9/10/03

PROPOSED RULES

NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-08-02
GROUP COVERAGE DISCONTINUANCE AND REPLACEMENT MODEL REGULATION

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Section 45-08-02-02, relating to Definitions, is amended as follows:

45-08-02-02. ~~Definition~~ Definitions. For purposes of this chapter:

1. "Carrier" means a person or an entity that offers or provides a policy, contract, or certificate of insurance coverage in this state. "Carrier" includes an insurer, a health maintenance organization, a nonprofit service corporation, or any other person or entity providing a policy, contract, or certificate of insurance coverage subject to state insurance regulation.

2. ~~The term "group-type~~ "Group-type basis" means a benefit plan, other than "salary budget" plans utilizing individual insurance policies, certificates, or subscriber contracts, which meets the following conditions:

~~1.~~ a. Coverage is provided through insurance policies, certificates, or subscriber contracts to classes of employees or members defined in terms of conditions pertaining to employment or membership.

~~2.~~ b. The coverage is not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with the particular organization or group, including bank depositor groups.

~~3.~~ c. There are arrangements for bulk payment of premiums or subscription charges to the insurer or nonprofit service corporation.

~~4.~~ d. There is sponsorship of the plan by the employer, union, bank, or association.

3. a. “Health insurance coverage” means a hospital and medical expense incurred policy, a nonprofit health care service plan contract, a health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise.

b. "Health insurance coverage" shall not include one or more, or any combination of, the following:

(1) Coverage only for accident, or disability income insurance, or any combination thereof;

(2) Coverage issued as a supplement to liability insurance;

(3) Liability insurance, including general liability insurance and automobile liability insurance;

(4) Workers' compensation or similar insurance;

(5) Automobile medical payment insurance;

(6) Credit-only insurance;

(7) Coverage for on-site medical clinics; and

(8) Other similar insurance coverage, specified in federal regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub.L.No. 104-191), under which benefits for medical care are secondary or incidental to other insurance benefits.

c. "Health insurance coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the coverage:

(1) Limited scope dental or vision benefits;

(2) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

(3) Other similar, limited benefits specified in federal regulations issued pursuant to HIPAA.

d. "Health insurance coverage" shall not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits

and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

(1) Coverage only for a specified disease or illness; or

(2) Hospital indemnity or other fixed indemnity insurance.

e. "Health insurance coverage" shall not include the following if offered as a separate policy, certificate or contract of insurance:

(1) Medicare supplemental health insurance as defined under Section 1882(g)(1) of the Social Security Act;

(2) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; or

(3) Similar supplemental coverage provided to coverage under a group health plan.

History: Effective March 1, 1988; amended effective _____.
General Authority: NDCC 26.1-04-08, 28-32-02
Law Implemented: NDCC 26.1-04-03(7), 26.1-30-19, 26.1-33-11, 26.1-33-12, 26.1-36-22, 26.1-36-23, 26.1-36-23.1

Subsection 5 of Section 45-08-02-06, relating to Extension of Benefits, is amended as follows:

5. Any applicable extension of benefits or accrued liability must be described in any policy or contract involved as well as in group insurance certificates. The benefits payable during any period of extension or accrued liability may be subject to the policy's or contract's regular benefit limits (e.g., benefits ceasing at exhaustion of a benefit period or of maximum benefits). For hospital or medical expense coverages, the benefit payments may be limited to payments applicable to the disabling condition only.

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Section 45-08-02-07, relating to Continuance of Coverage in Situations Involving Replacement of One Carrier by Another, is amended as follows:

45-08-02-07. Continuance of coverage in situations involving replacement of one carrier by another.

1. This section shall indicate the carrier responsible for liability in those instances in which one carrier's (succeeding carrier) contract replaces a plan of similar benefits of another (prior contract).

2. Liability of prior carrier. The prior carrier remains liable only to the extent of its accrued liabilities and extensions of benefits. The position of the prior carrier is the same whether the group policyholder or other entity secures replacement coverage from a new carrier, self-insures, or foregoes the provision of coverage.

3. Liability of succeeding carrier.

   a. ~~Each person who is eligible for coverage in accordance with the succeeding carrier's plan of benefits (in respect of classes eligible and activity at work and nonconfinement rules) is covered by that carrier's plan of benefits.~~

      (1) If the individual was validly covered under the prior plan on the date of discontinuance, each individual who is eligible for coverage in accordance with the succeeding carrier's plan of benefits with respect to the class or classes of individuals eligible for coverage under the succeeding carrier's plan and any actively-at-work and nonconfinement rules and requests enrollment shall be enrolled and covered by the succeeding carrier's plan of benefits.

      (2) In the case of health insurance coverage:

         (a) A succeeding carrier shall not have any nonconfinement rules in its plan of benefits; and

         (b) Any actively-at-work rules provided in the succeeding carrier's plan of benefits shall provide that absence from work due to any health status-related factor be treated as being actively-at-work.

      (3) For purposes of this paragraph, "health status-related factor" means any of the following factors:

         (a) Health status;

         (b) Medical condition, including both physical and mental illnesses;

         (c) Claims experience;

         (d) Receipt of health care;

         (e) Medical history;

         (f) Genetic information;

(g) Evidence of insurability, including conditions arising out of acts of domestic violence; or

(h) Disability.

b. Each person not covered under the succeeding carrier's plan of benefits in accordance with subdivision a must nevertheless be covered by the succeeding carrier in accordance with the following rules if such individual was validly covered (including benefit extension) under the prior plan on the date of discontinuance. Any reference in the following rules to an individual who was or was not totally disabled is a reference to the individual's status immediately prior to the date the succeeding carrier's coverage becomes effective.

(1) The minimum level of benefits to be provided by the succeeding carrier shall be the applicable level of benefits of the prior carrier's plan reduced by any benefits payable by the prior plan.

(2) Coverage must be provided by the succeeding carrier until at least the earliest of the following dates:

(a) The date the individual becomes eligible under the succeeding carrier's plan as described in subdivision a.

(b) For each type of coverage, the date the individual's coverage would terminate in accordance with the succeeding carrier's plan provisions applicable to individual termination of coverage (e.g., at termination of employment or ceasing to be eligible dependent, as the case may be).

(c) In the case of an individual who was totally disabled, and in the case of a type of coverage for which section 45-08-02-06 requires an extension of accrued liability, the end of any period of extension or accrued liability which is required of the prior carrier by section 45-08-02-06 or, if the prior carrier's policy or contract is not subject to that section, would have been required of that carrier had its policy or contract been subject to section 45-08-02-06 at the time the prior plan was discontinued and replaced by the succeeding carrier's plan.

c. For health insurance coverage, in the case of an individual who was totally disabled at the time the prior carrier's plan was discontinued and replaced by the succeeding carrier's plan, and in the case in which section 45-08-02-06 requires an extension of benefits or accrued liability, the minimum level of benefits to be provided by the succeeding carrier shall be the

applicable level of benefits of the prior carrier's plan reduced by any benefits paid by the prior plan.

~~c.~~ d. In the case of a preexisting conditions limitation included in the succeeding carrier's plan, the level of benefits applicable to preexisting conditions of persons becoming covered by the succeeding carrier's plan in accordance with this subsection during the period of time this limitation applies under the new plan shall be the lessor of:

(1) The benefits of the new plan determined without application of the preexisting conditions limitation; and

(2) The benefits of the prior plan.

~~d.~~ e. The succeeding carrier, in applying any deductibles or coinsurance amounts applicable to the out-of-pocket maximums or waiting periods in its plan, shall give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior plan providing similar benefits. In the case of deductible provisions or coinsurance amounts applicable to the out-of-pocket maximums, the credit shall apply for the same or overlapping benefits periods and must be given for expenses actually incurred and applied against the deductible or coinsurance provisions of the prior carrier's plan during the ninety days preceding the effective date of the succeeding carrier's plan but only to the extent these expenses are recognized under the terms of the succeeding carrier's plan and are subject to similar deductible or coinsurance provision.

~~e.~~ f. In any situation where a determination of the prior carrier's benefit is required by the succeeding carrier, at the succeeding carrier's request the prior carrier shall furnish a statement of the benefits available or pertinent information, sufficient to permit verification of the benefit determination or the determination itself by the succeeding carrier. For the purposes of this section, benefits of the prior plan will be determined in accordance with all of the definitions, conditions, and covered expense provisions of the prior plan rather than those of the succeeding plan. The benefit determination will be made as if coverage had not been replaced by the succeeding carrier.

History: Effective March 1, 1988; amended effective _____.
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