

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2231
(Senators J. Lee, Schaible)
(Representative Weisz)

AN ACT to create and enact a new section to chapter 23-16 and four new sections to chapter 26.1-47 of the North Dakota Century Code, relating to informed decisionmaking for choosing air ambulance service providers, preferred provider arrangement requirements for insurance prior authorization for air ambulance services, and air ambulance subscriptions; to amend and reenact section 26.1-47-01, subsection 6 of section 26.1-47-02, and section 26.1-47-07 of the North Dakota Century Code, relating to preferred provider organizations; to provide an effective date; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

Air ambulances - Informed Decisions - Publication.

1. Before a hospital refers a patient to an air ambulance service provider or initiates contact with an air ambulance service provider for air transport of the patient, the hospital shall inform the patient, or the patient's representative, of the air ambulance service provider's health insurance network status for the purpose of allowing the patient or the patient's representative to make an informed decision on choosing an air ambulance service provider or form of transportation.
2. A hospital is presumed in compliance with subsection 1 if the hospital provides the patient, or the patient's representative, the health insurance network status published by the insurance department under subsection 4.
3. A hospital is exempt from complying with this section if the hospital determines and documents that due to emergency circumstances, compliance might jeopardize the health or safety of the patient.
4. At least quarterly, the insurance department shall publish on the insurance department's website data regarding the health insurance network status of each air ambulance service provider authorized to operate in the state.

SECTION 2. AMENDMENT. Section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-01. Definitions.

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

1. "Air ambulance" means a specially equipped aircraft licensed by the state department of health for transporting patients.
2. "Air ambulance provider" means a publicly or privately owned organization that is licensed or applies for licensure by the state department of health to provide transportation and care of patients by air ambulance.
3. "Commissioner" means the insurance commissioner of the state of North Dakota.

- 2-4. "Covered person" means any person on whose behalf the health care insurer is obligated to pay for or provide health care services.
- 3-5. "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
- 4-6. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
- 5-7. "Health care provider" means licensed providers of health care services in this state.
- 6-8. "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.
9. "In-network payment" means a full and final payment for air ambulance services pursuant to a network plan.
10. "Network" means a group of preferred providers providing services under a network plan.
11. "Network plan" means a health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed by, owned by, under contract with, or employed by the health care insurer.
12. "Out-of-network" means a provider that is not providing the service under a network plan.
- 7-13. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this chapter, to provide health care services to covered persons under a health benefit plan.
- 8-14. "Preferred provider arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter.

SECTION 3. AMENDMENT. Section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-01. Definitions.

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

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

4. "Balance billing" means the practice of an air ambulance provider billing for the difference between the air ambulance provider's charge and the health care insurer's allowed amount.
5. "Commissioner" means the insurance commissioner of the state of North Dakota.
- 2-6. "Covered person" means ~~any person~~ an individual on whose behalf the health care insurer is obligated to pay for or provide health care services.
- 3-7. "Facility" means an institution or other immobile health care setting providing physical, mental, or behavioral health care services.
8. "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
- 4-9. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
- 5-10. "Health care provider" means licensed providers of health care services in this state.
- 6-11. "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.
- 7-12. "Network" means a group of preferred providers providing services under a network plan.
13. "Network plan" means a health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed by, owned by, under contract with, or employed by the health care insurer.
14. "Out-of-network" means a provider that is not providing the service under a network plan.
15. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this chapter, to provide health care services to covered persons under a health benefit plan.
- 8-16. "Preferred provider arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter.
17. "Prior authorization" means confirmation by the covered person's health care insurer that the air ambulance services sought to be provided by the air ambulance provider meet the criteria for coverage under the covered person's health benefit plan as defined by the provisions of the covered person's health benefit plan.

SECTION 4. AMENDMENT. Subsection 6 of section 26.1-47-02 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 5. AMENDMENT. Section 26.1-47-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-07. Penalty.

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

SECTION 6. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Air ambulances.

1. A health benefit plan may not be issued in this state unless the plan provides the reimbursement rate for out-of-network air ambulance provider services is equal to the average of the insurer's in-network rates for air ambulance providers in the state.
2. An insurer may not use the average of an insurer's in-network rates for air ambulance providers in the state in order to decrease current or future contractual rates between an insurer and an air ambulance provider.
3. For purposes of settling a claim made by the insured for air ambulance services, a payment made by an insurer under the plan in compliance with this section is deemed to be the same as an in-network payment and is considered a full and final payment by the insured for out-of-network air ambulance services billed to the insured.
4. This section does not apply to a policy or certificate of insurance, whether written on a group or individual basis, which provides coverage limited to:
 - a. A specified disease, a specified accident, or accident-only coverage;
 - b. Credit;
 - c. Dental;
 - d. Disability;
 - e. Hospital;
 - f. Long-term care insurance as defined by chapter 26.1-45;
 - g. Vision care or any other limited supplemental benefit;
 - h. A medicare supplement policy of insurance, as defined by the commissioner by rule or coverage under a plan through medicare;
 - i. Medicaid;
 - j. The federal employees health benefits program and any coverage issued as a supplement to that coverage;
 - k. Coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; or
 - l. Automobile medical payment insurance.

SECTION 7. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Preferred provider arrangements - Requirements for accessing air ambulance providers.

1. In addition to the other preferred provider arrangement requirements under this chapter, a preferred provider arrangement must require the health care insurer and health care provider comply with this section.
2. Except as otherwise provided under this section, before a health care provider arranges for air ambulance services for an individual the health care provider knows to be a covered person, the health care provider shall request a prior authorization from the covered person's health care insurer for the air ambulance services to be provided to the covered person. If the health care provider is unable to request or obtain prior authorization from the covered person's health care insurer:
 - a. The health care provider shall provide the covered person or the covered person's authorized representative an out-of-network services written disclosure stating the following:
 - (1) Certain air ambulance providers may be called upon to render care to the covered person during the course of treatment;
 - (2) These air ambulance providers might not have contracts with the covered person's health care insurer and are, therefore, considered to be out of network;
 - (3) If these air ambulance providers do not have contracts with the covered person's health care insurer, the air ambulance services will be provided on an out-of-network basis;
 - (4) A description of the range of the charges for the out-of-network air ambulance services for which the covered person may be responsible;
 - (5) A notification the covered person or the covered person's authorized representative may agree to accept and pay the charges for the out-of-network air ambulance services, contact the covered person's health care insurer for additional assistance, or rely on other rights and remedies that may be available under state or federal law; and
 - (6) A statement indicating the covered person or the covered person's authorized representative may obtain a list of air ambulance providers from the covered person's health care insurer which are preferred providers and the covered person or the covered person's representative may request those participating air ambulance providers be accessed by the health care provider.
 - b. Before air ambulance services are accessed for the covered person, the health care provider shall provide the covered person or the covered person's authorized representative the written disclosure, as outlined by subdivision a and obtain the covered person's or the covered person's authorized representative's signature on the disclosure document acknowledging the covered person or the covered person's authorized representative received the disclosure document before the air ambulance services were accessed. If the health care provider is unable to provide the written disclosure or obtain the signature required under this subdivision, the health care provider shall document the reason, which may include the health and safety of the patient. The health care provider documentation satisfies the requirement under this subdivision.
3. This section does not:
 - a. Preclude a covered person from agreeing to accept and pay the charges for the out-of-network services and not access the covered person's health care insurer's out-of-network air ambulance billing process described under this section.

- b. Preclude a covered person from agreeing to accept and pay the bill received from the out-of-network air ambulance provider or from not accessing the air ambulance provider mediation process described under this section.
 - c. Regulate an out-of-network air ambulance provider's ability to charge certain fees for services or to charge any amount of fee for services provided to a covered person by the out-of-network air ambulance provider.
- 4. A health care insurer shall develop a program for payment of out-of-network air ambulance bills submitted under this section. A health benefit plan may not be issued in this state without the terms of the health benefit plan including the provisions of the health care insurer's program for payment of out-of-network air ambulance bills.
 - a. A health care insurer may elect to pay out-of-network air ambulance provider bills as submitted, or the health care insurer may elect to use the out-of-network air ambulance provider mediation process described in subsection 5.
 - b. This section does not preclude a health care insurer and an out-of-network facility air ambulance provider from agreeing to a separate payment arrangement.
- 5. A health care insurer shall establish an air ambulance provider mediation process for payment of out-of-network air ambulance provider bills. A health benefit plan may not be issued in this state if the terms of the health benefit plan do not include the provisions of the health care insurer's air ambulance provider mediation process for payment of out-of-network air ambulance provider bills.
 - a. A health care insurer's air ambulance provider mediation process must be established in accordance with mediation standards recognized by the department by rule.
 - b. If the health care insurer and the out-of-network air ambulance provider agree to a separate payment arrangement or if the covered person agrees to accept and pay the out-of-network air ambulance provider's charges for the out-of-network services, compliance with the air ambulance provider mediation process is not required.
 - c. A health care insurer shall maintain records on all requests for mediation and completed mediation under this subsection for one year and, upon request of the commissioner, submit a report to the commissioner in the format specified by the commissioner.
- 6. The rights and remedies provided under this section to covered persons are in addition to and may not preempt any other rights and remedies available to covered persons under state or federal law.
- 7. The department shall enforce this section and shall report a violation of this section by a facility to the state department of health.
- 8. This section does not apply to a policy or certificate of insurance, whether written on a group or individual basis, which provides coverage limited to:
 - a. A specified disease, a specified accident, or accident-only coverage;
 - b. Credit;
 - c. Dental;
 - d. Disability;
 - e. Hospital;
 - f. Long-term care insurance as defined by chapter 26.1-45;

- g. Vision care or any other limited supplemental benefit;
- h. A medicare supplement policy of insurance, as defined by the commissioner by rule or coverage under a plan through medicare;
- i. Medicaid;
- j. The federal employees health benefits program and any coverage issued as a supplement to that coverage;
- k. Coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; or
- l. Automobile medical payment insurance.

9. The commissioner may adopt rules to implement this section.

SECTION 8. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Rules.

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

SECTION 9. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Air ambulance subscription agreements - Prohibition.

An air ambulance provider, or an agent of an air ambulance provider, may not sell, solicit, or negotiate a subscription agreement or contract relating to services or the billing of services provided by an air ambulance provider. An air ambulance provider, or agent of an air ambulance provider, which violates this section is subject to a civil fine in an amount not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state.

SECTION 10. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE. Sections 2, 4, 5, and 6 of this Act become effective January 1, 2018. If section 6 of this Act is declared invalid, sections 3, 7, and 8 of this Act become effective on the date the insurance commissioner certifies the invalidity of section 6 to the secretary of state and the legislative council.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2231.

Senate Vote: Yeas 43 Nays 4 Absent 0

House Vote: Yeas 72 Nays 19 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State