




DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Glenn Pomeroy
Commissioner of Insurance

BULLETIN 97-4

TO: All Insurance Companies Licensed to Market Accident and Health Insurance in North Dakota

FROM: Glenn Pomeroy, Commissioner 

DATE: December 15, 1997

SUBJECT: Attorney General's Opinion 97-04

SCOPE AND APPLICABILITY

This bulletin pertains to all insurance companies authorized to sell group health insurance in this state. The purpose of this bulletin is to notify all such companies of Attorney General's Opinion 97-04.

ATTORNEY GENERAL'S OPINION 97-04

On July 18, 1997, Attorney General Heidi Heitkamp issued Attorney General's Opinion 97-04. This opinion dealt with the proper interpretation of N.D.C.C. § 26.1-36-09, regarding group mental disorder coverage. A copy of the Attorney General's opinion is attached to this bulletin.

Attorney General's Opinion 97-04 makes it clear that insurers offering group health insurance coverage must provide for mental disorder coverage consisting of, at a minimum:

1. 60 days of inpatient treatment benefits;
2. 120 days of partial hospitalization or residential treatment benefits;
3. A "combination benefit" of inpatient treatment and partial hospitalization or residential treatment benefits; and

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4. 30 hours of outpatient treatment benefits.

The "combination benefit" must allow up to 46 days of inpatient treatment benefits to be traded for **additional** days of partial hospitalization or residential treatment benefits. For every day of inpatient treatment benefits traded, the insured must receive two days of partial hospitalization or residential treatment benefits. This "combination benefit" results in a sliding scale of potential benefits from 60 days of inpatient treatment benefits and 120 days of partial hospitalization or residential treatment benefits to 14 days of inpatient treatment benefits and 212 days of partial hospitalization or residential treatment benefits.

All future group health filings must comply with Attorney General's Opinion 97-04. Any existing group contracts with conflicting policy language must be interpreted to comply with Attorney General's Opinion 97-04 pursuant to N.D.C.C. § 26.1-36-39.

GP/njb
Enclosure

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 97-04

Date Issued: July 18, 1997

Requested by: Representative Clara Sue Price

- QUESTIONS PRESENTED -

I.

Whether an individual covered under a group policy or contract for the mental disorder benefits mandated by N.D.C.C. § 26.1-36-09 who uses 120 days of partial hospitalization or residential treatment benefits in a calendar year is entitled to any other mental disorder benefits under the statute?

II.

Whether, under N.D.C.C. § 26.1-36-09, an insurance company, nonprofit health service corporation, or health maintenance organization providing health insurance on a group, blanket, franchise, or association basis is required to reserve 14 days of inpatient treatment for mental disorder coverage?

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that an individual covered under a group policy or contract for the mental disorder benefits mandated by N.D.C.C. § 26.1-36-09 who has used 120 days of partial hospitalization or residential benefits is still entitled to 60 days of inpatient treatment benefits or can trade up to 46 days of inpatient benefits for additional partial hospitalization or residential treatment benefits.

II.

It is my opinion that N.D.C.C. § 26.1-36-09 requires an insurance company, nonprofit health service corporation or health maintenance organization providing health insurance on a group, blanket, franchise, or association basis to reserve 14 days of inpatient treatment when benefits for inpatient treatment and partial hospitalization or residential treatment for mental orders are provided in combination.

- ANALYSES -

I.

N.D.C.C. § 26.1-36-09(1) provides:

An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of mental disorder and other related illness, which benefits meet or exceed the benefits provided in subsection 2.

For purposes of this opinion, the term "group insurer" will be used to refer to those entities subject to the statute. The statute further provides that "[t]he benefits must be provided for inpatient treatment, treatment by partial hospitalization, residential treatment, and outpatient treatment." N.D.C.C. § 26.1-36-09(2)(a).

The benefits mandated by N.D.C.C. § 26.1-36-09 include: 60 days of inpatient treatment, N.D.C.C. § 26.1-36-09(2)(b); 120 days of partial hospitalization or residential treatment; N.D.C.C. § 26.1-36-09(2)(c); and 30 hours of outpatient treatment, N.D.C.C. § 26.1-36-09(2)(e). Benefits for residential treatment were added to the statute by S. 2040, which was passed during the recent Fifty-fifth Legislative Assembly. S. 2040 also amended N.D.C.C. § 26.1-36-09(2)(d) to provide that "[b]enefits must also be provided for a combination of inpatient hospitalization, partial hospitalization, and residential treatment." For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization or residential treatment. Id. However, no more than 46 days of inpatient treatment may be traded for treatment by partial hospitalization or residential treatment. Id.

The primary goal of construing a statute is to ascertain the Legislature's intent. Berg Transport, Inc. v. North Dakota Workers Compensation Bureau, 542 N.W.2d 729, 732 (N.D. 1996). The meaning of a statute must be sought initially from the statutory language. County of Stutsman v. State Historical Soc., 371 N.W.2d 321, 325 (N.D. 1985). Words used in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears. N.D.C.C. § 1-02-02; e.g., Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990). The word "must" as ordinarily used indicates a mandatory

and not merely a directory or nonmandatory duty. Greenwood v. Moore, 545 N.W.2d 790, 795 (N.D. 1996). Ordinarily, the word "and" is used as a conjunctive, requiring satisfaction of all listed conditions. Casteel v. Iowa Dept. of Transp., 395 N.W.2d 896, 989 (Iowa 1986).

Under the plain meaning of the statute, a group insurer is required to provide mental disorder benefits for each of the treatments listed in N.D.C.C. § 26.1-36-09(2). The group insurer must provide for: 60 days of inpatient treatment pursuant to N.D.C.C. § 26.1-36-09(2)(b); 120 days of partial hospitalization or residential treatment pursuant to N.D.C.C. § 26.1-36-09(2)(c); a combination benefit pursuant to N.D.C.C. § 26.1-36-09(2)(d); and 30 hours of outpatient treatment pursuant to N.D.C.C. § 26.1-36-09(2)(e). A group insurer cannot discharge its duty under the statute by providing benefits for only one of the treatments provided for in N.D.C.C. § 26.1-36-09. Therefore an insured who has already used 120 days of partial hospitalization benefits is still entitled to receive 60 days of inpatient treatment and 30 hours of outpatient treatment.

When benefits for inpatient treatment and partial hospitalization or residential treatment are provided in combination, an insured is allowed to trade up to 46 days of inpatient treatment for partial hospitalization or residential treatment. N.D.C.C. § 26.1-36-09(2)(d). The statute is silent on whether this trade for partial hospitalization or residential treatment benefits is in addition to, or in lieu of, the 120 days for partial hospitalization or residential treatment benefits provided for in N.D.C.C. § 26.1-36-09(2)(c). However, when interpreting a statute, meaning and effect must be given to every word, phrase, and sentence. E.g., Stewart v. Ryan, 520 N.W.2d 39, 45 (N.D. 1994). Under the plain meaning of the statute and in order to give effect to the statute as a whole, a group insurer must allow an insured to trade up to 46 days of inpatient treatment for partial hospitalization or residential treatment benefits in addition to the 120 days already provided for in N.D.C.C. § 26.1-36-09(2)(c). If the combination benefits for partial hospitalization or residential treatment were not to be in addition to those already mandated by N.D.C.C. § 26.1-36-09(2)(c), a group insurer could satisfy the mandate by providing 14 days of inpatient treatment and 92 days of partial hospitalization or residential treatment benefits. To interpret N.D.C.C. § 26.1-36-09(2)(d) in such a fashion would render N.D.C.C. § 26.1-36-09(2)(b) & (c) meaningless. By providing a combination benefit, the group insurer would not have to provide either 60 days of inpatient treatment or 120 days of partial hospitalization or residential treatment when it provided a combination benefit. It is presumed that, in enacting a statute, the Legislature intended the entire statute to be effective. N.D.C.C. § 1-02-38. Therefore, giving effect to N.D.C.C. § 26.1-36-09 as a whole and harmonizing each of its' provisions, an insured who has used up 120 days of partial hospitalization or residential treatment

benefits can trade up to 46 days of inpatient treatment benefits and receive up to 92 additional days of partial hospitalization or residential treatment benefits.

II.

Under the plain meaning of N.D.C.C. § 26.1-36-09(2)(d), group insurers are required to provide a combination benefit for inpatient hospitalization and partial hospitalization or residential treatment for mental disorders. Further, N.D.C.C. § 26.1-36-09(2)(d) provides that no more than 46 days of inpatient hospitalization may be traded for treatment by partial hospitalization or residential treatment. Therefore, a group insurer is required to reserve 14 of the 60 mandatory inpatient hospitalization days from being traded for partial hospitalization or residential treatment benefits.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Trent Heinemeyer
Assistant Attorney General

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