

Fifty-fifth  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2278**

Introduced by

Senators DeMers, LaFountain, St. Aubyn

Representatives Mahoney, Price, Wald

- 1 A BILL for an Act to prohibit health plans from interfering with health care provider  
2 communications with patients and to prohibit certain provisions in contracts with a health care  
3 provider; and to provide a penalty.

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

5 **SECTION 1. Definitions.** In this Act, unless the context otherwise requires:

- 6 1. "Entity" includes any third-party administrator or other person with responsibility for  
7 contracts with health care providers under a health plan.
- 8 2. "Health care provider" means any person that delivers, administers, or supervises  
9 health care products or services, for profit or otherwise, in the ordinary course of  
10 business or professional practice.
- 11 3. "Health plan" means any public or private plan or arrangement that provides or  
12 pays the cost of health benefits, including any organization of health care providers  
13 that furnishes health services under a contract or agreement with this type of plan.
- 14 4. "Medical communication" means any communication, other than a knowing and  
15 willful misrepresentation, made by a health care provider to a patient regarding the  
16 health care needs or treatment options of the patient and the applicability of the  
17 health plan to the patient's needs or treatment. The term includes communications  
18 concerning:
- 19 a. Any tests, consultations, and treatment options;
- 20 b. Any risks or benefits associated with tests, consultations, and options;
- 21 c. Variation in experience, quality, or outcome among any health care providers  
22 or health care facilities providing any medical service;
- 23 d. The process, basis, or standard used by any entity to determine whether to  
24 authorize or deny health care services or benefits; and

e. Any financial incentives or disincentives based on service utilization provided by an entity to a health care provider.

5. "Patient" includes any former, current, or prospective patient or the guardian or legal representative of any former, current, or prospective patient.

**SECTION 2. Interference with certain medical communications prohibited.** 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 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;
4. Refusal to compensate the health care provider for covered services that are medically necessary; or
5. Any other retaliatory action against the health care provider.

This section does not prohibit an entity from communicating with its participating health care providers to address internal health plan issues of quality assurance or utilization review.

**SECTION 3. Contracts between a health plan and a health care provider.** A contract between a health plan and a health care provider may not require the health care provider to indemnify the health plan for the health plan'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 health plan. A contract provision violating this section is void.

**SECTION 4. Civil money penalty.** Any entity that violates section 2 of this Act is subject to a civil money penalty of up to twenty-five thousand dollars for each violation, or up to one hundred thousand dollars for each violation if the court finds the entity has engaged in, within the five years immediately preceding such violation, a pattern of violations of this Act. The attorney general may commence an action against an entity in violation of this Act for the civil penalty in any county the entity conducts business.