

**DRAFT: SB2375 DELETE-ALL AMENDMENT**

**SECTION 1.** A new section to chapter 43-28 of the North Dakota Century Code is created 7 and enacted as follows:

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

- I. As authorized under this section, dental providers and dental insurers may enter into voluntary non-fee-related joint negotiations. Prior to commencing voluntary joint negotiations, a joint negotiation representative shall notify the attorney general of its intent to engage in voluntary joint negotiations. The notice must be in writing and include:
  - a. The matters, including terms and conditions, to be negotiated,
  - b. The identity and location of all dental providers participating in the voluntary joint negotiation,
  - c. The identity, location, and market share of the dental insurer the dental providers seek to engage in voluntary joint negotiation,
  - d. A statement explaining the circumstances that creates the need for voluntary joint negotiation and the benefits anticipated to result from voluntary joint negotiation, and
  - e. The joint negotiation representative's procedures to ensure compliance with this chapter.

At the time of the filing with the attorney general, the joint negotiation representative shall provide a copy to the dental insurer of its notice and any other materials then or thereafter submitted to the attorney general. The dental insurer may provide additional information to the attorney general regarding matters described in this section.

The attorney general shall review the notice to determine whether the proposed voluntary joint negotiation complies with law and public policy, and shall, within ninety days, unless a thirty-day extension is requested, notify the joint negotiation representative and the dental insurer whether voluntary joint negotiation is authorized pursuant to this section. The attorney general, in determining whether voluntary joint negotiation is authorized, shall consider the following factors:

- i. The stated necessity and anticipated benefits of voluntary joint negotiation,
- ii. The parties market power and bargaining power,
- iii. A party's ability to control or steer consumers, dictate terms of contracts, impose take-it-or-leave-it terms, or dictate or limit products or services available or offered to consumers,
- iv. The contract terms to be negotiated, and the contract terms potential effect on the ability to provide quality care or medically appropriate care without delay and difficulties,
- v. The risk of anticompetitive effects, and
- vi. The potential effect on price, quality, choice, or access to products or services for consumers or others.

The attorney general may request additional information from the parties at any point during this process or during the parties' negotiations.

2. Upon a determination by the attorney general that voluntary joint negotiation is authorized under this section, and after a duly authorized officer of the dental insurer and all dental providers seeking voluntary joint negotiations have granted written consent, two or more dental providers practicing in the service area of the dental insurer may jointly engage in voluntary negotiations with the dental insurer regarding the following non-fee-related matters:
  - a. Definition of medical necessity and other conditions of coverage.
  - b. Utilization management criteria and procedures.
  - c. Clinical practice guidelines.
  - d. Preventative care and other medical management policies.
  - e. Patient referral standards and procedures.
  - f. Drug formularies and standards for prescribing off-formulary drugs.
  - g. Quality assurance programs.
  - h. Liability terms for a dental provider and dental insurer.
  - i. Administrative procedures.
  - j. Credentialing standards and procedures for selection, retention, and termination of participating dentists.
  - k. Mechanisms for resolving disputes between the dental insurer and dental providers.
  - l. Inclusion or alteration of a contractual term or condition, except when the inclusion or alteration is otherwise required by federal or state law.

For the purposes of this section, "fee-related matters" include the amount of payment, the amount of discount, procedure codes or descriptions of services covered by payment, appropriate grouping of procedure codes, and any other matter directly relating to the amount of reimbursements paid to or revenue received by dental providers.

3.
  - a. Upon a determination by the attorney general that voluntary joint negotiations are authorized under this section, dental providers may communicate with each other and a joint negotiation representative authorized to negotiate on behalf of the dental providers with the dental insurer concerning any contractual term or condition to be negotiated, subject to any limitations imposed by the attorney general. For the purposes of this section, a "joint negotiation representative" means a representative selected by two or more independent dental providers to engage in voluntary joint negotiations with a dental insurer on behalf of the dental providers.
  - b. The dental providers may agree to be bound by the terms and conditions negotiated by joint negotiation representative.
4. A person may not act as a joint negotiation representative without express permission from the attorney general's office.



5. Upon the joint negotiation representative and dental insurer determining a voluntary agreement has been reached on contractual terms or conditions that are the subject matter of the negotiations, the joint negotiation representative shall submit to the attorney general, for its determination, a copy of the proposed contract or agreed-upon term or terms between the dental providers and the dental insurer. At the time of the submission to the attorney general, the joint negotiation representative shall provide a copy of the proposed materials submitted to the attorney general to the dental insurer, which may provide additional information to the attorney general regarding the matters in this section.

Within 90 days of receipt of the proposed contract or agreed upon term or terms, the attorney general shall review the proposed contract or agreed upon term or terms and provide a determination.

The attorney general may consider the following factors in reviewing a proposed contract or term, a negotiated contract or term, and the plan of action for implementing a negotiated contract or term under this section:

- a. Fairness of the contract and whether the contract terms are consistent with applicable laws and regulations,
- b. Details provided about the negotiation process,
- c. The parties market power and bargaining power,
- d. The contract terms and the benefits achieved by the parties,
- e. Potential benefit to consumers and other purchasers of dental insurance,
- f. Risk of harm to consumers and others, including likelihood of increase in prices or reduction in quality, choice, or access to dental care or dental insurance,
- g. Risk of anticompetitive effects and potential effects on third parties, including creation of barriers to entry for new market participants, unfair competition, or exclusionary effects, and
- h. Promotion of increased infrastructure and innovation in a market.

The joint negotiation representative, a participating dental provider, and the dental insurer shall, upon request from the attorney general, provide additional information to inform the attorney general's determination under this section.

6. The attorney general may adopt rules and procedures as necessary to carry out the responsibilities of this section.
7. This section does not apply to dental benefit plans providing covered services exclusively or primarily to individuals who are eligible for medical assistance.
8. This section may not be construed to:
  - a. Permit a coordinated cessation reduction or limitation of dental services.

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