

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~~ to title 43 of the North
2 Dakota Century Code, relating to joint negotiations by dental providers with dental insurers; ~~to~~
3 ~~amend and reenact section 54-57-07 of the North Dakota Century Code, relating to~~
4 ~~compensation for the provision of administrative law judges; and to provide a penalty~~ an
5 effective date.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

9 **SECTION 1.** A new chapter to title 43 of the North Dakota Century Code is created and
10 enacted as follows:

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

- 12 1. As authorized under this ~~section~~ chapter and in accordance with rules adopted by the
13 office of the attorney general, two or more dental providers practicing in the service
14 area of a dental insurer may jointly negotiate with the dental insurer ~~and engage in~~
15 ~~related joint activity~~ under the active supervision of the office of the attorney general
16 regarding non-fee-related matters including:
- 17 a. Definition of medical necessity and other conditions of coverage.
 - 18 b. Utilization management criteria and procedures.
 - 19 c. Clinical practice guidelines.
 - 20 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. 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 duly
authorized officer of 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

1 joint negotiations with ~~at~~the duly authorized officer of the dental insurer on behalf of the
2 dental providers.

3 b. The joint negotiation representative is the only party authorized to negotiate with
4 the duly authorized officer of the dental insurer on behalf of the dental providers
5 as a group.

6 c. The dental providers may agree to be bound by the terms and conditions
7 negotiated by the joint negotiation representative.

8 d. The joint negotiation representative shall disclose to the duly authorized officer of
9 the dental insurer the number of dental providers represented by the joint
10 negotiation representative.

11 ~~4.3.~~ A person may not act as a joint negotiation representative without express permission
12 from the office of ~~administrative hearings~~the attorney general.

13 ~~5.4.~~ The joint negotiation representative must receive authorization from the office of the
14 attorney general before joint negotiations may begin. The joint negotiation
15 representative shall notify the office of the attorney general of the dental providers'
16 intent to engage in joint negotiations. The notice must be in writing and include:

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

18 b. The identity and location of all dental providers that will participate in the joint
19 negotiations;

20 c. The identity, location, and market share of the dental insurer the dental providers
21 intend to engage in the joint negotiations;

22 d. A statement explaining the circumstances that create the need for joint
23 negotiations and the anticipated benefits of the joint negotiations; and

24 e. The procedure the joint negotiation representative intends to follow to ensure
25 compliance with this chapter.

26 5. The office of the attorney general shall review the notice to determine whether the
27 proposed joint negotiations comply with applicable law and public policy. Except as
28 provided in subsection 11, within thirty days of receipt of the notice from the joint
29 negotiation representative, the office of the attorney general shall notify the joint
30 negotiation representative whether the proposed joint negotiations are authorized

under this chapter. In determining whether proposed joint negotiations are authorized, the office of the attorney general shall consider the following factors:

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

b. The market and bargaining power of the parties;

c. A party's ability to control or steer consumers, dictate terms of contract, impose final or nonnegotiable terms, or limit products or services available or offered to consumers;

d. The contract terms to be negotiated and the potential effect the terms have on the ability of the provider to provide quality care or medically appropriate care without delay and difficulty;

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.

6. a. Upon the joint negotiation representative and the duly authorized officer of the dental insurer determining an agreement has been reached on contractual terms or conditions ~~that will be the subject matter of the negotiations~~, the joint negotiation representative shall submit to the office of ~~administrative hearings~~ the attorney general, for approval, a copy of the proposed contract between the dental providers and dental insurer.

~~a. Within~~

b. Except as provided in subsection 11, within thirty days of receipt of the proposed contract, the office of ~~administrative hearings~~ the attorney general shall review the proposed contract and provide a determination. If the office of ~~administrative hearings~~ the attorney general disapproves the proposed contract, the office of ~~administrative hearings~~ the attorney general shall communicate to the joint negotiation representative any deficiencies and specific remedial measures for the deficiencies.

c. In reviewing a proposed contract, the office of the attorney general may consider the following factors:

(1) The fairness of the contract and whether the contract terms are consistent with applicable laws and regulations.

- 1 (2) Details about the negotiation process.
- 2 (3) The market and bargaining power of the parties.
- 3 (4) The benefits achieved by the parties.
- 4 (5) Potential benefit to consumers and other purchasers of dental insurance.
- 5 (6) Risk of harm to consumers and others, including the likelihood of increase in
- 6 prices or reduction in quality, choice, or access to dental care or dental
- 7 insurance.
- 8 (7) Risk of anticompetitive effects and potential effects on third parties,
- 9 including creation of barriers to entry for new market participants, unfair
- 10 competition, or exclusionary effects.
- 11 (8) Promotion of increased infrastructure and innovation in a market.
- 12 ~~b.d.~~ If the office of the attorney general disapproves the proposed contract, the office
- 13 of the attorney general shall communicate to the joint negotiation representative
- 14 any deficiencies and specific remedial measures for the deficiencies.
- 15 e. Upon approval of the proposed contract, the dental providers, through the joint
- 16 negotiation representative, and the dental insurer, through the duly authorized
- 17 officer, may engage in negotiations.
- 18 ~~c. The joint negotiation representative shall submit the negotiated contract to the~~
- 19 ~~office of administrative hearings for review.~~
- 20 ~~6.7.~~ a. A negotiated contract and any plan of action for implementing a negotiated
- 21 contract must be approved by the office of ~~administrative hearings~~the attorney
- 22 general before becoming effective. Within
- 23 b. Except as provided in subsection 11, within thirty days of receipt of the negotiated
- 24 contract, the office of ~~administrative hearings~~the attorney general shall review the
- 25 ~~proposed~~negotiated contract and provide a determination. In reviewing a
- 26 negotiated contract or plan of action, the office of the attorney general may
- 27 consider the factors under subdivision c of subsection 6.
- 28 c. If the office of ~~administrative hearings~~the attorney general disapproves the
- 29 negotiated contract, the office of ~~administrative hearings~~the attorney general shall
- 30 communicate to the joint negotiation representative any deficiencies and specific
- 31 remedial measures for the deficiencies.

1 ~~7.8.~~ The office of ~~administrative hearings shall~~ the attorney general shall adopt rules and
2 procedures as necessary to carry out the responsibilities of this ~~section~~ chapter.

3 ~~8.9.~~ This section does not apply to dental benefit plans providing covered services
4 exclusively or primarily to individuals who are eligible for medical assistance.

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

8 10. This section may not be construed to:

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

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

13 11. ~~The dental insurer is responsible for costs for services rendered by the office of~~
14 ~~administrative hearings and shall make payment for costs for services in accordance-~~
15 ~~with section 54-57-07 and rules adopted by the office of administrative hearings~~ Upon
16 notice to the parties, the office of the attorney general may extend for up to an
17 additional thirty days the timeframe to review a notice under subsection 5, a proposed
18 contract under subsection 6, and a negotiated contract or plan of action under
19 subsection 7.

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

22 ~~54-57-07. Compensation for provision of administrative law judges -- Special fund~~
23 ~~established -- Continuing appropriation.~~

24 ~~1.~~ ~~The office of administrative hearings shall require payment for services rendered by~~
25 ~~any administrative law judge provided by it to any~~ an ~~agency, to any unit of local~~
26 ~~government in this state, to any tribal government in this state, or to the judicial~~
27 ~~branch, or a nongovernmental entity, in the conduct of an administrative hearing and~~
28 ~~related proceedings, and proceedings under section 1 of this Act, and those entities~~
29 ~~must make the required payment to the office. Payment must include payment for~~
30 ~~support staff necessary to render administrative law judge services. Moneys received~~
31 ~~by the office of administrative hearings in payment for providing an administrative law~~

1 judge to conduct an administrative hearing and related proceedings, ~~and proceedings~~
2 ~~under section 1 of this Act~~, must be deposited into the operating fund of the office of
3 administrative hearings.

4 ~~2.~~ The office of administrative hearings shall require payment for mileage, meals, and
5 lodging in connection with services rendered by an administrative law judge provided
6 to ~~any~~ an agency, to any unit of local government in this state, to any tribal government
7 in this state, or to the judicial branch, ~~or a nongovernmental entity~~, in the conduct of an
8 administrative hearing and related proceedings, ~~and proceedings under section 1 of~~
9 ~~this Act~~, and those entities must make the required payment to the office. Payment for
10 meals and lodging must be in the amounts allowable under section 44-08-04. Payment
11 for mileage when using state vehicles must be in amounts set for user charges under
12 section 24-02-03.5. All other payments must be in amounts allowed for other state
13 officials and employees. Either general fund or special fund moneys, or other income,
14 may be used for the payment of mileage, meals, and lodging under this subsection.

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

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

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

4 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on April 1, 2026.