North Dakota Life and Health Insurance Law Supplement

Effective March 1, 2022

Life and Health Insurance Guaranty Association: Add the following section after the Life and Health Insurance Guaranty Association material:

Federal Laws Pertaining to Insurance

Privacy (Gramm-Leach-Bliley Act)

Insurance and financial holding companies have the potential to capture unprecedented amounts of information about their customers. This law establishes a minimum federal standard for financial privacy. The law requires that technical, administrative, and physical safeguards be established to:

- ensure the security and confidentiality of customer records and information;
- protect against any anticipated threats or hazards to the security or integrity of such records; and
- protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

Anyone about whom a company collects information is a **consumer**. A **customer** is a consumer who has an ongoing relationship with the financial institution.

It is the responsibility of a producer to explain to an applicant the various resources from which the insurer will obtain information regarding that applicant's insurability. Applicants for insurance must be given advance written notice of an insurer's practices regarding the collection and use of personal information related to insurance transactions. Written disclosure authorization forms must be furnished stating:

- who is authorized to disclose personal information;
- the kind of information that may be disclosed;
- the reason information is being collected; and
- how it will be used.

The applicant's signature on the disclosure form authorizes the insurer to collect and disseminate information in the manner described in the notice. The authorization is good only for a certain period. At the end of this period, another authorization must be obtained.

Consumers and customers are given the opportunity to prevent the company from sharing the information it has about them. This is known as the right to **opt out**. Health information, such as that acquired during a medical exam, is subject to a stricter **opt-in** standard, meaning that companies may not share health information without receiving specific permission to do so.

Any person who obtains information about a client without having a legitimate reason to receive it is subject to fines and imprisonment.

National Do Not Call Registry

The National Do Not Call Registry is a list of phone numbers from consumers who have indicated their preference to limit the telemarketing calls they receive. The registry is managed and enforced by the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), and state officials. The registry applies to any plan, program, or campaign to sell goods or services through interstate phone calls, including insurance. This includes telemarketers who solicit consumers on behalf of third parties. It also includes sellers who provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment.

Calls from or on behalf of political organizations, charities, and telephone surveyors are still permitted, as well as calls from companies that have the express written permission of the consumer.

Calls are permitted to consumers with whom the company has established a business relationship, as follows.

- A consumer can establish a business relationship with an insurer by requesting information from it or submitting an application to it. In this case, the business can call for three months from the date of inquiry or application.
- A company with which a consumer has an established business relationship may call for up to 18 months after the consumer's last purchase or last delivery, or last payment, unless the consumer asks the company not to call again.

Telemarketers and sellers are required to search the registry at least once every 31 days and drop from their call lists the phone numbers of consumers who have registered. A consumer who receives a telemarketing call despite being on the registry will be able to file a complaint with the FTC either online or by calling a toll-free number. Violators may be subject to civil penalties (fines) for each violation.

CAN-SPAM Act

The Controlling the Assault of Non-Solicited Pornography and Marketing Act was enacted to:

- counter the effects of unsolicited commercial electronic mail; and
- protect individuals from receiving unsolicited email whose source is undisclosed or disguised.

The act requires:

- the labeling of unsolicited commercial email messages and the prohibition of false or misleading information in such messages, such as deceptive subject lines or false headers;
- the inclusion of opt-out instructions for recipients who do not wish to receive commercial email messages; and
- clear identification that the message is an advertisement, along with the sender's physical address.

Violations of the act may result in:

- a fine;
- imprisonment; or

- both.

A convicted person may also be ordered to forfeit any property or proceeds resulting from such violation.

Annuities section, death claim settlement and interest heading: Add the following material after this heading.

Guaranteed minimum withdrawal benefit (GMWB)

The guaranteed minimum withdrawal benefits (GMWB) rider is an optional annuity rider that guarantees the owner can make systematic withdrawals over a specific period of time and be assured of receiving no less than a return of principal regardless of the contract's investment performance.

If the contract value becomes insufficient to allow the owner to withdraw the guaranteed amount, the insurance company will contribute enough to the contract to allow the owner to complete the guaranteed withdrawals. The benefit amount is the maximum the owner is allowed to withdraw and generally is expressed as a percentage of the premium. Typical percentages range from 5% to 10%.

An example would be a 5% withdrawal benefit with a $100,000 base benefit. The owner could receive systematic withdrawals of up to $5,000 each year under the rider. If the benefit amount is 5% of the benefit base, the owner is assured of receiving systematic withdrawals for at least 20 years. If the investment performance of the contact does well, the withdrawals may last longer than 20 years.

Comprehensive Health Insurance Association of North Dakota (CHAND) section, Plans and minimum benefits heading: Add the following material after this heading.

Short-Term Limited Duration Plans

Definitions

Association means a group that has a constitution and bylaws, has been organized and maintained in good faith for purposes other than obtaining insurance, and insures at least 25 members of the association for the benefit of persons other than the association.

Association short-term limited-duration plan means health insurance coverage provided to an association that has an expiration date specified in the policy that is no longer than 12 months after the original effective date of the policy and, taking into account any renewals or extensions, has a duration of no more than 36 months total.

Essential health benefits means benefits required under the federal Affordable Care Act.

Individual short-term limited-duration plan means health insurance coverage provided under an individual insurance policy that has an expiration date specified in the policy that is no longer than 12 months after the original effective date of the policy.

Individual short-term limited-duration plan

An insurer issuing an individual short-term limited-duration plan must give the insured the option of renewing or continuing coverage.

An insurer may not subject an insured to additional underwriting at renewal or continuation of coverage, and the insured must remain within the same risk class as of the original effective date of the policy.

An insurer must provide a notice of termination of the individual short-term limited-duration plan to the insured at least 15 days before renewal or end of the policy term.

Association short-term limited-duration insurance plan

Association short-term limited duration insurance plans approved before August 1, 2021, may maintain the current plan and are not required to comply with the requirements of this section.

An insurer issuing a policy or certificate must provide, at the insured's option, for renewal or continuation of coverage for up to 36 months from the original effective date of the policy.

An insurer may not subject an insured to additional underwriting at renewal or continuation of coverage. An insurer offering a short-term limited-duration health insurance plan may not rate an insured based on any factor other than geographic area, tobacco use, family size, age, and gender.

At a minimum, an association short-term limited-duration plan must cover the following in accordance with essential health benefits.

- Ambulatory patient services
- Emergency services
- Hospitalization
- Pregnancy, maternity, and newborn care
- Mental health and substance use disorder services
- Prescription drugs
- Rehabilitative and habilitative services and devices
- Laboratory services
- Preventive and wellness services

An insurer must provide a notice of termination of the policy or certificate to the insured at least 15 days before renewal or the end of the policy term.

Marketing and sales of individual and association plan

All marketing materials related to the offering or sale of an individual or association short-term limited-duration plan must be filed with and approved by the Commissioner before the plan is offered for sale in North Dakota.

Sale of an individual or association short-term limited-duration plan is only allowed through a licensed and properly appointed insurance producer. An insurance producer's signature and identification number must be included on the prospective insured's application.