CHAPTER 26.1-04
PROHIBITED PRACTICES IN INSURANCE BUSINESS

26.1-04-01. Limitation on right to engage in trade. An insurance company organized under this title may not deal or trade, directly or indirectly, in the buying or selling of any goods, wares, merchandise, or other commodities whatsoever, except such as may have been insured by the company and are claimed to be damaged by reason of the risk insured against.

26.1-04-02. Unfair methods of competition or unfair and deceptive acts or practices prohibited. A person may not engage in this state in any trade practice defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

26.1-04-03. Unfair methods of competition and unfair or deceptive acts or practices defined. The following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

1. Misrepresentations and false advertising of policy contracts. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policies, or making any misleading representation or any misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurance company operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy or for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance.

2. False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of that person's insurance business, which is untrue, deceptive, or misleading.

3. Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure any person engaged in the business of insurance.

4. Boycott, coercion, and intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. False financial statements. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of any person with intent to deceive.

Making any false entry in any book, report, or statement of any person with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the person is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of the person in any book, report, or statement of the person.

6. Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. Unfair discrimination.

   a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

   b. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatsoever.

   c. Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses the insured's eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.

   d. Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

8. Rebates.

   a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity, or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance or annuity any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatsoever not specified in the contract; or giving, selling, or purchasing, or offering to give, sell, or purchase as

inducement to the insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

b. Subsection 7 or subdivision a of this subsection do not prohibit the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders;

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; and

(3) Readjusting the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year.

9. Unfair claim settlement practices. Committing any of the following acts, if done without just cause and if performed with a frequency indicating a general business practice:

a. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue.

b. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under insurance policies.

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear.

e. Compelling insureds to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.

f. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

g. Attempting settlement or compromise of claims on the basis of applications which were altered without notice to, or knowledge or consent of, insureds.

h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed one was entitled by reference to written or printed advertising material accompanying or made a part of an application.

i. Attempting to delay the investigation or payment of claims by requiring an insured and the insured's physician to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

j. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss has been completed.

k. Refusing payment of claims solely on the basis of the insured's request to do so without making an independent evaluation of the insured's liability based upon all available information.

l. Providing coverage under a policy issued under chapter 26.1-45 or 26.1-36.1 for confinement to a nursing home and refusing to pay a claim when a person is covered by such a policy and the person's physician ordered confinement pursuant to the terms of the policy 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.

m. Failure to use the standard health insurance proof of loss and claim form or failure to pay a health insurance claim as required by section 26.1-36-37.1.

It is not a prohibited practice for a health insurance company with participating provider agreements to require that a subscriber or member using a nonparticipating provider be responsible for providing the insurer a copy of medical records used for claims processing.

10. Unfair handling of communications by insurance company. Failing to adopt and implement reasonable standards for the prompt handling of written communications, primarily expressing grievances, received by the insurance company from insureds or claimants.

11. Refusing to insure risks. Refusing to insure risks solely because of race, color, creed, sex, or national origin, or refusing to continue to insure risks solely because an employer chooses to offer a health maintenance organization option to employees in its health benefit plan.

12. Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, insurance producer, or individual.

13. Failure to refund unearned premiums. Failing to refund within thirty days of the cancellation of an insured's policy the unearned premium paid for that insurance policy. However, for commercial lines of insurance policies which are audited by the insurer to determine premium, the refund of premium must be made within thirty days from the date the insurer receives from the insured that information which is reasonably necessary for the insurer to audit the insured's business to determine the premium due to the insurer.

14. As used in subsections 15, 16, 17, 18, and 19, unless the context otherwise requires:

a. "Entity" includes a third-party administrator, an insurance company as defined in section 26.1-02-01, a health maintenance organization, or any other entity providing a plan of health insurance subject to state insurance regulation.

b. "Health care provider" means a person that delivers, administers, or supervises health care products or services, for profit or otherwise, in the ordinary course of business or professional practice.

c. "Health plan" means any public or private plan or arrangement that provides or pays the cost of health benefits, including any organization of health care providers that furnishes health services under a contract or agreement with this type of plan.

d. "Medical communication" means any communication, other than a knowing and willful misrepresentation, made by a health care provider to a patient regarding the health care needs or treatment options of the patient and the applicability of the health plan to the patient's needs or treatment. The term includes communications concerning:

(1) Tests, consultations, and treatment options;

(2) Risks or benefits associated with tests, consultations, and options;

(3) Variation in experience, quality, or outcome among any health care providers or health care facilities providing any medical service;

(4) The process, basis, or standard used by an entity to determine whether to authorize or deny health care services or benefits; and

(5) Financial incentives or disincentives based on service utilization provided by an entity to a health care provider.

e. "Patient" includes a former, current, or prospective patient or the guardian or legal representative of any former, current, or prospective patient.

15. a. Interference with certain medical communications. An entity offering a health plan may not restrict or interfere with any medical communication and may not take any of the following actions against a health care provider solely on the basis of a medical communication:

(1) Refusal to contract with the health care provider;

(2) Termination of or refusal to renew a contract with the health care provider;

(3) Refusal to refer patients to or allow others to refer patients to the health care provider; or

(4) Refusal to compensate the health care provider for covered services that are medically necessary.

b. This subsection does not prohibit an entity from enforcing, as part of a contract or agreement to which a health care provider is a party, any mutually agreed-upon terms and conditions, including terms and conditions requiring a health care provider to participate in and cooperate with all programs, policies, and procedures developed or operated by a health plan to assure, review, or improve the quality and effective utilization of health care services, if the utilization is according to guidelines or protocols that are based on clinical or scientific evidence and only if the guidelines or protocols under the utilization do not prohibit or restrict medical communications between providers and their patients.

16. Unfair indemnification. A contract between an entity and a health care provider may not require the health care provider to indemnify the entity for the entity's negligence, willful misconduct, or breach of contract, and may not require a health care provider as a condition of participation to waive any right to seek legal redress against the entity. In addition to the proceedings and penalties provided in this chapter, a contract provision violating this subsection is void.

17. Incentives to withhold medically necessary care. An entity may not offer a health care provider, and a contract with a health care provider under a health plan may not contain, an incentive plan that includes a specific payment made to, or withheld from, the provider as an inducement to deny, reduce, limit, or delay medically necessary care covered by the health plan and provided with respect to a patient. This subsection does not prohibit incentive plans, including capitation payments or shared-risk arrangements, that are not tied to specific medical decisions with respect to a patient. In addition to the proceedings and penalties provided in this chapter, a contract provision violating this subsection is void. As used in this subsection, "medically necessary care" means health care services, supplies, or treatments that a reasonably prudent physician or other health care provider would provide to a patient for the prevention, diagnosis, or treatment of illness, injury, disease, or its symptoms which are in accordance with generally accepted standards of medical practice, clinically appropriate in terms of type, frequency, extent, site, and duration, and not primarily for the convenience of the patient, physician, or other health care provider. This definition does not preclude an entity from establishing a definition of "medically necessary care" for determining which services are covered by the health plan.

18. Retaliation for patient advocacy. An entity may not take any of the following actions against a health care provider solely because the provider, in good faith, reports to state or federal authorities an act or practice by the entity that jeopardizes patient health or welfare, or advocates on behalf of a patient in a utilization review program or grievance procedure:

    a. Refusal to contract with the health care provider;

    b. Termination of or refusal to renew a contract with the health care provider;

    c. Refusal to refer patients to or allow others to refer patients to the health care provider; or

    d. Refusal to compensate the health care provider for covered services that are medically necessary.

19. Unfair reimbursement. An entity may not require that a health care provider receive under a health plan, pursuant to policies of the entity or a contract with the health care provider, the lowest payment for services and items that the health care provider charges or receives from any other entity. In addition to the proceedings and penalties provided in this chapter, a contract provision violating this subsection is void.

20. Unfair referral. An insurer, insurance producer, or third-party administrator referring an individual employee to the association, or arranging for an individual employee to apply to the association for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment.

21. Unfair compensation. Basing the compensation, including performance bonuses or incentives, of claims employees or contracted claims personnel on the following:

    a. The number of policies canceled.

b. The number of times coverage is denied.

c. Use of a quota limiting or restricting the number or volume of claims.

d. Use of an arbitrary quota or cap limiting or restricting the amount of claims payments without due consideration to the merits of the claim.

26.1-04-04. Coercing purchaser or borrower to insure with particular company or insurance producer prohibited.

1. No person, engaged in selling property or in the business of financing the purchase of property or of lending money on the security of property and no trustee, director, officer, agent, or other employee of the person may require, as a condition precedent, concurrent, or subsequent to the sale or financing the purchase of the property or to lending money upon the security of a mortgage thereon or for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person purchasing the property or for whom the purchase is to be financed or to whom the money is to be loaned or for whom the extension, renewal, or other act is to be granted, or performed, negotiate any insurance policy or renewal thereof covering the property through a particular insurance company or insurance producer.

2. This section does not prevent the exercise by any person of the right to designate reasonable financial requirements as to the insurance company, the terms and provisions of the policy, and the adequacy of the coverage with respect to insurance on property pledged or mortgaged to the person; nor does this section prohibit the right of any person from voluntarily negotiating or soliciting the placing of such insurance; nor does this section forbid the securing of insurance or renewal thereof at the request of the purchaser or borrower or because of the failure of the purchaser or borrower to furnish the necessary insurance or renewal thereof.

3. Violation of this section constitutes an unfair insurance practice. The person violating this section must be proceeded against under this chapter.

26.1-04-05. Discrimination by life insurance companies and rebates and inducements by insurance producers prohibited. A life insurance company doing business in this state may not make or permit any distinction or discrimination between insureds of the same class and with equal expectation of life in the amount or payment of premiums or rate charges for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms or conditions of the contracts which it makes. No life insurance company, and no insurance producer therefor, either personally or by any other person, may:

1. Make any insurance contract, or agreement with reference thereto, other than such as is expressed plainly in the policy issued thereon.

2. Offer, promise, allow, give, set off, or pay any rebate of the whole or any part of the premium payable on the policy or the insurance producer's commission thereon, or any special favor or advantage in the dividends, earnings, profits, or other benefit founded, arising, accruing, or to accrue thereon or therefrom.

3. Offer, promise, allow, or give any special advantage in the date of the policy or the age at which the same is issued.

4. Offer, promise, allow, or give any paid employment or contract for services of any kind, or any other valuable inducement or consideration whatsoever not specified in the insurance policy or contract.

5. Offer, promise, give, option, sell, or purchase, or offer to give, sell, or purchase, as inducement to insurance or in connection therewith, any stocks, bonds, securities, or

property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever not specified in the policy.

This section does not prevent the taking of a bona fide obligation, with legal interest, in payment of any premium.

26.1-04-05.1. Visual acuity prohibited as factor in life or accident and sickness contracts. No insurance company, benevolent society, nonprofit health service corporation, or health maintenance organization may issue any policy, certificate, or contract on life, accident and sickness, health services, or health care protection for which visual acuity is used as a criteria for accepting or rejecting risks or for setting of rates charged for that coverage.

26.1-04-06. Insured persons and applicants for insurance prohibited from accepting rebates. An insurance producer or agent of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, may not grant, and an insured person or party or applicant for insurance, either directly or indirectly, may not receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, or all or any part of any insurance producer's commission thereon, or any favor or advantage, or any share in any benefit to accrue under any insurance policy, or any other valuable consideration or inducement other than such as may be specified in the policy, except as provided in an applicable filing which is in effect under the provisions of the laws regulating insurance rates.

26.1-04-07. Misrepresentation of terms of policy and future dividends prohibited. An insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, doing business in this state, and an officer, director, agent, or solicitor of the company, society, or organization, and an insurance producer, may not issue, circulate, or use, or cause or permit to be issued, circulated, or used, any written or oral statement or circular misrepresenting the terms of any policy issued or to be issued by the company, society, or organization, or the benefits or advantages, promised thereby, or make an estimate, with intent to deceive, of the future dividends or shares of surplus payable under the policy, or use any name or title of any policy or class of policies misrepresenting the true nature thereof.

26.1-04-08. Rulemaking. The commissioner may adopt reasonable rules necessary to identify specific methods of competition and acts or practices prohibited by section 26.1-04-03. The rules may not enlarge upon nor extend the provisions of section 26.1-04-03.

26.1-04-09. Authority of commissioner. The commissioner may examine and investigate the affairs of every person engaged in the business of insurance in this state to determine whether the person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 26.1-04-02.

26.1-04-10. State's attorney to prosecute for discrimination or misrepresentation. Upon evidence satisfactory to the commissioner that section 26.1-04-05, 26.1-04-06, 26.1-04-07, or 26.1-04-17 has been violated by any person, the commissioner shall certify to the state's attorney of the county in which the violation occurred all evidence of the violation in the commissioner's possession, and the state's attorney shall prosecute the case.

26.1-04-11. Immunity from prosecution. If any person asks to be excused from attending and testifying or from producing any evidence at any trial or hearing on the ground that the testimony or evidence required may tend to incriminate that person or subject that person to a penalty or forfeiture, but is directed to give the testimony or produce the evidence, that person shall comply with the direction; but no testimony or evidence compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture. However, no individual so testifying is exempt from prosecution or punishment for any perjury or false statements committed while testifying and the testimony or evidence given or produced is admissible upon any criminal action, investigation, or proceeding concerning the

perjury or false statements, nor is the individual exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance laws of this state.

26.1-04-12. Hearing. Whenever the commissioner has reason to believe that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in section 26.1-04-03, and that a proceeding would be to the interest of the public, the commissioner shall conduct a hearing.

26.1-04-13. Orders and modifications.

1. If, after hearing, the commissioner determines that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall order the person to cease and desist from engaging in the method of competition, act, or practice. If the person charged is found to have willfully engaged in a method of competition, act, or practice in violation of section 26.1-04-03, the commissioner may order any one or more of the following:

   a. Payment of a monetary penalty of not more than one thousand dollars for each and every act or violation but not to exceed an aggregate penalty of ten thousand dollars unless the person knew or reasonably should have known that person was in violation of section 26.1-04-03, in which case the penalty must be not more than five thousand dollars for each and every act or violation but not to exceed an aggregate penalty of fifty thousand dollars in any six-month period.

   b. Suspension or revocation of the person's license if the person knew or reasonably should have known that person was in violation of section 26.1-04-03.

2. Until the expiration of the time allowed for an appeal if no appeal has been duly filed or, if an appeal has been filed, then until the transcript of the record in the proceeding has been filed in the district court, the commissioner may modify or set aside in whole or in part any order issued under this section.

3. After the expiration of the time allowed for filing an appeal if no appeal has been duly filed, the commissioner may, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued under this section, whenever in the commissioner's opinion conditions of fact or of law have so changed as to require the action or if the public interest shall so require.

26.1-04-14. Penalty. Any person who violates a cease and desist order of the commissioner under section 26.1-04-13, after it has become final, and while it is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of North Dakota a sum not to exceed a monetary penalty of not more than ten thousand dollars for each and every act or violation.

26.1-04-15. Judicial review by intervenor. If the commissioner does not charge a violation of this chapter, then any intervenor in the proceedings may within ten days after the service of the report, cause a notice of appeal to be filed in the district court of Burleigh County for a review of the report. The court may issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act, or practice which it finds, notwithstanding the report of the commissioner, violates this chapter.

26.1-04-16. Penalty for violating provisions relating to misrepresentation and discrimination. Any officer, agent, insurance producer, or representative of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization, or association, or any other person, who violates section 26.1-04-05, 26.1-04-06, 26.1-04-07, or

26.1-04-17 is guilty of a class A misdemeanor. The commissioner may, after a hearing upon fifteen days' notice, revoke the license to transact business in this state of any insurance organization violating section 26.1-04-05 or 26.1-04-06.

26.1-04-17. Revocation or suspension of insurance producer's license for misrepresentation or discrimination. Upon satisfactory evidence of the violation of any provision of this chapter relating to misrepresentation or discrimination by any insurance producer of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, the commissioner may suspend or revoke the license of the offending insurance producer.

26.1-04-18. Order does not relieve from other liability. An order of the commissioner under this chapter or order of a court affirming the commissioner's order does not relieve or absolve any person affected by the order from any liability under any other law of this state.

26.1-04-19. Chapter additional to existing law. The powers vested in the commissioner by this chapter are additional to any other powers to enforce any penalties, fines, or forfeitures authorized by law with respect to the methods, acts, and practices declared to be unfair or deceptive by this chapter.