State of North Dakota

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Office of the Insurance Commissioner

Bulletin: 81-1

HOUSE BILL 1059 - NURSING HOME POLICY

March 31, 1981

Effective July 1, 1981

Enclosed you will find a copy of HB 1059 passed by the 1981 Legislature and signed by the Governor. The law will be effective July 1, 1981, and relates specifically to policies or riders providing nursing home coverage, including medicare supplement policies which provide nursing home coverage as an incidental benefit. The purpose of this Bulletin is to advise companies writing such business of the law itself and the Department's implementation, handling, and interpretation of the legislation.

Any necessary premium increase as a result of this legislation must be submitted to the North Dakota Insurance Department for its approval. These requests must include anticipated loss ratios which justify the required premium increase.

Furthermore, the Department will allow companies to submit an amendment endorsement that will facilitate the presently filed policies to conform to the newly enacted legislation and minimum standards.

MINIMUM STANDARDS

Section 1 of HB 1059 creates and enacts a new section ot Chapter 26-03 of the North Dakota Century Code in regard to nursing home policies. This provision establishes minimum standards in two specific areas.

First, the section provides that a company providing benefits for confinement to a nursing home must issue policies which are guaranteed renewable for life. The provision in question contains a definition of guaranteed renewable. The company has no right to change any of the policy provisions, and it authorizes companies to only make changes in premium rates on a class basis.

Second, the provision specifies that policies providing nursing home coverage have a limitation as to the time period for pre-existing conditions. This applies to pre-existing conditions, declared or undeclared. The Legislature has established that the maximum amount of time for such a pre-existing condition clause is six months. Any pre-existing clause in excess of six months is a violation of the newly created law.

While the newly enacted legislation does not affect in force policies, after July 1, 1981, it is the position of the Department that all policies which are presently approved providing coverage for nursing home policies must contain policy provisions in compliance with these minimum standards. In other words, nursing home coverage must be issued on a guaranteed renewable basis for life and may not have a longer period than six months for pre-existing conditions.

If companies writing nursing home benefits have filed policies which are inconsistent with these minimum standards, this

is to advise you that the approval of those policies is withdrawn as of July 1, 1981. In addition, from this date forward, the Department will not approve policies that are not in compliance with these minimum standards.

UNFAIR TRADE PRACTICES

Section 2 of HB 1059 creates and enacts a new subdivision to Subsection 9 of Section 26-30-04 of the North Dakota Century Code. Subsection 9 of the aforementioned section deals with unfair claims settlement practices. HB 1059 creates a new subdivision specifically relating to nursing home policies and claims under such policies.

The subdivision establishes that it is a violation for a company to provide coverage for confinement to a nursing home and to refuse to pay claims when an insured was confined to a hospital for three days or more and the person's physician ordered confinement in a nursing home for care other than custodial care. Custodial care is also defined by this provision. Custodial care is primary for the purpose of meeting personal needs without supervision by a registered nurse or a licensed practical nurse.

The legislative intent is clear. Claims for confinement to nursing homes must be paid if the claims meet the initial criteria established by the provision and the care rendered by the nursing home to the insured is more than custodial care. Degrees of care rendered by a nursing home can no longer be used in handling such claims.

No longer will the Department accept that the care rendered by a nursing home was less than "skilled care", although the care may be more than custodial care. If the care rendered is

more than custodial care, the company must handle the claim accordingly.

This subdivision to the Unfair Claims Settlement Practices Provision will apply to all claims which arise on or after July 1, 1981. Companies writing nursing home policies who fail to comply with the newly enacted provision will be deemed to be in violation.

We would call the companies' attention to the fact that there is a rather severe penalty for any violation wherein the company is found to have willfully engaged in an unfair claim settlement practice. The statute provides that in such a case, the Commissioner may impose a civil penalty which shall not exceed Ten Thousand Dollars ($10,000).

We are making every effort to adequately apprise the companies writing nursing home coverage of the new statutory provisions relating to such policies and claims. We wish to give those companies a sufficient amount of lead time to change their policies according to the minimum standards and to also properly advise those individuals with the companies handling claims as to the newly enacted provision under the Unfair Claims Settlement Practices Provision.

J. O. Wigen
Commissioner of Insurance

Please direct all inquiries concerning this bulletin to:

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the Capitol in the City of Bismarck, on Tuesday, the sixth day of January, one thousand nine hundred and eighty-one.

HOUSE BILL NO. 1059
(Legislative Council)
(Interim Health Care Committee)

AN ACT to create and enact a new section to chapter 26-03 and a new subdivision to subsection 9 of section 26-30-04 of the North Dakota Century Code, relating to nursing home policies, requiring such policies to be guaranteed renewable for life, limiting preexisting conditions, and unfair claims settlement practices.

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

SECTION 1. A new section to chapter 26-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

NURSING HOME POLICIES - GUARANTEED RENEWABLE FOR LIFE - LIMITATION ON PREEXISTING CONDITIONS. Any policy providing benefits for confinement to a nursing home shall be guaranteed renewable for life. For the purposes of this section, the term "guaranteed renewable" means a policy which the insured has the right to continue in force for life subject to its terms by the timely payment of premiums during which the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force. The insurer may, however, in accordance with the provisions of the policy, make changes in premium rates as to all insureds who are placed in the same class for purposes of rate determination in the process of issuance of the policy or making it guaranteed renewable.

A policy providing nursing home coverage shall contain no provision limiting payment of benefits due to preexisting conditions of the insured after the policy has been in force for a period of six months.

SECTION 2. A new subdivision to subsection 9 of section 26-30-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Providing coverage under a policy for confinement to a nursing home and refusing to pay a claim when a person

covered by such a policy was confined to a hospital for three days or more and the person's physician ordered confinement for care other than custodial care. Custodial care means care which is primarily for the purpose of meeting personal needs without supervision by a registered nurse or a licensed practical nurse.