and 23-07-17.1, neither a  
5 state government entity nor any of its subdivisions, agents, or assigns may:

6       a. Require documentation, whether physical or electronic, for the purpose of  
7 certifying or otherwise communicating the following before providing access to  
8 state property, funds, or services:

9           (1) An individual's vaccination status;

10          (2) The presence of pathogens, antigens, or antibodies; or

11          (3) An individual's post-transmission recovery status;

12       b. Otherwise publish or share an individual's vaccination record or similar health  
13 information, except as specifically authorized by the individual or otherwise  
14 authorized by statute; or

15       c. Require a private business to obtain documentation, whether physical or  
16 electronic, for purposes of certifying or otherwise communicating the following  
17 before employment or providing access to property, funds, or services based on:

18           (1) An individual's vaccination status;

19           (2) The presence of pathogens, antigens, or antibodies; or

20           (3) An individual's post-transmission recovery status.

21       2. A private business located in this state may not require a patron or customer to  
22 provide any documentation certifying vaccination or post-transmission recovery to gain  
23 access to, entry upon, or services from the business. This subsection does not apply  
24 to a health care provider including a long-term care provider.

25       3. This section may not be construed to interfere with an individual's rights to access that  
26 individual's own personal health information or with a person's right to access personal  
27 health information of others which the person otherwise has a right to access.

28       4. Subsection 1 is not applicable to the state board of higher education, the university  
29 system, or institutions under the control of the state board of higher education to the  
30 extent the entity has adopted policies and procedures governing the type of

documentation required, the circumstances under which such documentation may be shared, and exemptions from providing such documentation.

5. This section is not applicable during a public health disaster or emergency declared in accordance with chapter 37-17.1.

6. This section is limited in application to a vaccination authorized by the federal food and drug administration pursuant to an emergency use authorization.

**SECTION 2. AMENDMENT.** Section 26.1-36-09.15 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36-09.15. Coverage of telehealth services.**

1. As used in this section:

a. "Distant site" means a site at which a health care provider or health care facility is located while providing medical services by means of telehealth.

b. "E-visit" means a face-to-face digital communication initiated by a patient to a provider through the provider's online patient portal.

c. "Health care facility" means any office or institution at which health services are provided. The term includes hospitals; clinics; ambulatory surgery centers; outpatient care facilities; nursing homes; nursing, basic, long-term, or assisted living facilities; laboratories; and offices of any health care provider.

~~e.d.~~ "Health care provider" includes an individual licensed under chapter 43-05, 43-06, 43-12.1 as a registered nurse or as an advanced practice registered nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42, 43-44, 43-45, 43-47, 43-58, or 43-60.

~~d.e.~~ "Nonpublic facing product" means a remote communication product that, as a default, allows only the intended parties to participate in the communication.

f. "Originating site" means a site at which a patient is located at the time health services are provided to the patient by means of telehealth.

~~e.g.~~ "Policy" means an accident and health insurance policy, contract, or evidence of coverage on a group, individual, blanket, franchise, or association basis.

~~f.h.~~ "Secure connection" means a connection made using a nonpublic facing remote communication product that employs end-to-end encryption, and which allows

only an individual and the person with whom the individual is communicating to see what is transmitted.

i. "Store-and-forward technology" means electronic information, imaging, and communication that is transferred, recorded, or otherwise stored in order to be reviewed at a distant site at a later date by a health care provider or health care facility without the patient present in real time. The term includes telehome monitoring and interactive audio, video, and data communication.

~~g.i.~~ "Telehealth":

(1) Means the use of interactive audio, video, or other telecommunications technology that is used by a health care provider or health care facility at a distant site to deliver health services at an originating site and that is delivered over a secure connection that complies with the requirements of state and federal laws.

(2) Includes the use of electronic media for consultation relating to the health care diagnosis or treatment of a patient in real time or through the use of store-and-forward technology.

(3) Does not include the use of ~~audio-only telephone~~, electronic mail, ~~or~~ facsimile transmissions, or audio-only telephone unless for the purpose of e-visits or a virtual check-in.

k. "Virtual check-in" means a brief communication via telephone or other telecommunications device to decide whether an office visit or other service is needed.

2. An insurer may not deliver, issue, execute, or renew a policy that provides health benefits coverage unless that policy provides coverage for health services delivered by means of telehealth which is the same as the coverage for health services delivered by in-person means.

3. Payment or reimbursement of expenses for covered health services delivered by means of telehealth under this section may be established through negotiations conducted by the insurer with the health services providers in the same manner as ~~the insurer with the health services providers in the same manner as~~ the insurer

- 1 establishes payment or reimbursement of expenses for covered health services that  
2 are delivered by in-person means.
- 3 4. Coverage under this section may be subject to deductible, coinsurance, and  
4 copayment provisions.
- 5 5. This section does not require:
- 6 a. A policy to provide coverage for health services that are not medically necessary,  
7 subject to the terms and conditions of the policy;
- 8 b. A policy to provide coverage for health services delivered by means of telehealth  
9 if the policy would not provide coverage for the health services if delivered by  
10 in-person means;
- 11 c. A policy to reimburse a health care provider or health care facility for expenses  
12 for health services delivered by means of telehealth if the policy would not  
13 reimburse that health care provider or health care facility if the health services  
14 had been delivered by in-person means; or
- 15 d. A health care provider to be physically present with a patient at the originating  
16 site unless the health care provider who is delivering health services by means of  
17 telehealth determines the presence of a health care provider is necessary.

18 **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HEALTH INSURANCE**  
19 **NETWORKS.**

- 20 1. During the 2021-22 interim, the legislative management shall consider studying health  
21 insurance networks, including narrow networks. The study must include:
- 22 a. Consideration of the use and regulation of broad and narrow networks in the  
23 state by individuals and employers, the sales and marketing of broad and narrow  
24 networks, opportunities for consumer choice-of-provider, and premium  
25 differentials among states with choice-of-provider laws;
- 26 b. A review of legislative and court history regarding the impact of choice-of-provider  
27 laws on exclusive provider organizations and preferred provider organizations  
28 and how choice-of-provider laws apply to risk-pooled health plans regulated by  
29 the federal Employee Retirement Income Security Act of 1974;
- 30 c. The impact of the consolidation of the health care market on consumer cash  
31 prices, insurance plan deductibles and premiums prices, and consumer options;

- 1 d. A comparison of health maintenance organizations provider network designs and
- 2 other health insurer provider network designs;
- 3 e. A review of how vertical integrated networks utilize HMO plans; and
- 4 f. A comparison of premiums of health benefit plans offered in the individual and
- 5 small group markets in relation to the provider network design associated with
- 6 those plans along with the growth of value-based purchasing.
- 7 2. The legislative management shall report its finding and recommendations, together
- 8 with any legislation required to implement the recommendations, to the sixty-eighth
- 9 legislative assembly.

10 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.