

Fifty-fifth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Monday, the sixth day of January, one thousand nine hundred and ninety-seven

HOUSE BILL NO. 1418
(Representatives Boucher, Callahan, Jensen)
(Senators Mutzenberger, Nalewaja, O'Connell)

AN ACT to create and enact three new subsections to section 26.1-04-03 of the North Dakota Century Code, relating to the restriction or interference with medical communications between health care providers and patients and unfair indemnification provisions in contracts with health care providers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

- a. "Entity" includes a third-party administrator or other person with responsibility for contracts with health care providers under a health plan.
- 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.

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.

SECTION 3. A new subsection to section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1418.

House Vote: Yeas 94 Nays 0 Absent 3

Senate Vote: Yeas 47 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State