

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### SENATE BILL NO. 2375

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~~43-28 of the North  
2 Dakota Century Code, relating to joint negotiations by dental providers with dental insurers; to  
3 amend and reenact section 54-57-07 of the North Dakota Century Code, relating to  
4 compensation for the provision of administrative law judges; and to provide a penalty.

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

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

8 **SECTION 1.** A new section to chapter 43-28 of the North Dakota Century Code is created  
9 and enacted as follows:

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

- 11 1. As authorized under this section, two or more dental providers practicing in the service  
12 area of a dental insurer may jointly negotiate with the dental insurer and engage in  
13 related joint activity regarding non-fee-related matters including:
- 14 a. Definition of medical necessity and other conditions of coverage.
  - 15 b. Utilization management criteria and procedures.
  - 16 c. Clinical practice guidelines.
  - 17 d. Preventative care and other medical management policies.
  - 18 e. Patient referral standards and procedures.
  - 19 f. Drug formularies and standards for prescribing off-formulary drugs.
  - 20 g. Quality assurance programs.

- 1           h. Liability terms for a dental provider and dental insurer.
- 2           i. Methods and timing of payments.
- 3           j. Administrative procedures.
- 4           k. Credentialing standards and procedures for selection, retention, and termination
- 5           of participating dentists.
- 6           l. Mechanisms for resolving disputes between the dental insurer and dental
- 7           provider.
- 8           m. Dental benefits sold or administered by the dental insurer in which the dental
- 9           provider is required to participate.
- 10          n. Formulation and application of reimbursement methodology.
- 11          o. Inclusion or alteration of a contractual term or condition, except when the
- 12          inclusion or alteration is otherwise required by federal or state law.
- 13          2. As authorized under this section, upon a finding by the commissioneroffice of
- 14          administrative hearings that a dental insurer has substantial market power in a service
- 15          area and any of the terms or conditions of the contract with the dental insurer pose an
- 16          actual or potential threat to the quality and availability of patient care among covered
- 17          individuals, two or more independent dental providers may jointly negotiate with the
- 18          dental insurer and engage in related joint activity relating to fees and fee-related
- 19          matters, including the:
- 20           a. Amount of payment.
- 21           b. Amount of discount.
- 22           c. Procedure codes or descriptions of services covered by payment.
- 23           d. Appropriate grouping of procedure codes.
- 24          3. a. The dental providers may communicate with each other and a joint negotiation
- 25           representative authorized to negotiate on behalf of the dental providers with the
- 26           dental insurer concerning any contractual term or condition to be negotiated. For
- 27           purposes of this section, a "joint negotiation representative" means a
- 28           representative selected by two or more independent dental providers to engage
- 29           in joint negotiations with a dental insurer on behalf of the dental providers.
- 30           b. The joint negotiation representative is the only party authorized to negotiate with
- 31           the dental insurer on behalf of the dental providers as a group.

- 1           c. The dental providers may agree to be bound by the terms and conditions  
2           negotiated by the joint negotiation representative.
- 3           4. A person may not act as a joint negotiation representative without express permission  
4           from the commissioneroffice of administrative hearings.
- 5           5. Upon the joint negotiation representative and dental insurer determining an agreement  
6           has been reached on contractual terms or conditions that will be the subject matter of  
7           the negotiations, the joint negotiation representative shall submit to the  
8           commissioneroffice of administrative hearings, for approval, a copy of the proposed  
9           contract between the dental providers and dental insurer.
- 10          a. Within thirty days of receipt of the proposed contract, the commissioneroffice of  
11          administrative hearings shall review the proposed contract and provide a  
12          determination. If the commissioneroffice of administrative hearings disapproves  
13          the contract, the commissioneroffice of administrative hearings shall  
14          communicate to the joint negotiation representative any deficiencies and specific  
15          remedial measures for the deficiencies.
- 16          b. Upon approval of the proposed contract, the dental providers, through the joint  
17          negotiation representative, and the dental insurer may engage in negotiations.
- 18          c. The joint negotiation representative shall submit the negotiated contract to the  
19          commissioneroffice of administrative hearings for review.
- 20          6. A negotiated contract and any plan of action for implementing a negotiated contract  
21          must be approved by the commissioneroffice of administrative hearings before  
22          becoming effective. Within thirty days of receipt of the negotiated contract, the  
23          commissioneroffice of administrative hearings shall review the proposed contract and  
24          provide a determination. If the commissioneroffice of administrative hearings  
25          disapproves the contract, the commissioneroffice of administrative hearings shall  
26          communicate to the joint negotiation representative any deficiencies and specific  
27          remedial measures for the deficiencies.
- 28          7. The commissioneroffice of administrative hearings shall adopt rules and procedures  
29          as necessary to carry out the responsibilities of this section.
- 30          8. This section does not apply to dental benefit plans providing covered services  
31          exclusively or primarily to individuals who are eligible for medical assistance.

- 1       9. Any negotiations under this section must be made in good faith. A person that does  
2       not negotiate in good faith may be subject to sanctions or penalties as determined by  
3       the ~~commissioner~~office of administrative hearings.
- 4       10. This section may not be construed to:
- 5       a. Permit a coordinated cessation reduction or limitation of dental services.  
6       b. Affect governmental approval of, or otherwise restrict activity by, dental providers  
7       which is not prohibited under federal antitrust law or require approval of contract  
8       terms to the extent the terms are exempt from state regulation under federal law.
- 9       11. The dental insurer is responsible for costs for services rendered by the office of  
10       administrative hearings and shall make payment for costs for services in accordance  
11       with section 54-57-07 and rules adopted by the office of administrative hearings.

12       **SECTION 2. AMENDMENT.** Section 54-57-07 of the North Dakota Century Code is  
13       amended and reenacted as follows:

14       **54-57-07. Compensation for provision of administrative law judges - Special fund**  
15       **established - Continuing appropriation.**

- 16       1. The office of administrative hearings shall require payment for services rendered by  
17       any administrative law judge provided by it to ~~any~~an agency, ~~to any~~unit of local  
18       government in this state, ~~to any~~tribal government in this state, ~~or to~~the judicial  
19       branch, or a nongovernmental entity, in the conduct of an administrative hearing and  
20       related proceedings, and proceedings under section 1 of this Act, and those entities  
21       must make the required payment to the office. Payment must include payment for  
22       support staff necessary to render administrative law judge services. Moneys received  
23       by the office of administrative hearings in payment for providing an administrative law  
24       judge to conduct an administrative hearing and related proceedings, and proceedings  
25       under section 1 of this Act, must be deposited into the operating fund of the office of  
26       administrative hearings.
- 27       2. The office of administrative hearings shall require payment for mileage, meals, and  
28       lodging in connection with services rendered by an administrative law judge provided  
29       to ~~any~~an agency, ~~to any~~unit of local government in this state, ~~to any~~tribal government  
30       in this state, ~~or to~~the judicial branch, or a nongovernmental entity, in the conduct of an  
31       administrative hearing and related proceedings, and proceedings under section 1 of

1 this Act, and those entities must make the required payment to the office. Payment for  
2 meals and lodging must be in the amounts allowable under section 44-08-04. Payment  
3 for mileage when using state vehicles must be in amounts set for user charges under  
4 section 24-02-03.5. All other payments must be in amounts allowed for other state  
5 officials and employees. Either general fund or special fund moneys, or other income,  
6 may be used for the payment of mileage, meals, and lodging under this subsection.

7 3. A special fund is established in the state treasury and designated as the administrative  
8 hearings fund. The office of administrative hearings shall deposit in the fund all  
9 moneys received by it in payment for providing services rendered by any  
10 administrative law judge in the conduct of an administrative hearing and related  
11 proceedings, and proceedings under section 1 of this Act, under this chapter, as well  
12 as all moneys received by the office in payment for mileage, meals, and lodging in  
13 connection with providing any administrative law judge to conduct an administrative  
14 hearing and related proceedings, and proceedings under section 1 of this Act. The  
15 moneys in the fund are a standing and continuing appropriation and are appropriated,  
16 as necessary, for the following purposes:

- 17 a. For the office of administrative hearings to pay for salaries, wages, benefits,  
18 operating expenses, and equipment, including payment to temporary  
19 administrative law judges, as necessary, for the purpose of providing requested  
20 administrative law judges to ~~agencies~~an agency, ~~to any~~ unit of local government  
21 in this state, ~~to any~~ tribal government in this state, ~~or to~~ the judicial branch, or a  
22 nongovernmental entity.
- 23 b. For the office of administrative hearings to pay mileage, meals, and lodging to  
24 any administrative law judges, as necessary, in connection with the services to be  
25 provided under this chapter.