

Sixty-ninth
Legislative Assembly
of North Dakota

**FIRST ENGROSSMENT
with House Amendments**

ENGROSSED 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 43-28 of the North Dakota
2 Century Code, relating to joint negotiations by dental providers with dental insurers.

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

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

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

- 7 1. As authorized under this section, a dental provider and a dental insurer may enter into
8 voluntary non-fee-related joint negotiations. Before commencing voluntary joint
9 negotiations, a joint negotiation representative shall notify the attorney general of its
10 intent to engage in voluntary joint negotiations. The notice must be in writing and
11 include:
- 12 a. The matters, including terms and conditions, to be negotiated;
 - 13 b. The identity and location of all dental providers participating in the voluntary joint
14 negotiations;
 - 15 c. The identity, location, and market share of the dental insurer the dental providers
16 seek to engage in voluntary joint negotiations;
 - 17 d. A statement explaining the circumstances create the need for voluntary joint
18 negotiations and the benefits anticipated from the voluntary joint negotiations;
19 and
 - 20 e. The joint negotiation representative's procedures to ensure compliance with this
21 section.

- 1 2. At the time of the filing with the attorney general, the joint negotiation representative
2 shall provide a copy to the dental insurer of its notice and any other materials
3 submitted to the attorney general. The dental insurer may provide additional
4 information to the attorney general regarding matters described in this section.
- 5 3. The attorney general shall review the notice to determine whether the proposed
6 voluntary joint negotiations comply with law and public policy, and shall, within ninety
7 days, unless a thirty day extension is approved by the parties, notify the joint
8 negotiation representative and the dental insurer whether voluntary joint negotiations
9 are authorized under this section. The attorney general, in determining whether
10 voluntary joint negotiations are authorized, shall consider the following factors:
 - 11 a. The stated necessity and anticipated benefits of voluntary joint negotiations;
 - 12 b. The market and bargaining power of the parties;
 - 13 c. A party's ability to control or steer consumers, dictate terms of contracts, impose
14 final or nonnegotiable terms, or dictate or limit products or services available or
15 offered to consumers;
 - 16 d. The contract terms to be negotiated, and the contract terms' potential effect on
17 the ability to provide quality care or medically appropriate care without delay and
18 difficulty;
 - 19 e. The risk of anticompetitive effects; and
 - 20 f. The potential effect on price, quality, choice, or access to products or services for
21 consumers or others.
- 22 4. The attorney general may request additional information from the parties at any point
23 during the process or during the parties' negotiations.
- 24 5. Upon a determination by the attorney general that voluntary joint negotiation is
25 authorized under this section, and after a duly authorized officer of the dental insurer
26 and all dental providers seeking voluntary joint negotiations have granted written
27 consent, two or more dental providers practicing in the service area of the dental
28 insurer may jointly engage in voluntary negotiations with the dental insurer regarding
29 the following non-fee-related matters:
 - 30 a. Definition of medical necessity and other conditions of coverage.
 - 31 b. Utilization management criteria and procedures.

- 1 c. Clinical practice guidelines.
- 2 d. Preventative care and other medical management policies.
- 3 e. Patient referral standards and procedures.
- 4 f. Drug formularies and standards for prescribing off-formulary drugs.
- 5 g. Quality assurance programs.
- 6 h. Liability terms for a dental provider and dental insurer.
- 7 i. Administrative procedures.
- 8 j. Credentialing standards and procedures for selection, retention, and termination
- 9 of participating dentists.
- 10 k. Mechanisms for resolving disputes between the dental insurer and dental
- 11 providers.
- 12 l. Inclusion or alteration of a contractual term or condition, unless the inclusion or
- 13 alteration is otherwise required by federal or state law.
- 14 6. As used in this section, "fee-related matters" includes the amount of payment, the
- 15 amount of discount, procedure codes or descriptions of services covered by payment,
- 16 appropriate grouping of procedure codes, and any other matter directly relating to the
- 17 amount of reimbursements paid to or revenue received by dental providers.
- 18 7. a. Upon a determination by the attorney general that voluntary joint negotiations are
- 19 authorized under this section, dental providers may communicate with each other
- 20 and a joint negotiation representative authorized to negotiate on behalf of the
- 21 dental providers with the dental insurer concerning any contractual term or
- 22 condition to be negotiated, subject to any limitations imposed by the attorney
- 23 general. As used in this section, a "joint negotiation representative" means a
- 24 representative selected by two or more independent dental providers to engage
- 25 in voluntary joint negotiations with a dental insurer on behalf of the dental
- 26 providers.
- 27 b. The dental providers may agree to be bound by the terms and conditions
- 28 negotiated by the joint negotiation representative.
- 29 8. A person may not act as a joint negotiation representative without express permission
- 30 from the office of the attorney general.

- 1 9. a. Upon the joint negotiation representative and dental insurer determining a
2 voluntary agreement has been reached on contractual terms or conditions that
3 are the subject matter of the negotiations, the joint negotiation representative
4 shall submit to the attorney general, for its determination, a copy of the proposed
5 contract or agreed upon terms between the dental providers and the dental
6 insurer. At the time of the submission to the attorney general, the joint negotiation
7 representative shall provide a copy of the proposed materials submitted to the
8 attorney general to the dental insurer, which may provide additional information to
9 the attorney general regarding the matters in this section.
- 10 b. Within ninety days of receipt of the proposed contract or agreed upon terms, the
11 attorney general shall review the proposed contract or agreed upon terms and
12 provide a determination.
- 13 c. The attorney general may consider the following factors in reviewing a proposed
14 contract or term, a negotiated contract or term, and the plan of action for
15 implementing a negotiated contract or term under this section:
- 16 (1) Fairness of the contract and whether the contract terms are consistent with
17 applicable laws and regulations;
- 18 (2) Details provided about the negotiation process;
- 19 (3) The market and bargaining power of the parties;
- 20 (4) The contract terms and the benefits achieved by the parties;
- 21 (5) Potential benefit to consumers and other purchasers of dental insurance;
- 22 (6) Risk of harm to consumers and others, including the likelihood of increase in
23 prices or reduction in quality, choice, or access to dental care or dental
24 insurance;
- 25 (7) Risk of anticompetitive effects and potential effects on third parties,
26 including creation of barriers to entry for new market participants, unfair
27 competition, or exclusionary effects; and
- 28 (8) Promotion of increased infrastructure and innovation in a market.
- 29 d. Upon request from the attorney general, the joint negotiation representative, a
30 participating dental provider, and the dental insurer shall provide additional
31 information to inform the attorney general's determination under this section.

- 1 10. The attorney general may adopt rules and procedures as necessary to carry out the
- 2 responsibilities of this section.
- 3 11. This section does not apply to dental benefit plans providing covered services
- 4 exclusively or primarily to individuals who are eligible for medical assistance.
- 5 12. This section may not be construed to:
- 6 a. Permit a coordinated cessation, reduction, or limitation of dental services.
- 7 b. Affect government approval of, or otherwise restrict activity by, dental providers
- 8 which is not prohibited under federal antitrust law or require approval or contract
- 9 terms to the extent the terms are exempt from state regulation under federal law.