

April 27, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1465

That the Senate recede from its amendments as printed on pages 1513 and 1514 of the House Journal and pages 1256 and 1257 of the Senate Journal and that Engrossed House Bill No. 1465 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 23-12 of the North Dakota Century Code, relating to vaccine information; to amend and reenact section 26.1-36-09.15 of the North Dakota Century Code, relating to coverage of telehealth services; to provide for a legislative management study; and to declare an emergency.

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

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

**Vaccine and infection information.**

1. Except as provided under sections 15.1-23-02, 23-01-05.3, and 23-07-17.1, neither a state government entity nor any of its subdivisions, agents, or assigns may:
  - a. Require documentation, whether physical or electronic, for the purpose of certifying or otherwise communicating the following before providing access to state property, funds, or services:
    - (1) An individual's vaccination status;
    - (2) The presence of pathogens, antigens, or antibodies; or
    - (3) An individual's post-transmission recovery status;
  - b. Otherwise publish or share an individual's vaccination record or similar health information, except as specifically authorized by the individual or otherwise authorized by statute; or
  - c. Require a private business to obtain documentation, whether physical or electronic, for purposes of certifying or otherwise communicating the following before employment or providing access to property, funds, or services based on:
    - (1) An individual's vaccination status;
    - (2) The presence of pathogens, antigens, or antibodies; or
    - (3) An individual's post-transmission recovery status.
2. A private business located in this state may not require a patron or customer to provide any documentation certifying vaccination or post-transmission recovery to gain access to, entry upon, or services from the

business. This subsection does not apply to a health care provider including a long-term care provider.

3. This section may not be construed to interfere with an individual's rights to access that individual's own personal health information or with a person's right to access personal health information of others which the person otherwise has a right to access.
4. Subsection 1 is not applicable to the state board of higher education, the university system, or institutions under the control of the state board of higher education to the 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.j. "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 establishes payment or reimbursement of expenses for covered health services that are delivered by in-person means.
  4. Coverage under this section may be subject to deductible, coinsurance, and copayment provisions.
  5. This section does not require:
    - a. A policy to provide coverage for health services that are not medically necessary, subject to the terms and conditions of the policy;

- b. A policy to provide coverage for health services delivered by means of telehealth if the policy would not provide coverage for the health services if delivered by in-person means;
- c. A policy to reimburse a health care provider or health care facility for expenses for health services delivered by means of telehealth if the policy would not reimburse that health care provider or health care facility if the health services had been delivered by in-person means; or
- d. A health care provider to be physically present with a patient at the originating site unless the health care provider who is delivering health services by means of telehealth determines the presence of a health care provider is necessary.

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

- 1. During the 2021-22 interim, the legislative management shall consider studying health insurance networks, including narrow networks. The study must include:
  - a. Consideration of the use and regulation of broad and narrow networks in the state by individuals and employers, the sales and marketing of broad and narrow networks, opportunities for consumer choice-of-provider, and premium differentials among states with choice-of-provider laws;
  - b. A review of legislative and court history regarding the impact of choice-of-provider laws on exclusive provider organizations and preferred provider organizations and how choice-of-provider laws apply to risk-pooled health plans regulated by the federal Employee Retirement Income Security Act of 1974;
  - c. The impact of the consolidation of the health care market on consumer cash prices, insurance plan deductibles and premiums prices, and consumer options;
  - d. A comparison of health maintenance organizations provider network designs and other health insurer provider network designs;
  - e. A review of how vertical integrated networks utilize HMO plans; and
  - f. A comparison of premiums of health benefit plans offered in the individual and small group markets in relation to the provider network design associated with those plans along with the growth of value-based purchasing.
- 2. The legislative management shall report its finding and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly.

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

Renumber accordingly