



HB 1416  
Patient Choice

- Senate Human Services Committee
- March 14, 2023

# North Dakotans for Open Access Healthcare

Duncan B. Ackerman, MD

## HB 1416

- The genesis of this bill is due to the concern of expansion of plans that have ZERO out-of-network option for patients.
- HB 1416 provides a solution for patients to choose care outside of the closed network, when that network doesn't provide the option they need for their care.
- 27 states have some form of patient choice law
- 12 are similar to HB 1416
- NDCC, 26.1-36-12.2 (1989) applies to pharmacies and pharmacists

# HB 1416 History

- 14-0 DO PASS out of House Human Services Committee
- 84-9 DO PASS out of House Assembly

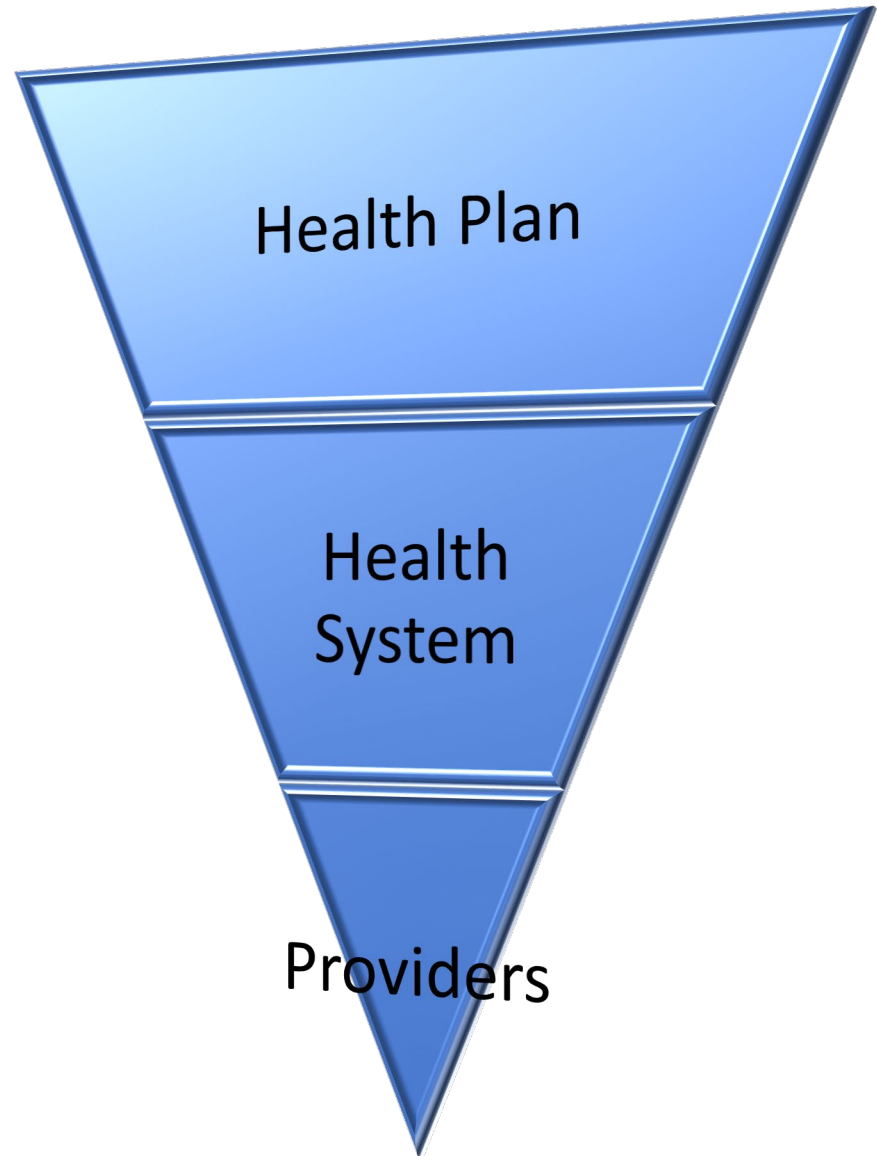
What did  
we learn  
from similar  
bill HB 1465  
last  
session?

- Significant discussions:
  - Patients
  - Providers
  - Independent Critical Access Hospitals
  - Independent medical practices
  - Independent medical facilities
  - Medical Associations
  - Insurance carriers

What did  
we learn?

- We learned the common concern was the Vertically Integrated Healthcare Delivery Network in North Dakota
- Vertically Integrated Network (VIN)

What is a  
Vertically  
Integrated  
Network  
(VIN)?



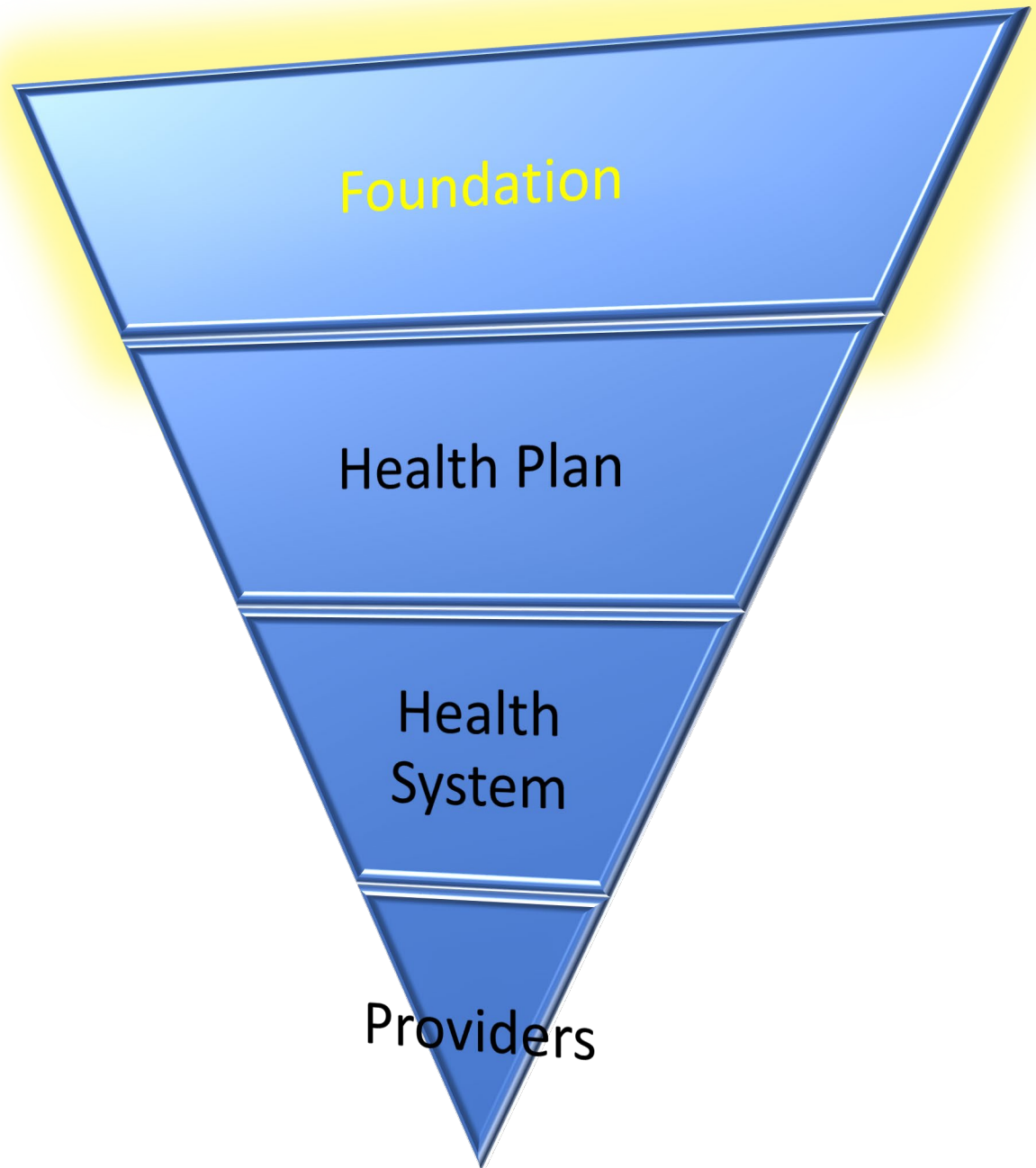


# Vertically Integrated Network (VIN)

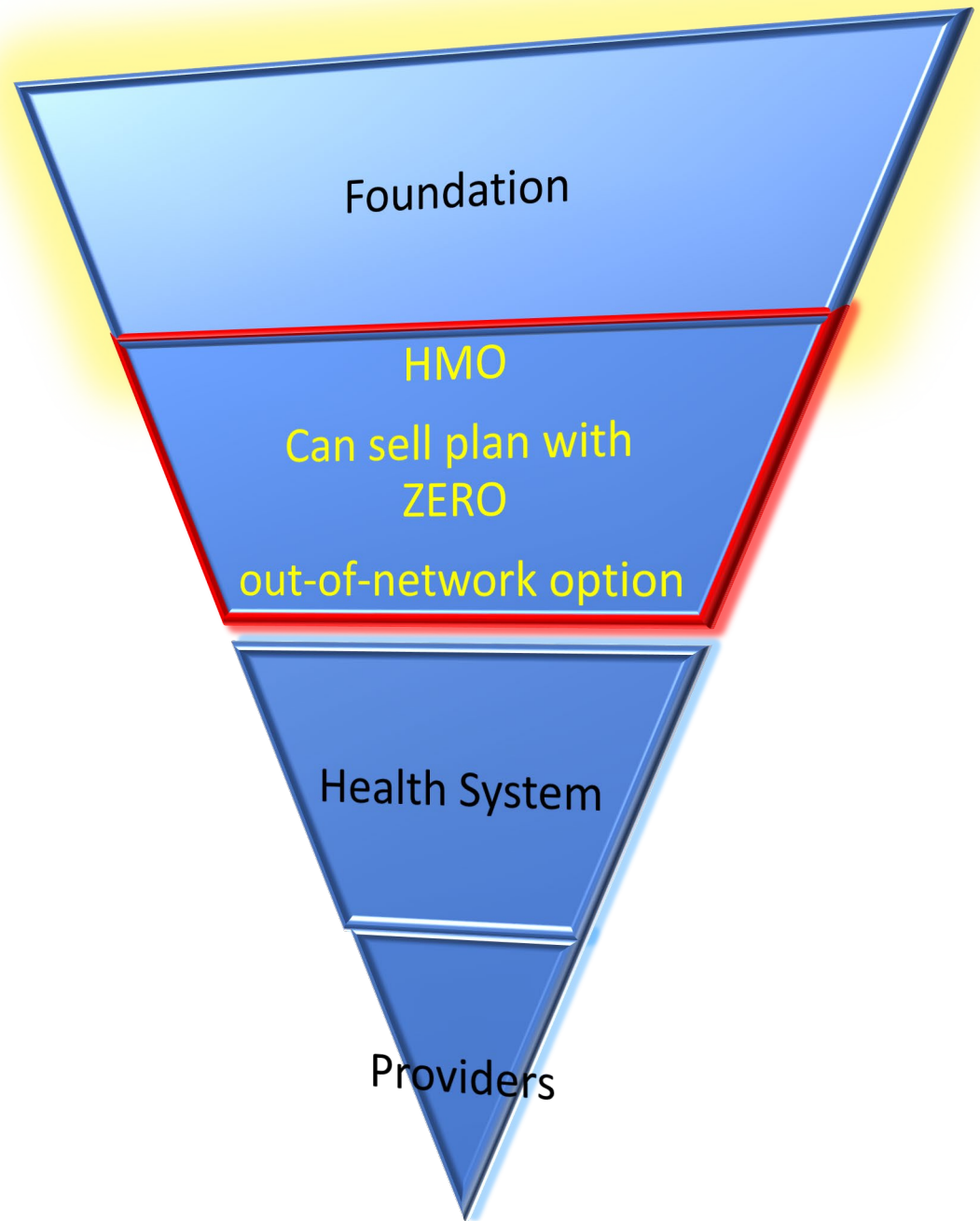
VIN houses the health plan, the health system, the providers and services provided



Distinct  
Advantages  
of VIN in  
North  
Dakota,  
Large  
Foundation

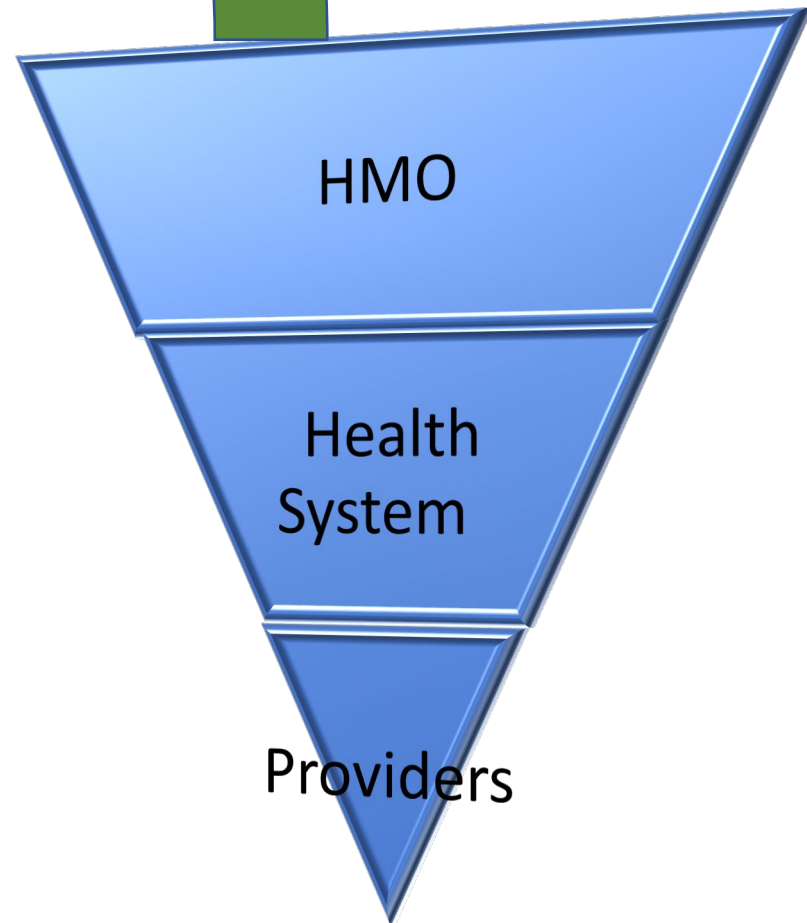
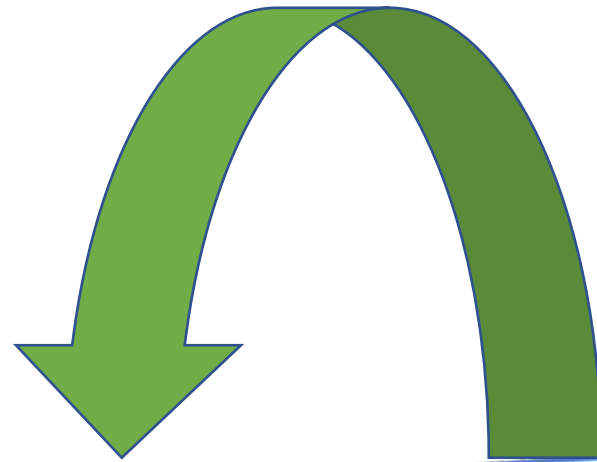


Distinct  
Advantages  
of VIN in  
North  
Dakota,  
Health  
Maintenance  
Organization  
(HMO)

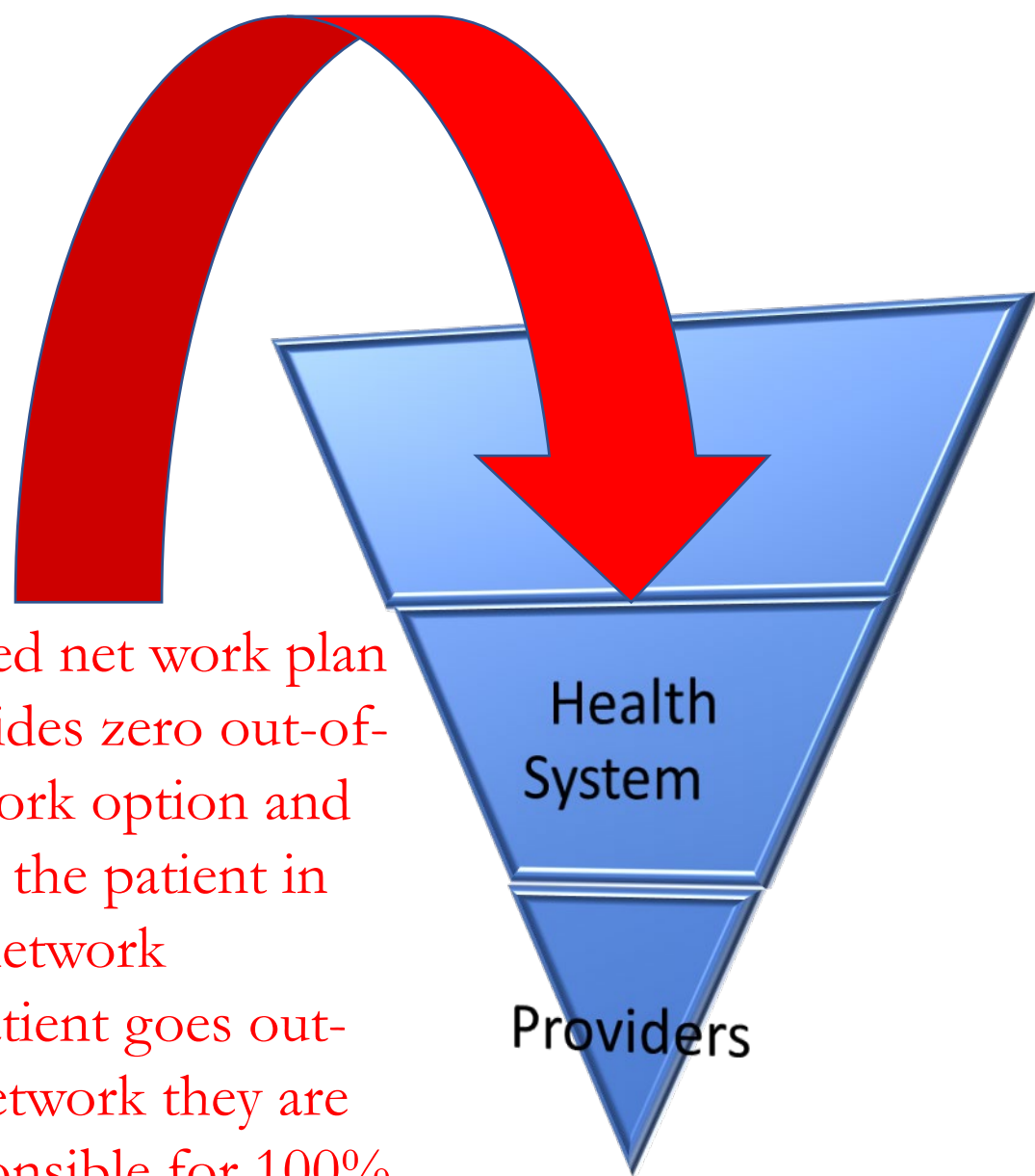


Distinct  
Advantages  
of VIN in  
North  
Dakota,  
HMO

Patients pay  
higher  
premium to  
get out-of-  
network  
option



Distinct  
Advantages  
of VIN in  
North  
Dakota,  
HMO



Closed net work plan  
provides zero out-of-  
network option and  
traps the patient in  
the network  
If patient goes out-  
of-network they are  
responsible for 100%  
of charges

# Financial Disparity Should NOT handcuff a patient's ability to choose a health care provider

- In 2014, a similar bill (Measure 17) was passed in South Dakota, with 61.81% of South Dakotans support.

- “Those who want more choice and are willing to pay more for it have that option.”

Dave Hewett, South Dakota Associations Of Healthcare Organizations.

- That comment should resonate....and so should the following question.....

What if you are unable afford to pay more for that choice?

- HB 1416 answers this question

Question  
from last  
session..how  
is Measure 17  
functioning in  
South  
Dakota?

STATE OF SOUTH DAKOTA)  
  :SS  
COUNTY OF MINNEHAHA )  
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IN CIRCUIT COURT  
  
SECOND JUDICIAL CIRCUIT

49CIV21-2622

MEMORANDUM OPINION GRANTING  
PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT AND DENYING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT


49CIV21-2622

GRANTS Plaintiffs' motion for summary judgment and DENIES Defendant's motion for summary judgment; the Court further,

DECLARES the Any Willing Provider Law enacted through Initiated Measure 17 by the voters of South Dakota does not allow a health insurer to exclude a health care provider from a health benefit plan's panel of providers who is (1) licensed under the laws of South Dakota; (2) located within the geographic coverage area of the health benefit plan; and (3) willing and fully qualified to meet the terms and conditions of participation as established by the health insurer.

Dated this 2nd day of December, 2022.

BY THE COURT:

  
\_\_\_\_\_  
Rachel R. Rasmussen  
Circuit Court Judge



STATE OF SOUTH DAKOTA)  
  :SS  
COUNTY OF MINNEHAHA )

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IN CIRCUIT COURT  
  
SECOND JUDICIAL CIRCUIT

49CIV21-2622

MEMORANDUM OPINION GRANTING  
PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT AND DENYING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

<sup>2</sup> This SHP policy argument is also somewhat disingenuous. Defendant SHP claims a decision against their position would cause harm to policy holders who cannot afford a higher-cost policy, but at the same time argues that the low-cost policy complies with the AWP law because it still allows insureds who need a low-cost policy to still choose any provider by simply paying out of pocket for a provider not covered in their plan.

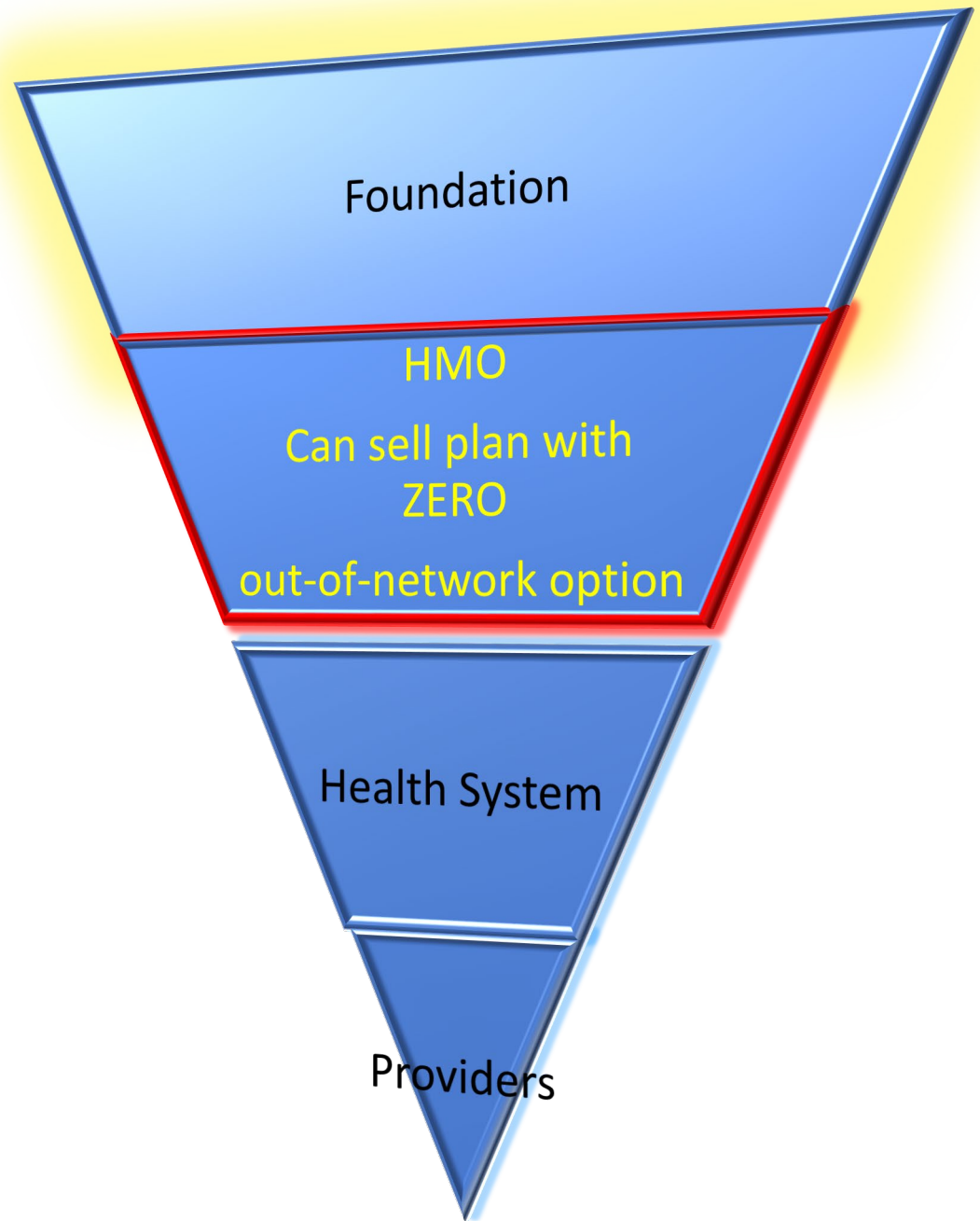
What is the main  
argument against HB  
1416?:

Increase in cost

“Competition stimulates innovation –  
lower prices and better quality.  
Competition is the ultimate consumer  
protection because it allows a consumer  
to walk away from a transaction to find a  
better partner”

North Dakota Legislative Management  
Interim Healthcare Study, Final report January 2021

Does the VIN  
model in  
North Dakota  
promote  
competition?





California Health Care Foundation

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# Is Vertical Integration Bad for Health Care Consumers?

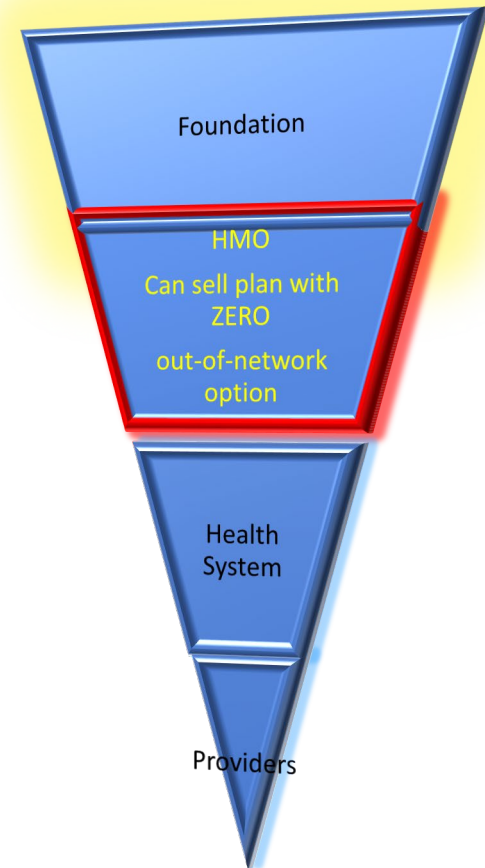
Stories that caught our attention this week

JUNE 21, 2019

[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](https://www.chcf.org/blog/2019/06/21/is-vertical-integration-bad-for-health-care-consumers/)

## Summary to article:

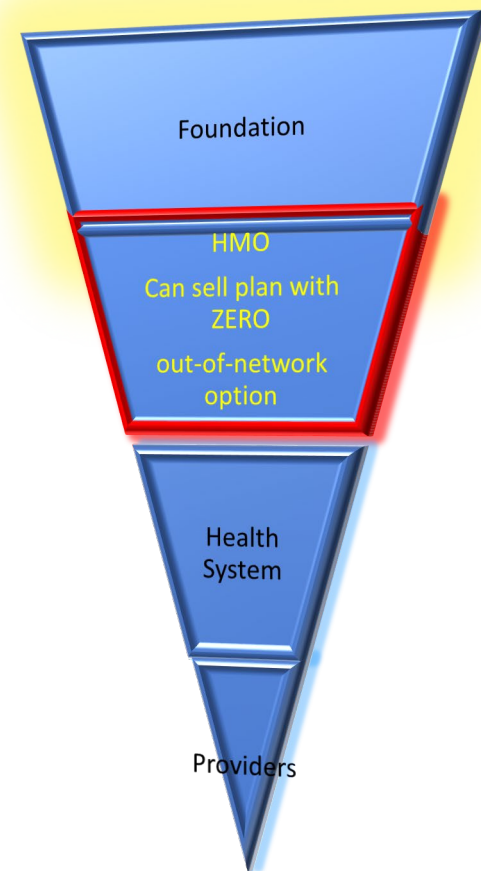
- “vertical integration can easily enable market power to use in an anticompetitive manner, allowing the merged firm to use its new structure to the disadvantage of others, and in some cases, to the harm of consumers.”



[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](https://www.chcf.org/)

## Summary to article:

- Vertical integration increased hospital's bargaining power with the insurers, meaning the dominant hospitals can demand higher costs and limit competition.

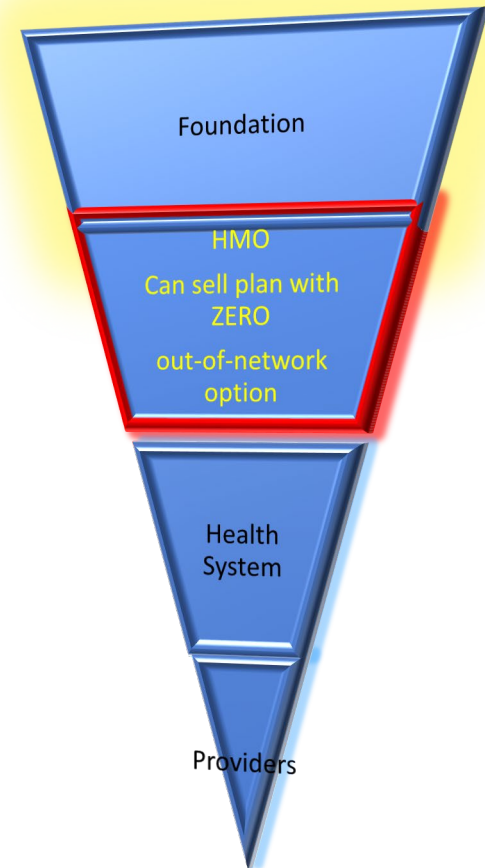


[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](http://chcf.org)



## Summary to article:

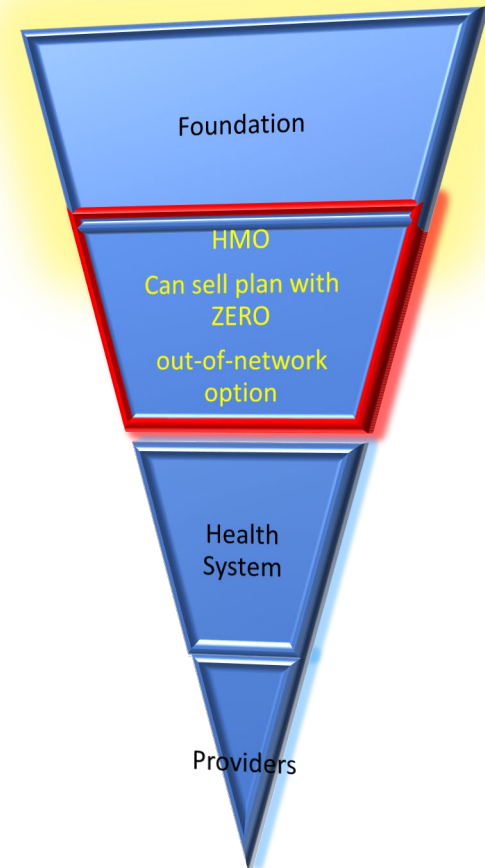
- Recent increases in vertical integration were associated with higher prices for primary care, more expensive specialty care, and higher health insurance premiums.



[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](https://www.chcf.org)

## Summary to article:

- “Physician-Hospital integration did not improve the quality of care for the overwhelming majority of quality measures.”



[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](https://www.chcf.org)

# STATE EFFORTS TO ADDRESS HEALTH CARE CONSOLIDATION AND COSTS

September 14, 2021

Katherine L. Gudixsen, Ph.D., M.S.

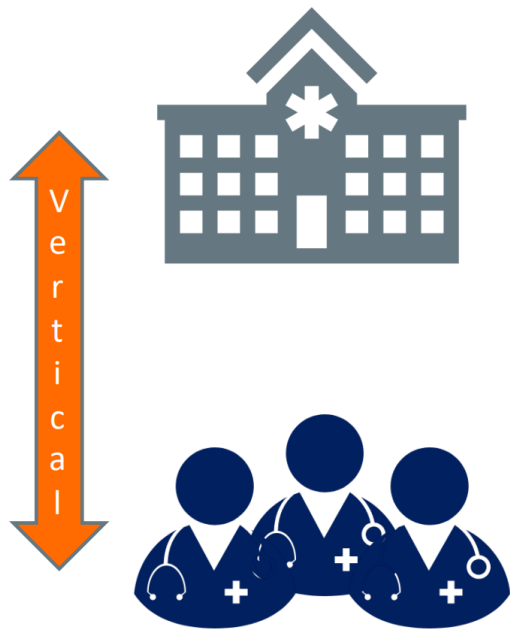
THE SOURCE  
ON HEALTHCARE PRICE & COMPETITION



# WHY ARE U.S. HEALTHCARE PRICES SO HIGH?

- Failure to protect a free market – lack of transparency
- Failure to protect competition and rigorously enforce antitrust laws
- Failure of policymakers to act when competition no longer exists

# DATA ON RESULTS FROM HEALTHCARE MERGERS



## Vertical Mergers

- **Higher Physician Prices:** Physician prices increase post-merger by an average of 14%  
(Capps, Dranove, & Ody, 2018)
  - Cardiologist prices increased by 33.5%  
(Capps, Dranove, & Ody, 2018)
  - Orthopedist prices increased by 12-20%  
(Koch and Ulrick, 2017)
- **Higher Clinic Prices:** Hospital-acquired clinic prices increased 32–47% within four years  
(Carlin, Feldman & Dowd, 2017)
- **Higher Hospital Prices** (Baker, Bundorf, Kessler, 2014)
- **Little to no quality improvements** (McWilliams et al. 2013; Neprash et al. 2015; Short and Ho, 2019)

Epub 2022 Jan 4.

# Vertical integration in healthcare: What does literature say about improvements on quality, access, efficiency, and costs containment?

Guilherme C Amado <sup>1</sup>, Diogo C Ferreira <sup>2</sup>, Alexandre M Nunes <sup>3</sup>

**Results:** A sample of 64 papers resulted from the screening process. The impact of vertical integration on costs and prices of care appears to be negative. Decreases in technical efficiency upon vertical integration are practically out of the question. Nevertheless, there is no substantial inclination to visualize a positive influence. The same happens with the quality of care.

# Issue Brief

## **Hospital and Provider Consolidation: Negative Impact on Affordability for Consumers**

November, 2014

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America's Health  
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# AHIP Statement for Senate Hearing Highlights Concerns About Vertical Provider Consolidation

[Article](#)

**PUBLISHED 10/12, 2019 • BY AHIP**

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# How Hospital Consolidation Hurts Americans

Article

PUBLISHED AUG 26, 2021 • BY AHIP

SHARE

## Lower hospital competition equals higher health care costs

## Diminished quality of care

# VERTICAL INTEGRATION AND THE MONOPOLY PROBLEM\*

CORWIN D. EDWARDS

*Bureau of Industrial Economics, Federal Trade Commission*

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Corwin D. Edwards. *Journal of Marketing* Vol.17, No.4 (Apr, 1953), pp. 404-410

# VERTICAL INTEGRATION AND THE MARKET POWER CRISIS

ISSUE BRIEF BY ADIL ABDELA, KRISTINA KARLSSON, AND MARSHALL STEINBAUM  
APRIL 2019

We define “market power” as the ability to skew market outcomes in one’s own interest, without creating value or serving the public good.

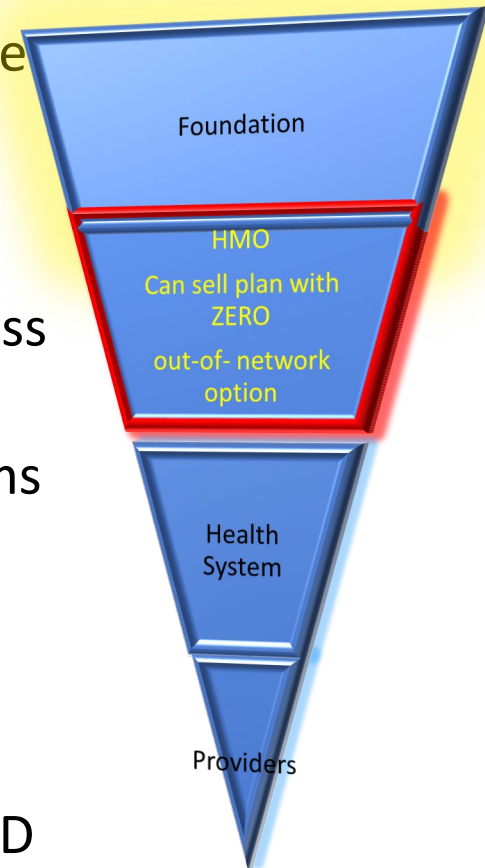
***The real problem is the legalization of highly profitable business models that suppress competition and exploit stakeholders throughout the supply chain, no matter how large or small the parties to any given merger are.***

[RI-Vertical-Integration-and-Market-Power-Crisis-Issue-brief-201904.pdf](https://rooseveltinstitute.org/RI-Vertical-Integration-and-Market-Power-Crisis-Issue-brief-201904.pdf)  
([rooseveltinstitute.org](https://rooseveltinstitute.org))

Is ND at risk of  
a monopoly in  
healthcare?

YES

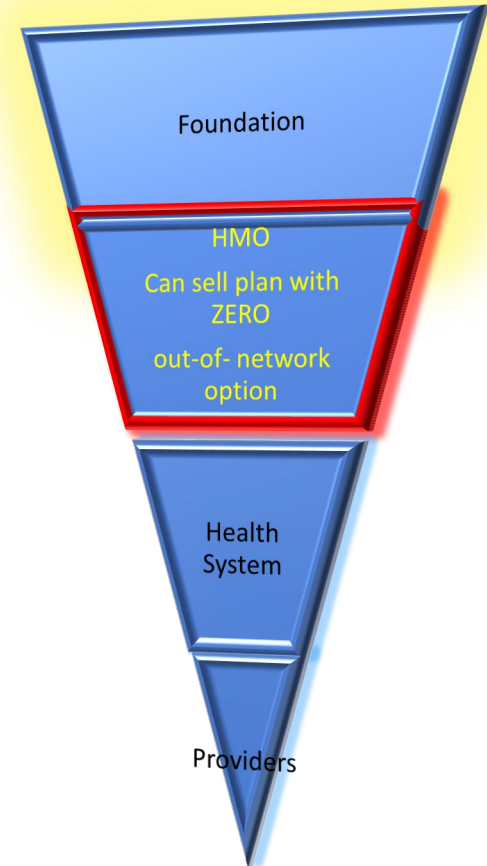
- 1) Vertically Integrated Network
- 2) Large foundation to support anti-competitive growth
- 3) HMO with zero out-of-network options, with planned expansion across ND
- 4) Struggling health systems at risk for consolidation
- 5) Struggling provider practices at risk for consolidation
- 6) Difficulty to recruit to ND in an anti-competitive environment = less competition



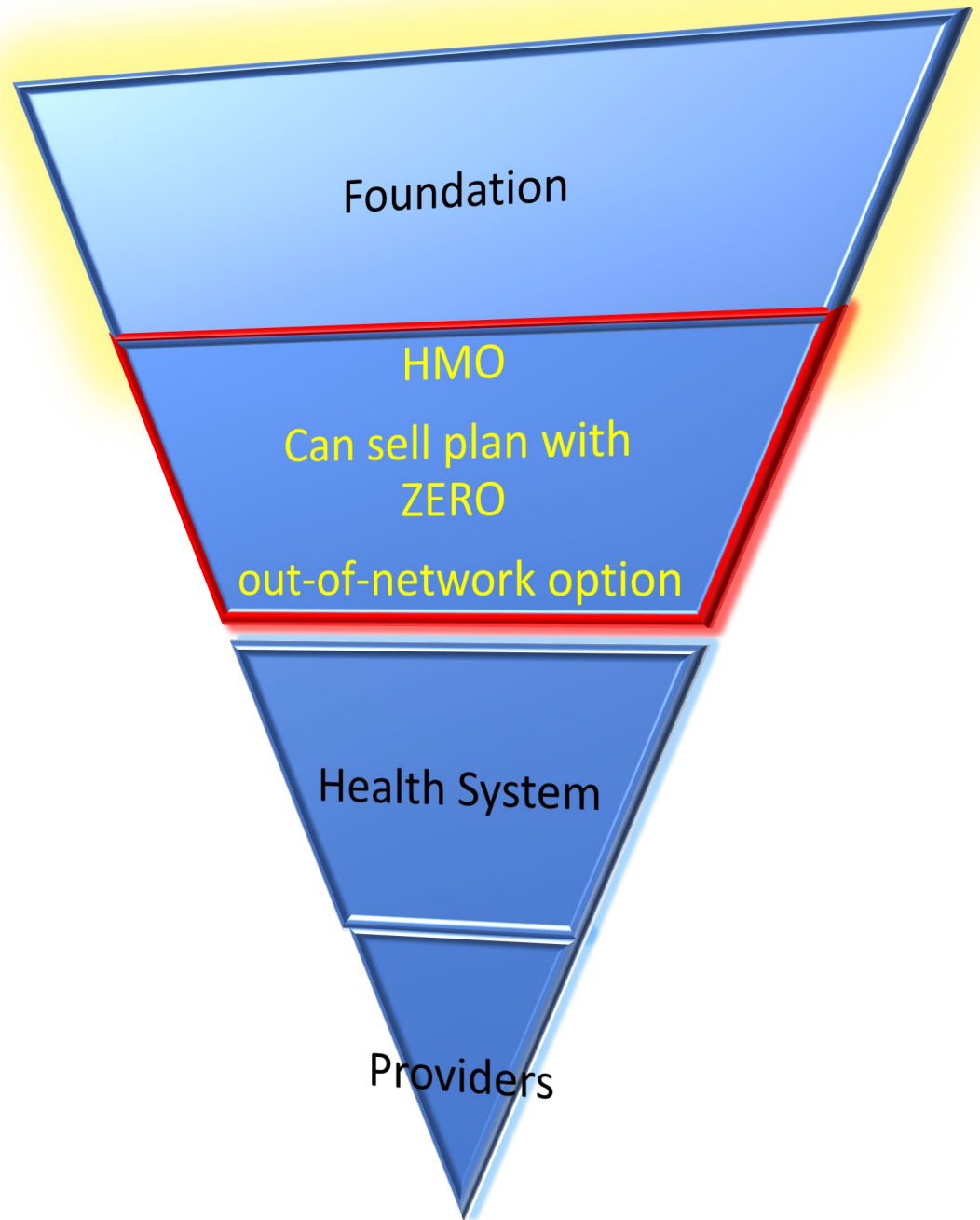
Is ND at risk of  
a monopoly in  
healthcare?

YES

- 1) HB 1416 - Allowing patients to choose a trusted provider helps solve one small piece of the monopoly risk

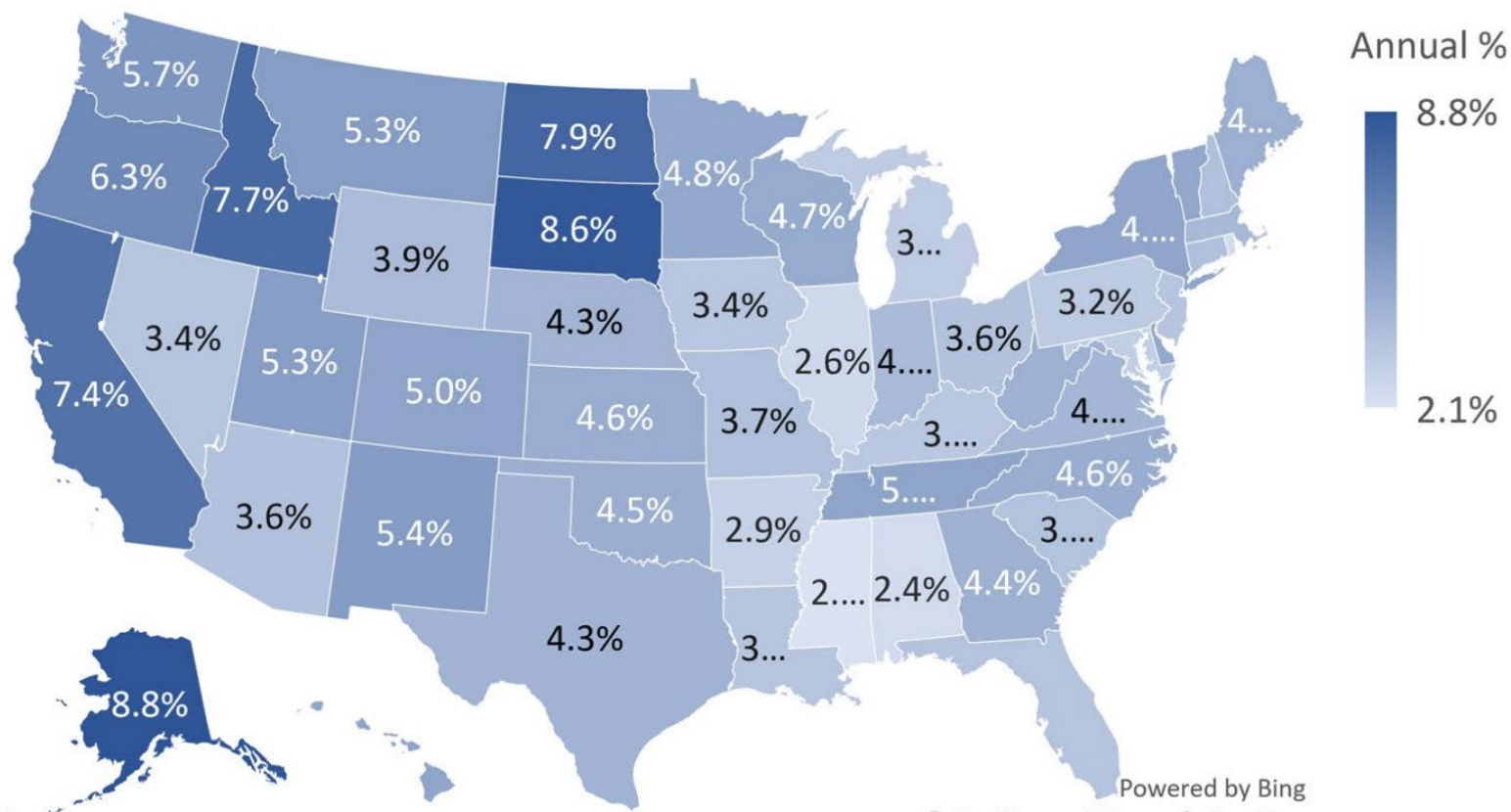


Does the VIN  
model in North  
Dakota  
promote cost  
savings?





## Operating Expenses, 2010-2018 Growth

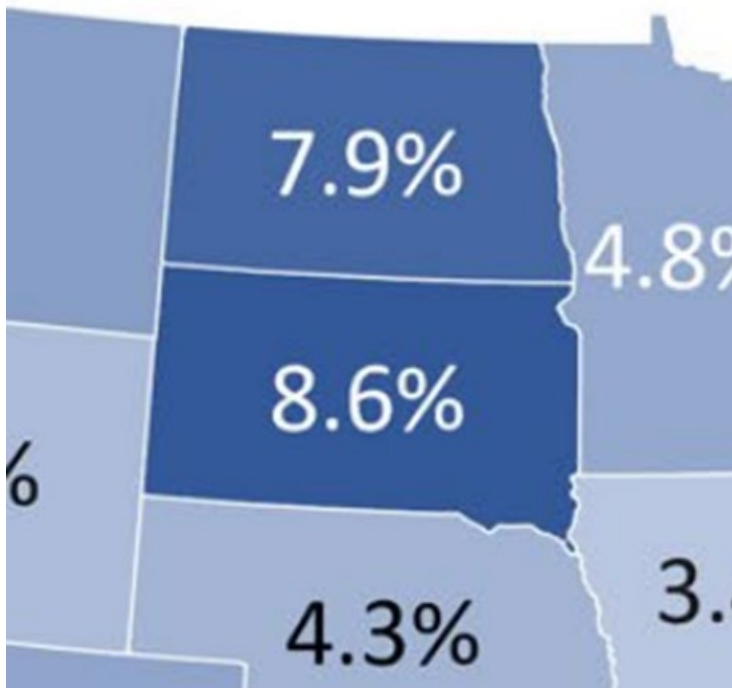


Powered by Bing  
© GeoNames, Microsoft, TomTom

North Dakota RANKS #3 in percentage of average annual hospital operating EXPENSES GROWTH from 2010-2018

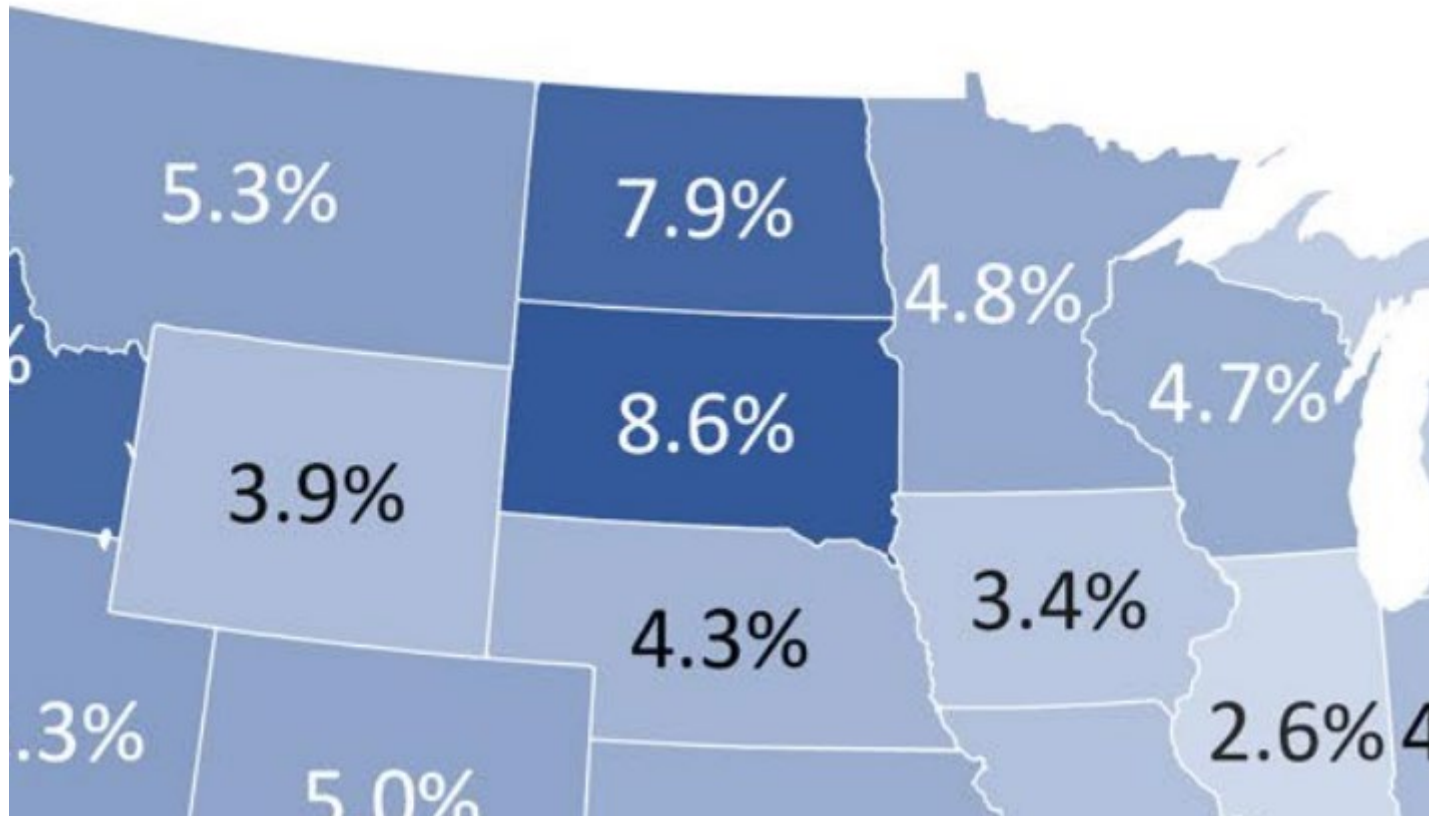
South Dakota RANKS #2 in the same category

# Average Annual Growth in Hospital Expenses



Hospital	Average Expense Growth
Hospital 1	4.0%
<b>VIN</b>	<b>8.9%</b>
Hospital 3	5.1%
<b>VIN</b>	<b>14.0%</b>
Hospital 5	6.0%
Hospital 6	3.1%

## Operating Expenses, 2010-2018 Growth



The other 4 major hospitals in North Dakota had operating expenses growth similar to surrounding states (3.1-6%) [20210108 ND Legislative Management Interim Healthcare Study-FINAL.pdf](#) Page 4

# Hospital Related Prices for Selected Common Procedures in North Dakota

HOSPITAL	COLONOSCOPY	NORMAL VAGINAL DELIVERY
HOSPITAL 1	2,980	4,343
HOSPITAL 2	1,775	4,895
<b>VIN HOSPITAL</b>	3,843	<b>15,056</b>
<b>VIN HOSPITAL</b>	<b>5,509</b>	<b>13,603</b>
HOSPITAL 5	2,064	12,239
HOSPITAL 6	2,100	13,000
HOSPITAL 7	4,700	11,000

- [20210108 ND Legislative Management Interim Healthcare Study-FINAL.pdf](#)
- North Dakota Legislative Management Interim Healthcare Study, page 15.

# Repair of ruptured musculotendinous cuff (eg, rotator cuff) open; chronic

Code: 23412

Patient pays (average)

**\$774**

## Ambulatory surgical centers

This includes facility and doctor fees. You may need more than one doctor and additional costs may apply.

### More cost information ^

*All costs are national averages*

<u>Total Cost</u>		<b>\$3,874</b>
Doctor Fee	<b>\$876</b>	
Facility Fee	<b>\$2,998</b>	
<u>Medicare Pays</u>		<b>\$3,099</b>

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Patient pays		<b>\$774</b>
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Patient pays (average)

**\$1,454**

## Hospital outpatient departments

This includes facility and doctor fees. You may need more than one doctor and additional costs may apply.

### More cost information ^

*All costs are national averages*

<u>Total Cost</u>		<b>\$7,273</b>
Doctor Fee	<b>\$876</b>	
Facility Fee	<b>\$6,397</b>	
<u>Medicare Pays</u>		<b>\$5,818</b>

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Patient pays		<b>\$1,454</b>
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“HOW DO WE DRIVE DOWN COSTS IN  
HEALTHCARE”?

“Competition stimulates innovation –  
lower prices and better quality.  
Competition is the ultimate consumer  
protection because it allows a consumer  
to walk away from a transaction to find a  
better partner”

North Dakota Legislative Management  
Interim Healthcare Study, Final report January 2021

# Healthier People Through Healthier Markets

SOLUTIONS TO IMPROVE HEALTH CARE AFFORDABILITY AND ACCESS FOR EVERY AMERICAN

## **Stop Consolidated Health Systems from Stifling Negotiation and Innovation**

In concentrated health system markets, prices do not flow from competitive negotiations. Instead, they are the result of the outsized leverage and inability to negotiate.

Some health systems leverage their significant market shares by requiring contracts with all affiliated facilities and preventing steering patients to lower-cost, higher-quality care. These anti-competitive contract terms, in the form of “anti-steering,” “anti-tiering,” and similar contract provisions, protect providers’ highly inflated costs – costs that patients and consumers pay through higher premiums and out-of-pocket costs.<sup>14</sup>

<https://www.ahip.org/resources/healthier-people-through-healthier-markets>





# Healthier People Through Healthier Markets

SOLUTIONS TO IMPROVE HEALTH CARE AFFORDABILITY AND ACCESS FOR EVERY AMERICAN

## Let's Work Together for Solutions

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Increased competition will mean that patients and consumers have more choices over where to seek their health care. When patients and consumers have more control, they can get the care they need, when they need it – at a price they can afford. As demonstrated

<https://www.ahip.org/resources/healthier-people-through-healthier-markets>

How will HB  
1416 control  
or even  
decrease cost?

- 1) HB 1416 – Is not “any willing provider” at “any willing price” - provider still needs to negotiate and meet the terms and conditions to participate
- 2) Fail First mechanisms employed by insurance companies
- 3) Provide access to Ambulatory Surgery Centers vs Hospital Outpatient Departments (ASC up to 50% cost savings vs HOPD)
- 4) Patient access to the providers they need, avoid redundant visits

How will HB  
1416 control  
or even  
decrease cost?

5) Value based contracting arrangements with independent providers

6) Allows patients the Right to Shop for lower cost centers of care.

7) Allows patients to access LOWER COST centers which drives down cost, saves the patient money, saves the VIN insurance company money, allowing the VIN to offer its current closed network plan to MORE consumers.



**Deloitte Consulting LLP**

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## Memo

**Date:** January 24, 2023

**To:** Scott Miller  
Executive Director, North Dakota Public Employees Retirement System

**From:** Tim Egan & Dan Plante & Drew Rasmussen, Deloitte Consulting LLP

**Subject:** **ACTUARIAL REVIEW OF PROPOSED HOUSE BILL 1416**

“Deloitte’s comments are limited to the scope of the uniform group insurance program. The legislation is anticipated to have a financial impact on the uniform group insurance program but the impact cannot be estimated with confidence because the costs will be dependent on provider contracting arrangements with the health insurer that administers the uniform group insurance program”



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“**Conceptually**, eliminating the ability for health insurers to exclude any providers from their networks removes some of the incentive for providers to agree to competitive reimbursements. The average discounts agree to by health systems (e.g., usually 30-40% for hospital care) could be reduced, or eliminated, **IF providers could charge higher rates without any impact to patient volume**. Any reduction in the discounts could lead to significant increase in health insurance premiums for all covered participants under the uniform group insurance program.”



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Program include 100% of hospitals and over 96% of physicians in the State. Given the breadth of the network participation in the State, the legislation may not have the effect of expanding provider participation. Additionally, since there is such broad provider participation, the financial impact of the proposed legislation could be immaterial if provider reimbursement rates do not increase as result of the legislation (since there are no hospitals and relatively few providers that are not under contract today).

## What HB 1416 Does Do?



Allows patient to see the provider of their choice, IF the provider agrees to the terms and conditions established by the insurer

Allows insurance companies to determine the terms and condition offered to the provider (96% of physicians already contracted in other VIN plans with out-of-network options)

# What HB 1416 Does Do?



Allows patients to select an out of network option when no option exists

Increases healthcare workforce capacity, by adding more providers patients can choose from for their care



## What HB 1416 Does Do



Increases Competition,  
“evens the playing field”

Allows patients the right  
to shop for lower cost  
alternatives outside of  
the closed network

Decreases the risk of  
future health care  
monopolization in North  
Dakota



HB 1416  
Patient Choice

- Senate Human Services Committee
- March 14th, 2023