

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 26.1-36.9 of the North Dakota  
2 Century Code, relating to joint negotiations by dental providers with dental insurers; and to  
3 provide a penalty.

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

5 **SECTION 1.** A new section to chapter 26.1-36.9 of the North Dakota Century Code is  
6 created and enacted as follows:

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

- 8 1. As authorized under this section, two or more dental providers practicing in the service  
9 area of a dental insurer may jointly negotiate with the dental insurer and engage in  
10 related joint activity regarding non-fee-related matters including:
- 11 a. Definition of medical necessity and other conditions of coverage.
  - 12 b. Utilization management criteria and procedures.
  - 13 c. Clinical practice guidelines.
  - 14 d. Preventative care and other medical management policies.
  - 15 e. Patient referral standards and procedures.
  - 16 f. Drug formularies and standards for prescribing off-formulary drugs.
  - 17 g. Quality assurance programs.
  - 18 h. Liability terms for a dental provider and dental insurer.
  - 19 i. Methods and timing of payments.
  - 20 j. Administrative procedures.
  - 21 k. Credentialing standards and procedures for selection, retention, and termination  
22 of participating dentists.
  - 23 l. Mechanisms for resolving disputes between the dental insurer and dental  
24 provider.

- 1           m. Dental benefits sold or administered by the dental insurer in which the dental  
2           provider is required to participate.
- 3           n. Formulation and application of reimbursement methodology.
- 4           o. Inclusion or alteration of a contractual term or condition, except when the  
5           inclusion or alteration is otherwise required by federal or state law.
- 6           2. As authorized under this section, upon a finding by the commissioner that a dental  
7           insurer has substantial market power in a service area and any of the terms or  
8           conditions of the contract with the dental insurer pose an actual or potential threat to  
9           the quality and availability of patient care among covered individuals, two or more  
10           independent dental providers may jointly negotiate with the dental insurer and engage  
11           in related joint activity relating to fees and fee-related matters, including the:
- 12           a. Amount of payment.
- 13           b. Amount of discount.
- 14           c. Procedure codes or descriptions of services covered by payment.
- 15           d. Appropriate grouping of procedure codes.
- 16           3. a. The dental providers may communicate with each other and a joint negotiation  
17           representative authorized to negotiate on behalf of the dental providers with the  
18           dental insurer concerning any contractual term or condition to be negotiated. For  
19           purposes of this section, a "joint negotiation representative" means a  
20           representative selected by two or more independent dental providers to engage  
21           in joint negotiations with a dental insurer on behalf of the dental providers.
- 22           b. The joint negotiation representative is the only party authorized to negotiate with  
23           the dental insurer on behalf of the dental providers as a group.
- 24           c. The dental providers may agree to be bound by the terms and conditions  
25           negotiated by the joint negotiation representative.
- 26           4. A person may not act as a joint negotiation representative without express permission  
27           from the commissioner.
- 28           5. Upon the joint negotiation representative and dental insurer determining an agreement  
29           has been reached on contractual terms or conditions that will be the subject matter of  
30           the negotiations, the joint negotiation representative shall submit to the commissioner,

1 for approval, a copy of the proposed contract between the dental providers and dental  
2 insurer.

3 a. Within thirty days of receipt of the proposed contract, the commissioner shall  
4 review the proposed contract and provide a determination. If the commissioner  
5 disapproves the contract, the commissioner shall communicate to the joint  
6 negotiation representative any deficiencies and specific remedial measures for  
7 the deficiencies.

8 b. Upon approval of the proposed contract, the dental providers, through the joint  
9 negotiation representative, and the dental insurer may engage in negotiations.

10 c. The joint negotiation representative shall submit the negotiated contract to the  
11 commissioner for review.

12 6. A negotiated contract and any plan of action for implementing a negotiated contract  
13 must be approved by the commissioner before becoming effective. Within thirty days  
14 of receipt of the negotiated contract, the commissioner shall review the proposed  
15 contract and provide a determination. If the commissioner disapproves the contract,  
16 the commissioner shall communicate to the joint negotiation representative any  
17 deficiencies and specific remedial measures for the deficiencies.

18 7. The commissioner shall adopt rules and procedures as necessary to carry out the  
19 responsibilities of this section.

20 8. This section does not apply to dental benefit plans providing covered services  
21 exclusively or primarily to individuals who are eligible for medical assistance.

22 9. Any negotiations under this section must be made in good faith. A person that does  
23 not negotiate in good faith may be subject to sanctions or penalties as determined by  
24 the commissioner.

25 10. This section may not be construed to:

26 a. Permit a coordinated cessation reduction or limitation of dental services.

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