

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1418

Introduced by

Representatives Boucher, Callahan, Jensen

Senators Mutzenberger, Nalewaja, O'Connell

1 A BILL for an Act to create and enact three new subsections to section 26.1-04-03 of the North
2 Dakota Century Code, relating to the restriction or interference with medical communications
3 between health care providers and patients and unfair indemnification provisions in contracts
4 with health care providers; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new subsection to section 26.1-04-03 of the North Dakota Century
7 Code is created and enacted as follows:

8 As used in sections 2 and 3 of this Act, unless the context otherwise requires:

- 9 a. "Entity" includes a third-party administrator or other person with responsibility
10 for contracts with health care providers under a health plan.
- 11 b. "Health care provider" means a person that delivers, administers, or
12 supervises health care products or services, for profit or otherwise, in the
13 ordinary course of business or professional practice.
- 14 c. "Health plan" means any public or private plan or arrangement that provides
15 or pays the cost of health benefits, including any organization of health care
16 providers that furnishes health services under a contract or agreement with
17 this type of plan.
- 18 d. "Medical communication" means any communication, other than a knowing
19 and willful misrepresentation, made by a health care provider to a patient
20 regarding the health care needs or treatment options of the patient and the
21 applicability of the health plan to the patient's needs or treatment. The term
22 includes communications concerning:
- 23 (1) Tests, consultations, and treatment options;
- 24 (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.

SECTION 2. A new subsection to section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

- 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.

1 **SECTION 3.** A new subsection to section 26.1-04-03 of the North Dakota Century
2 Code is created and enacted as follows:
3 Unfair indemnification. A contract between an entity and a health care provider
4 may not require the health care provider to indemnify the entity for the entity's
5 negligence, willful misconduct, or breach of contract, and may not require a health
6 care provider as a condition of participation to waive any right to seek legal redress
7 against the entity. In addition to the proceedings and penalties provided in this
8 chapter, a contract provision violating this subsection is void.