

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

### ENGROSSED SENATE BILL NO. 2375

Introduced by

Senators Castaneda, Bekkedahl, Lee, Barta

Representatives Vigesaa, Ostlie

1 A BILL ~~for an Act to create and enact a new section to chapter 43-28 of the North Dakota~~  
2 ~~Century Code, relating to joint negotiations by dental providers with dental insurers; to amend~~  
3 ~~and reenact section 54-57-07 of the North Dakota Century Code, relating to compensation for~~  
4 ~~the provision of administrative law judges; and to provide a penalty~~ for an Act to create and  
5 enact a new section to chapter 43-28 of the North Dakota Century Code, relating to joint  
6 negotiations by dental providers with dental insurers.

### 7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 ~~SECTION 1. A new section to chapter 43-28 of the North Dakota Century Code is created~~  
9 ~~and enacted as follows:~~

10 ~~Joint negotiations by dental providers with dental insurers.~~

11 ~~1. As authorized under this section, two or more dental providers practicing in the service~~  
12 ~~area of a dental insurer may jointly negotiate with the dental insurer and engage in~~  
13 ~~related joint activity regarding non-fee-related matters including:~~

14 ~~a. Definition of medical necessity and other conditions of coverage.~~

15 ~~b. Utilization management criteria and procedures.~~

16 ~~c. Clinical practice guidelines.~~

17 ~~d. Preventative care and other medical management policies.~~

18 ~~e. Patient referral standards and procedures.~~

19 ~~f. Drug formularies and standards for prescribing off-formulary drugs.~~

20 ~~g. Quality assurance programs.~~

- ~~h. Liability terms for a dental provider and dental insurer.~~
- ~~i. Methods and timing of payments.~~
- ~~j. Administrative procedures.~~
- ~~k. Credentialing standards and procedures for selection, retention, and termination of participating dentists.~~
- ~~l. Mechanisms for resolving disputes between the dental insurer and dental provider.~~
- ~~m. Dental benefits sold or administered by the dental insurer in which the dental provider is required to participate.~~
- ~~n. Formulation and application of reimbursement methodology.~~
- ~~o. Inclusion or alteration of a contractual term or condition, except when the inclusion or alteration is otherwise required by federal or state law.~~
- ~~2. As authorized under this section, upon a finding by the office of administrative hearings that a dental insurer has substantial market power in a service area and any of the terms or conditions of the contract with the dental insurer pose an actual or potential threat to the quality and availability of patient care among covered individuals, two or more independent dental providers may jointly negotiate with the dental insurer and engage in related joint activity relating to fees and fee-related matters, including the:~~
  - ~~a. Amount of payment.~~
  - ~~b. Amount of discount.~~
  - ~~c. Procedure codes or descriptions of services covered by payment.~~
  - ~~d. Appropriate grouping of procedure codes.~~
- ~~3. a. The dental providers may communicate with each other and a joint negotiation representative authorized to negotiate on behalf of the dental providers with the dental insurer concerning any contractual term or condition to be negotiated. For purposes of this section, a "joint negotiation representative" means a representative selected by two or more independent dental providers to engage in joint negotiations with a dental insurer on behalf of the dental providers.~~
  - ~~b. The joint negotiation representative is the only party authorized to negotiate with the dental insurer on behalf of the dental providers as a group.~~

- 1 ~~c. The dental providers may agree to be bound by the terms and conditions~~  
2 ~~negotiated by the joint negotiation representative.~~
- 3 ~~4. A person may not act as a joint negotiation representative without express permission~~  
4 ~~from the office of administrative hearings.~~
- 5 ~~5. Upon the joint negotiation representative and dental insurer determining an agreement~~  
6 ~~has been reached on contractual terms or conditions that will be the subject matter of~~  
7 ~~the negotiations, the joint negotiation representative shall submit to the office of~~  
8 ~~administrative hearings, for approval, a copy of the proposed contract between the~~  
9 ~~dental providers and dental insurer.~~
- 10 ~~a. Within thirty days of receipt of the proposed contract, the office of administrative~~  
11 ~~hearings shall review the proposed contract and provide a determination. If the~~  
12 ~~office of administrative hearings disapproves the contract, the office of~~  
13 ~~administrative hearings shall communicate to the joint negotiation representative~~  
14 ~~any deficiencies and specific remedial measures for the deficiencies.~~
- 15 ~~b. Upon approval of the proposed contract, the dental providers, through the joint~~  
16 ~~negotiation representative, and the dental insurer may engage in negotiations.~~
- 17 ~~c. The joint negotiation representative shall submit the negotiated contract to the~~  
18 ~~office of administrative hearings for review.~~
- 19 ~~6. A negotiated contract and any plan of action for implementing a negotiated contract~~  
20 ~~must be approved by the office of administrative hearings before becoming effective.~~  
21 ~~Within thirty days of receipt of the negotiated contract, the office of administrative~~  
22 ~~hearings shall review the proposed contract and provide a determination. If the office~~  
23 ~~of administrative hearings disapproves the contract, the office of administrative~~  
24 ~~hearings shall communicate to the joint negotiation representative any deficiencies~~  
25 ~~and specific remedial measures for the deficiencies.~~
- 26 ~~7. The office of administrative hearings shall adopt rules and procedures as necessary to~~  
27 ~~carry out the responsibilities of this section.~~
- 28 ~~8. This section does not apply to dental benefit plans providing covered services~~  
29 ~~exclusively or primarily to individuals who are eligible for medical assistance.~~

1 ~~9. Any negotiations under this section must be made in good faith. A person that does~~  
2 ~~not negotiate in good faith may be subject to sanctions or penalties as determined by~~  
3 ~~the office of administrative hearings.~~

4 ~~10. This section may not be construed to:~~

5 ~~a. Permit a coordinated cessation reduction or limitation of dental services.~~

6 ~~b. Affect governmental approval of, or otherwise restrict activity by, dental providers~~  
7 ~~which is not prohibited under federal antitrust law or require approval of contract~~  
8 ~~terms to the extent the terms are exempt from state regulation under federal law.~~

9 ~~11. The dental insurer is responsible for costs for services rendered by the office of~~  
10 ~~administrative hearings and shall make payment for costs for services in accordance~~  
11 ~~with section 54-57-07 and rules adopted by the office of administrative hearings.~~

12 ~~**SECTION 2. AMENDMENT.** Section 54-57-07 of the North Dakota Century Code is-~~  
13 ~~amended and reenacted as follows:~~

14 ~~**54-57-07. Compensation for provision of administrative law judges -- Special fund**~~  
15 ~~**established -- Continuing appropriation.**~~

16 ~~1. The office of administrative hearings shall require payment for services rendered by~~  
17 ~~any administrative law judge provided by it to anyan agency, to any unit of local~~  
18 ~~government in this state, to any tribal government in this state, or to the judicial~~  
19 ~~branch, or a nongovernmental entity, in the conduct of an administrative hearing and~~  
20 ~~related proceedings, and proceedings under section 1 of this Act, and those entities~~  
21 ~~must make the required payment to the office. Payment must include payment for~~  
22 ~~support staff necessary to render administrative law judge services. Moneys received~~  
23 ~~by the office of administrative hearings in payment for providing an administrative law~~  
24 ~~judge to conduct an administrative hearing and related proceedings, and proceedings~~  
25 ~~under section 1 of this Act, must be deposited into the operating fund of the office of~~  
26 ~~administrative hearings.~~

27 ~~2. The office of administrative hearings shall require payment for mileage, meals, and~~  
28 ~~lodging in connection with services rendered by an administrative law judge provided~~  
29 ~~to anyan agency, to any unit of local government in this state, to any tribal government~~  
30 ~~in this state, or to the judicial branch, or a nongovernmental entity, in the conduct of an~~  
31 ~~administrative hearing and related proceedings, and proceedings under section 1 of~~

~~this Act, and those entities must make the required payment to the office. Payment for meals and lodging must be in the amounts allowable under section 44-08-04. Payment for mileage when using state vehicles must be in amounts set for user charges under section 24-02-03.5. All other payments must be in amounts allowed for other state officials and employees. Either general fund or special fund moneys, or other income, may be used for the payment of mileage, meals, and lodging under this subsection.~~

~~3. A special fund is established in the state treasury and designated as the administrative hearings fund. The office of administrative hearings shall deposit in the fund all moneys received by it in payment for providing services rendered by any administrative law judge in the conduct of an administrative hearing and related proceedings, and proceedings under section 1 of this Act, under this chapter, as well as all moneys received by the office in payment for mileage, meals, and lodging in connection with providing any administrative law judge to conduct an administrative hearing and related proceedings, and proceedings under section 1 of this Act. The moneys in the fund are a standing and continuing appropriation and are appropriated, as necessary, for the following purposes:~~

~~a. For the office of administrative hearings to pay for salaries, wages, benefits, operating expenses, and equipment, including payment to temporary administrative law judges, as necessary, for the purpose of providing requested administrative law judges to agenciesan agency, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch, or a nongovernmental entity.~~

~~b. For the office of administrative hearings to pay mileage, meals, and lodging to any administrative law judges, as necessary, in connection with the services to be provided under this chapter.~~

**SECTION 1.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Joint negotiations by dental providers with dental insurers.**

**1. As authorized under this section, a dental provider and a dental insurer may enter into voluntary non-fee-related joint negotiations. Before commencing voluntary joint negotiations, a joint negotiation representative shall notify the attorney general of its**

1 intent to engage in voluntary joint negotiations. The notice must be in writing and  
2 include:

3 a. The matters, including terms and conditions, to be negotiated;

4 b. The identity and location of all dental providers participating in the voluntary joint  
5 negotiations;

6 c. The identity, location, and market share of the dental insurer the dental providers  
7 seek to engage in voluntary joint negotiations;

8 d. A statement explaining the circumstances create the need for voluntary joint  
9 negotiations and the benefits anticipated from the voluntary joint negotiations;  
10 and

11 e. The joint negotiation representative's procedures to ensure compliance with this  
12 section.

13 2. At the time of the filing with the attorney general, the joint negotiation representative  
14 shall provide a copy to the dental insurer of its notice and any other materials  
15 submitted to the attorney general. The dental insurer may provide additional  
16 information to the attorney general regarding matters described in this section.

17 3. The attorney general shall review the notice to determine whether the proposed  
18 voluntary joint negotiations comply with law and public policy, and shall, within ninety  
19 days, unless a thirty day extension is approved by the parties, notify the joint  
20 negotiation representative and the dental insurer whether voluntary joint negotiations  
21 are authorized under this section. The attorney general, in determining whether  
22 voluntary joint negotiations are authorized, shall consider the following factors:

23 a. The stated necessity and anticipated benefits of voluntary joint negotiations;

24 b. The market and bargaining power of the parties;

25 c. A party's ability to control or steer consumers, dictate terms of contracts, impose  
26 final or non-negotiable terms, or dictate or limit products or services available or  
27 offered to consumers;

28 d. The contract terms to be negotiated, and the contract terms' potential effect on  
29 the ability to provide quality care or medically appropriate care without delay and  
30 difficulty;

31 e. The risk of anticompetitive effects; and

f. The potential effect on price, quality, choice, or access to products or services for consumers or others.

4. The attorney general may request additional information from the parties at any point during the process or during the parties' negotiations.

5. Upon a determination by the attorney general that voluntary joint negotiation is authorized under this section, and after a duly authorized officer of the dental insurer and all dental providers seeking voluntary joint negotiations have granted written consent, two or more dental providers practicing in the service area of the dental insurer may jointly engage in voluntary negotiations with the dental insurer regarding the following non-fee-related matters:

a. Definition of medical necessity and other conditions of coverage.

b. Utilization management criteria and procedures.

c. Clinical practice guidelines.

d. Preventative care and other medical management policies.

e. Patient referral standards and procedures.

f. Drug formularies and standards for prescribing off-formulary drugs.

g. Quality assurance programs.

h. Liability terms for a dental provider and dental insurer.

i. Administrative procedures.

j. Credentialing standards and procedures for selection, retention, and termination of participating dentists.

k. Mechanisms for resolving disputes between the dental insurer and dental providers.

l. Inclusion or alteration of a contractual term or condition, unless the inclusion or alteration is otherwise required by federal or state law.

6. As used in this section, "fee-related matters" includes the amount of payment, the amount of discount, procedure codes or descriptions of services covered by payment, appropriate grouping of procedure codes, and any other matter directly relating to the amount of reimbursements paid to or revenue received by dental providers.

7. a. Upon a determination by the attorney general that voluntary joint negotiations are authorized under this section, dental providers may communicate with each other

1 and a joint negotiation representative authorized to negotiate on behalf of the  
2 dental providers with the dental insurer concerning any contractual term or  
3 condition to be negotiated, subject to any limitations imposed by the attorney  
4 general. As used in this section, a "joint negotiation representative" means a  
5 representative selected by two or more independent dental providers to engage  
6 in voluntary joint negotiations with a dental insurer on behalf of the dental  
7 providers.

8 b. The dental providers may agree to be bound by the terms and conditions  
9 negotiated by the joint negotiation representative.

10 8. A person may not act as a joint negotiation representative without express permission  
11 from the office of the attorney general.

12 9. a. Upon the joint negotiation representative and dental insurer determining a  
13 voluntary agreement has been reached on contractual terms or conditions that  
14 are the subject matter of the negotiations, the joint negotiation representative  
15 shall submit to the attorney general, for its determination, a copy of the proposed  
16 contract or agreed upon terms between the dental providers and the dental  
17 insurer. At the time of the submission to the attorney general, the joint negotiation  
18 representative shall provide a copy of the proposed materials submitted to the  
19 attorney general to the dental insurer, which may provide additional information to  
20 the attorney general regarding the matters in this section.

21 b. Within ninety days of receipt of the proposed contract or agreed upon terms, the  
22 attorney general shall review the proposed contract or agreed upon terms and  
23 provide a determination.

24 c. The attorney general may consider the following factors in reviewing a proposed  
25 contract or term, a negotiated contract or term, and the plan of action for  
26 implementing a negotiated contract or term under this section:

27 (1) Fairness of the contract and whether the contract terms are consistent with  
28 applicable laws and regulations;

29 (2) Details provided about the negotiation process;

30 (3) The market and bargaining power of the parties;

31 (4) The contract terms and the benefits achieved by the parties;



1                   (5) Potential benefit to consumers and other purchasers of dental insurance;

2                   (6) Risk of harm to consumers and others, including the likelihood of increase in  
3                   prices or reduction in quality, choice, or access to dental care or dental  
4                   insurance;

5                   (7) Risk of anticompetitive effects and potential effects on third parties,  
6                   including creation of barriers to entry for new market participants, unfair  
7                   competition, or exclusionary effects; and

8                   (8) Promotion of increased infrastructure and innovation in a market.

9                   d. Upon request from the attorney general, the joint negotiation representative, a  
10                  participating dental provider, and the dental insurer shall provide additional  
11                  information to inform the attorney general's determination under this section.

12               10. The attorney general may adopt rules and procedures as necessary to carry out the  
13               responsibilities of this section.

14               11. This section does not apply to dental benefit plans providing covered services  
15               exclusively or primarily to individuals who are eligible for medical assistance.

16               12. This section may not be construed to:

17               a. Permit a coordinated cessation, reduction, or limitation of dental services.

18               b. Affect government approval of, or otherwise restrict activity by, dental providers  
19               which is not prohibited under federal antitrust law or require approval or contract  
20               terms to the extent the terms are exempt from state regulation under federal law.