

April 25, 2011

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2276

That the House recede from its amendments as printed on pages 1022-1024 of the Senate Journal and pages 1135-1137 of the House Journal and that Reengrossed Senate Bill No. 2276 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to the North Dakota immunization program; to amend and reenact section 23-01-05.3 of the North Dakota Century Code, relating to reporting immunization data; to provide for a legislative management study; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 23-01-05.3 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-05.3. Immunization data.**

1. The state department of health may establish an immunization information system and may require the childhood immunizations specified in subsection 1 of section 23-07-17.1 and other information be reported to the department. The state department of health may only require the reporting of childhood immunizations and other data upon completion of the immunization information reporting system. A health care provider who administers a childhood immunization shall report the patient's identifying information, the immunization that is administered, and other required information to the department. The report must be submitted using electronic media, and must contain the data content and use the format and codes specified by the department.
2. If a health care provider fails to submit an immunization report required under this section within four weeks of vaccination:
  - a. That health care provider may not order or receive any vaccine from the North Dakota immunization program until that provider submits all reports required under this section.
  - b. The state department of health shall make a report to that health care provider's occupational licensing entity outlining that provider's failure to comply with the reporting requirements under this section.
3. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange immunization data in any manner with one another. Immunization data that may be exchanged under this section is limited to the date and type of

immunization administered to a patient and may be exchanged regardless of the date of the immunization.

**SECTION 2.** A new chapter to title 23 of the North Dakota Century Code is created and enacted as follows:

**Definitions.**

As used in this chapter:

1. "Department" means the state department of health.
2. "Health insurance coverage" means any hospital and medical expense-incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes benefits that pay the costs of or provide medical, surgical, or hospital care or, if selected by the eligible individual, chiropractic care.
  - a. Health insurance coverage does not include any one or more of the following:
    - (1) Coverage only for accident or disability income insurance, or any combination of the two;
    - (2) Coverage issued as a supplement to liability insurance;
    - (3) Liability insurance, including general liability insurance and automobile liability insurance;
    - (4) Workers' compensation coverage or insurance;
    - (5) Automobile medical payment insurance;
    - (6) Credit-only insurance;
    - (7) Coverage for onsite medical clinics; and
    - (8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.
  - b. Health insurance coverage does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:
    - (1) Limited scope dental or vision benefits;
    - (2) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of this care; and
    - (3) Other similar limited benefits specified under federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.].

- c. Health insurance coverage does not include any of the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance; there is no coordination between the provision of the benefits; there is any exclusion of benefits under any group health insurance coverage maintained by the same plan sponsor; and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same sponsor:
    - (1) Coverage only for specified disease or illness; and
    - (2) Hospital indemnity or other fixed indemnity insurance.
  - d. Health insurance coverage does not include the following if offered as a separate policy, certificate, or contract of insurance:
    - (1) Coverage supplemental to the coverage provided under chapter 55 of United States Code title 10 [10 U.S.C. 1071 et seq.] relating to armed forces medical and dental care; and
    - (2) Similar supplemental coverage provided under a group health plan.
- 3. "Insurer" means any insurance company, nonprofit health service organization, fraternal benefit society, and health maintenance organization and any other entity providing or selling health insurance coverage or health benefits that are subject to state insurance regulation.
  - 4. "North Dakota immunization program" means the program administered by the department to provide vaccinations to North Dakota children consistent with state and federal law.
  - 5. "Program-eligible child" means any child who is under nineteen years of age, whose custodial parent or legal guardian resides in this state, who receives vaccinations from a North Dakota provider, and who is not eligible for the vaccines for children program.
  - 6. "Third-party administrator" means a person that administers payments for health care services on behalf of a client health plan in exchange for an administrative fee.
  - 7. "Vaccine" means any vaccine recommended by the federal advisory committee on immunization practices of the centers for disease control and prevention.
  - 8. "Vaccines for children program" is a federally funded program that provides vaccines at no cost to eligible children pursuant to section 1928 of the Social Security Act [42 U.S.C. 1396S].

### **Immunization program - Provider choice.**

As part of the North Dakota immunization program the department shall implement a provider choice system as part of the state's implementation of the vaccines for children program. This provider choice system must provide a health care provider participating in the state's vaccines for children program or in any other immunization program for children, adolescents, or adults which is administered

through the state using federal or state funds may select any licensed vaccine, including combination vaccines, and any dosage forms that have in effect a recommendation from the federal advisory committee on immunization practices. This section does not apply in the event of a disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

#### **Immunization program - Vaccine ordering program - Funding - Limitations.**

1. As part of the North Dakota immunization program the department shall establish a program through which the department orders vaccines through the federal government.
  - a. The department shall supply all providers with the ordered vaccines. A provider that receives vaccines under this vaccine ordering program shall administer the vaccines to program-eligible children.
  - b. A provider that receives vaccines under this vaccine ordering program may not bill an insurer for the cost of the vaccine but may charge an administration fee.
2. The department shall fund this vaccine ordering program first through participation in the vaccines for children program and the federal section 317 immunization grant program and then through assessments collected from insurers and third-party administrators. The department shall identify methodology and procedures for determining assessments that are fair and equitable for insurers and third-party administrators, including a third-party administrator for a self-insurance plan. The department may assess a subgroup of insurers and third-party administrators based on immunization volume or other factors as approved by the department. The department shall provide for any additional matters necessary for the implementation and administration of the fund.
3. In addition to the vaccines supplied to providers under the vaccines for children program and the federal section 317 immunization grant program under the federal vaccine purchasing contract, no more than ten percent of the remaining vaccines the department supplies under this section may be purchased under the federal vaccine purchasing contract.

#### **Vaccine ordering program - Assessment.**

1. An insurer or third-party administrator shall pay the insurer's or third-party administrator's annual assessment on the dates specified by the department. The department shall establish payment dates that are at least quarterly but which may be more frequent.
2. Within sixty days of the department sending the notice of assessment to the insurer or third-party administrator, that insurer or third-party administrator shall pay the department the assessment.
3. For late or nonpayment of an assessment by an insurer or third-party administrator, the department shall impose interest at the rate of one percent of the unpaid assessment due for each month or fraction of a month during which the assessment remains unpaid, computed from the due date of the assessment to the date paid, excepting the month in which

the assessment was required to be paid or the assessment became due. If an insurer's or third-party administrator's assessment remains partly or fully unpaid for more than ninety days from the due date, the department may impose a penalty not to exceed two times the amount of the unpaid assessment. In addition, the department may refer the insurer or third-party administrator to the insurance commissioner who may use any sanctions available to penalize for nonpayment of the assessment.

4. For good cause, an insurer or third-party administrator may request that the department grant a deferment from all or part of an assessment. The department may defer all or part of the assessment if the department determines the payment of the assessment would place the insurer or third-party administrator in a financially impaired condition, as provided under title 26.1. If all or part of an assessment against an insurer or third-party administrator is deferred, the amount deferred may be assessed against the other insurers and third-party administrators in a manner consistent with the basis for assessment provided under this section. The insurer or third-party administrator receiving the deferment remains liable to the North Dakota vaccine fund for the amount deferred and may be referred to the insurance commissioner who may use any sanctions available.
5. The department shall use all funds received through these assessments for the purposes expressly authorized by this chapter. The department may not use these assessment funds for any purpose that is not expressly authorized under this chapter.

#### **North Dakota vaccine fund.**

There is created in the state treasury the North Dakota vaccine fund. Moneys in the North Dakota vaccine fund must be appropriated by the legislative assembly solely for purposes established by this chapter. All interest and earnings of the North Dakota vaccine fund must be retained in the fund. Any entity subject to this assessment is not entitled to a credit for this assessment against tax due under section 26.1-03-17. Administrative costs associated with establishing and operating the North Dakota vaccine fund must be paid out of the fund.

**SECTION 3. LEGISLATIVE MANAGEMENT IMMUNIZATION STUDY.** During the 2011-12 interim, the legislative management shall consider studying the North Dakota immunization program. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 4. EFFECTIVE DATE.** Sections 1 and 2 of this Act become effective October 1, 2011."

Renumber accordingly