

**2025 SENATE HUMAN SERVICES**

**SB 2375**

# 2025 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Lincoln Room, State Capitol

SB 2375  
2/3/2025

Relating to joint negotiations by dental providers with dental insurers; and to provide a penalty.
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Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

9:38 a.m. Chairman Lee opened the hearing.

### **Discussion Topics:**

- Hearing extended for additional testimony

9:38 a.m. Senator Jose Castaneda introduced the bill. 9:40 a.m.

Chairman Lee closed the hearing.

### **Additional written testimony:**

Sarah Glood submitted written testimony in opposition #33550.

9:40 a.m. Chairman Lee closed the hearing.

*Andrew Ficek, Committee Clerk*

## Testimony

Senate Bill 2375

Senate Human Services Committee

Saturday, February 1, 2025

Thank you for the opportunity to present this testimony. My name is Sarah Glood, and I am writing to you today in opposition of SB 2375. Dental hygiene and oral care are vital to our overall health, but unfortunately not all North Dakotans can afford proper dental care. I'd like to share with you a personal story where affordable dental coverage was instrumental in saving my brother's life.

My family suffers from a long history of hereditary gastroesophageal reflux disease (GERD). In some cases, like my brother's, the condition is so bad that the stomach acid would reflux into his mouth which resulted in enamel erosion. Due to the continual erosion, he would frequently experience bacterial infections in his mouth, sinus cavities, and ultimately his lungs. These infections were repeatedly treated with oral antibiotics, each time with the prescription strength and dosage required to eliminate the infection increasing. One morning while at work in February of 2021, he found himself short of breath. An ambulance was dispatched, and he was transported to the hospital. After a few hours in the emergency room, they suspected Covid-19 due to the ongoing pandemic. When multiple Covid-19 tests came back negative, the next suspected illness was tuberculosis, and they placed him in isolation in a positive pressure room. After the tuberculosis test came back negative, his healthcare team was stumped by the mysterious cause of his lung infection. Eventually an oral surgeon was consulted to review his case, and it was through the surgeon's research that they determined the source of this illness was his deteriorated oral health. The oral surgeon's recommendation for long-term treatment was a complete mouth extraction. He ultimately spent 13 days in the critical care unit with critical lab values resulting in two chest tubes and IV antibiotics. After discharge, he then received a six-week course of outpatient IV antibiotic therapy to ensure the infection did not rebound. In total, his hospital stay and outpatient services cost North Dakota Medicaid \$123,000.

In the weeks and months after his hospitalization he went on an extensive search for new employment, with the criteria being that his new employer must offer medical and dental insurance. While his employer of 4 years paid a decent amount, he was still living paycheck to paycheck, and he was not eligible for their insurance. Seeking out dental care as an uninsured individual was unobtainable as well due to the out-of-pocket costs of those services. Those determinants inhibited his ability to seek out proper oral care. In July of 2022 he successfully started employment at a new organization that offered medical and dental insurance. He immediately made an effort to find a participating dental provider willing to take his case and work on a treatment plan, staggering out the treatments between the carrier's annual maximums and what monthly payments my brother could afford to help him live his healthiest life. Two and a half years later after a complete mouth extraction and a full set of dentures, he has not had a single oral, sinus or lung infection decreasing the cost of needed medical treatments. Further medical treatments which no doubt would have contributed to our already rising cost of healthcare.

Dental care in the United States is a luxury not a right. It is not affordable for the uninsured and for most Americans, access to dental care comes directly from their employer. In these tough financial times, when an employer is looking to cut costs to financially survive, dental insurance is the first to go. The requirements outlined in Senate Bill 2375 only aim to increase the cost of dental insurance. According to a 2024 Cotiviti study, 3-10% of dental services were considered improper. Improper treatments can come in the form of overtreatment such as placing unnecessary crowns or performing root canals, to miscoding which is the practice of billing more expensive procedures than the ones that were performed. Introducing a third-party such as a dental carrier provides some oversight which ultimately protects the consumer. Senate bill 2375 would essentially allow dental providers to set payment and utilization practices without oversight or prevention of improper practices thus increasing the cost of a third-party payment and subsequently impacting the consumers, both employer and employee's, premium amount. As of 2023, 68.5 million Americans did not have access to dental insurance, this bill would only stand to increase that number if passed.

Thank you for the opportunity and consideration.



# 2025 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Lincoln Room, State Capitol

SB 2375  
2/10/2025

Relating to joint negotiations by dental providers with dental insurers; and to provide a penalty.

9:01 a.m. Chairman Lee called the meeting to order.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

### **Discussion Topics:**

- Collective bargaining
- Availability of services
- Medicaid reimbursement
- Disallowed clause
- Potential monopolies

9:01 a.m. Senator Castaneda introduced the bill in favor and submitted testimony #36585 and #36655.

9:13 a.m. William Sherwin, Executive Director of The ND Dental Association, testified in favor and submitted testimony #36610 and #36611.

9:40 a.m. Hope Hogan, Director of the North Dakota Office of Administrative Hearings, testified in favor.

9:46 a.m. Davide Shibley, North Dakota State Board of Dental Examiners, testified in favor.

9:53 a.m. Dennis Pathroff, American Council of Life Insurers, testified in opposition and submitted testimony #36417.

9:58 a.m. Chrystal Bartuska, Director with the North Dakota Insurance Department, testified in neutral.

10:01 a.m. Elin S. Alm, Consumer Protection & Antitrust Division Office of The Attorney General Of North Dakota, testified in neutral.

10:07 a.m. Chairman Lee closed the hearing.

*Andrew Ficek, Committee Clerk*

**Alex Young**

Regional Director – State Relations

(202) 624-2341 t

[alexyoung@acli.com](mailto:alexyoung@acli.com)**Re: Senate Bill 2375 – Oppose**

Dear Chairman Lee and Members of the Senate Human Services Committee:

On behalf of the American Council of Life Insurers (ACLI), we appreciate the opportunity to share our concerns with SB. 2375 that permit for the joint negotiation provider contracts between two or more dentists and the insurer. We respectfully oppose the bill due to the administrative burden and consumer impact.

**Dental Is Different**

Dental insurance is fundamentally different than medical insurance. A dental plan manages costs by paying a greater share of preventative services to encourage regular dental visits that can reduce the need for more costly procedures in the future. Consumers share a higher percentage of the cost for restorative procedures such as crowns, periodontal surgery, and dentures. Higher cost-sharing for certain procedures keeps dental premiums low and affordable. Dental plan premiums are also on average only 1/20 of medical premiums. In North Dakota, dental premiums are on average, about \$33 per month. Therefore, dental plans can be very sensitive to increases in administrative costs.

**Joint Contract Negotiations**

Allowing providers to negotiate nearly every aspect of the provider-plan relationship would impede several internal processes put in place to protect consumers and providers, including claims review. Claims review protects patients from waste, fraud, and abuse which could harm their oral or overall health with serious long-term implications. The National Health Care Anti-Fraud Association estimates that dental fraud, waste and abuse costs approximately \$12.5 billion, or 5% of total spending on dental care in the U.S. each year. Allowing for the negotiation of utilization management criteria and procedures, clinical practice guidelines, and definitions of medical necessity and other conditions of coverage would significantly reduce the ability of dental plans to protect patients, leaving them more susceptible to waste, fraud, and abuse. Preserving this patient protection is paramount because most patients are unable to determine whether waste, fraud, or abuse has occurred. Patients rely on these processes to ensure that any services performed are necessary and appropriate.

Providers currently maintain the right to negotiate their contracts, including terms and fee scheduled. Many of the contract elements outlined in SB. 2375 are already necessitated by state

American Council of Life Insurers | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 273 member companies represent 93 percent of industry assets in the United States.

law or industry practice. Additional changes to individual contracts would prove administratively burdensome to plans and providers, which could result in higher costs for consumers. The American Dental Associations contract negotiation guide advises that contract negotiations should be conducted individually, between the dentist and plan, and not with or on behalf of other dentists<sup>1</sup>. For these reasons we believe that SB. 2375 would not be good for the insurance market, accessibility, and consumer cost.

Best,

A handwritten signature in black ink, appearing to read "Alex Young", written in a cursive style.

Alex Young

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<sup>1</sup> ADA, Contract Negotiation Guide - [link](#)



# North Dakota Senate

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## Senator Jose Castaneda

District 40  
309 Seventh Street NW  
Minot, ND, 58703-3061  
[jcastaneda@ndlegis.gov](mailto:jcastaneda@ndlegis.gov)

## COMMITTEES:

Judiciary  
State and Local Government (Vice Chair)

### SB 2375 Testimony Senate Human Services Committee February 10, 2025

Chair Lee and Members of the Senate Human Services Committee,

For the record, I am Jose Castaneda, Senator from District 40, North Minot.

SB 2375 will have a lasting impact on the access that our constituents will have to dentists in North Dakota. Too often dental providers do not have the ability nor the opportunity to negotiate with insurance companies to work out a mutual agreement on compensation for services rendered. When a dental provider is approached by an insurance company to see if they will become an in-network provider, it is often a take it or leave it scenario. With a limited ability to negotiate, dental providers may have to decline the insurance company. The ones that are being affected are our constituents. Since most patients usually only have one dental insurance plan, they are limited to only dental providers that honor their plan. The goal would be that every dental provider would honor as many insurance plans as possible, ultimately benefiting the consumer, our constituents.

This bill would authorize, two or more dental providers practicing in the service area of a dental insurer to jointly negotiate with the dental insurer and engage in related joint activity regarding non-fee-related matters. The Office of Administrative Hearings would arbitrate the negotiations.

As for fees and fee related matters: They can only be brought up for negotiation if it is found by the Office of Administrative Hearings that a dental insurer has substantial market power in a service area and any of the terms or conditions of the contract with the dental insurer pose an actual or potential threat to the quality and availability of patient care among covered individuals.

As you can see, I have provided each of you with an amendment. I have also e-mailed it to you. When the bill was first drafted, the Insurance Commission was the entity that seemed to make the most sense to arbitrate the negotiations. Upon further research, it became clear that the Commission would have a conflict of interest. The Office of Administrative Hearings is the agency that is perfectly suited to arbitrate these negotiations. The amendment replaces the Insurance Commission with the Office of Administrative Hearings, and moves section one from Century Code Title 26.1-36.9, Insurance, to Title 43-28, the Dentists chapter under Occupations and Professions. Section 2 under makes changes to Title 54-57-07, Compensation for provision of administrative law judges, under the Office of Administrative Hearings' chapter per their request.

In summary, Section 1 of SB 2375 details how the negotiations will take place, while section 2 details how arbitration will be paid for and makes allowances for Office of Administrative Hearings to receive payment from a non-governmental entity for arbitration services.

Thank you. I am happy to stand for any questions that you may have.



# Creating Value and Access in Dental Networks for Patients through Joint Negotiations



**In many markets, the dominance by a very small number of large insurance companies leaves dentists with almost no power in negotiating contracts that work for them and their patients. Passing legislation to allow Joint Negotiations can help level this playing field**

## Patient Concerns

Recent mergers of health and dental insurers have led to many markets where a small number of large insurance companies dominate.

Due to the lack of market competition, large insurers often approach contract negotiations with a "take it or leave it" approach without the opportunity for providers, such as dentists, to negotiate. Because most dental practices are also small businesses, the scales are tipped even further in the insurers' favor.

Dentists value consistency-of-care. They know that dropping from insurer networks could result in disruption of care for their patients. Insurance companies bet on the fact that dentists will be reluctant to leave their networks, taking advantage of dentists' commitment to patient care. Adding to the pressure dentists face, it has also become increasingly difficult for dentists to afford the radically reduced fees they must accept to remain "in network."

If this situation is left unchecked, patient access to their chosen provider will likely be diminished as dentists are compelled to drop from networks or seek more conducive environments in which to practice.

## Solution

The North Dakota Dental Association (NDDA) supports legislation that would help dentists in their negotiations with insurance companies fostering a more competitive market for dental coverage. The result would be more care provided at an affordable cost. NDDA is prepared to help dentists take advantage of a law that allows them to band together to benefit their patients once passed.

## What Are the Benefits of Joint Negotiations Laws?

Dentists in small practices are empowered to effectively negotiate contract terms with large insurers to the benefit of their patients.

Dental insurance contracts will reflect a better balance of the needs of patients, dentists, and insurers.

Improved coverage designs to help connect patients to the dental care they need.



**North Dakota**  
DENTAL ASSOCIATION

**To learn more about Joint Negotiation legislation in North Dakota, please contact the North Dakota Dental Association at 701-223-8870 or William Sherwin at [wsherwin@smilenorthdakota.org](mailto:wsherwin@smilenorthdakota.org).**



## Joint Negotiations by Dentists with Carriers Federal and State Perspectives

### *Antitrust Law in General*

The goal of antitrust laws at the federal level is to promote marketplace competition by restricting unreasonable restraint of trade and joint activity by competitors. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) are the agencies that enforce antitrust laws. Generally speaking, these agencies regard joint negotiations over fees by independent health care providers with carriers as price-fixing—an antitrust violation.

There are legislative approaches that appear to be available to address the DOJ and FTC enforcement of antitrust laws at the state level. While there may be a number of approaches, we focus only on the legislative/advocacy effort.

Federal antitrust laws generally prohibit joint negotiations by competitors because they can reduce market competition. The *state action doctrine* appears to provide a nuance with respect to these antitrust laws for anticompetitive activity when a state legislature permits the activity and the state actively supervises the activity.

### *State Action Doctrine*

The state action doctrine, based on a 1943 Supreme Court decision, establishes that the Sherman Antitrust Act does not “restrain state action or official action directed by a state.” Application of the concept, born out of *Parker v. Brown*, ***shields certain anticompetitive conduct from federal scrutiny when such conduct is: a) in furtherance of a clearly stated state policy; and, b) actively supervised by the state.*** State supervision is required in order to ensure private parties are acting in the public good and not just furthering their own interests.

### *State Legislation*

Several states have taken some level of action in this area in the last decade or so. At least fourteen states have taken some form of public policy action for health care providers in general. Many state bills are limited to physicians, behavior health providers and/or dentists, while others are more general (i.e. applicable to ‘health care providers’). The states below are live linked to the state website that provides info on the bills.

- [Alaska](#)(p), [California](#), [Connecticut](#), [Florida](#) (bill available from ADA)(d)([New Jersey](#)(d)(S1033), [New York](#), [Massachusetts](#), [Michigan](#), [Ohio](#), [Rhode Island](#), [Tennessee](#), [Texas](#)\*, [Washington](#), [West Virginia](#).
  - **Bold type** = Enacted into law; (p) = Physician only; (d) = includes dentists either directly or indirectly virtue of broad definition
  - \* Law expired under sunset provision

25.1361.01001  
Title.

Prepared by the Legislative Council  
staff for Senator Castaneda  
February 7, 2025

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 ~~commissioner~~office 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 ~~commissioner~~office 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           ~~commissioner~~office 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 ~~commissioner~~office of  
11          administrative hearings shall review the proposed contract and provide a  
12          determination. If the ~~commissioner~~office of administrative hearings disapproves  
13          the contract, the ~~commissioner~~office 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          ~~commissioner~~office 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 ~~commissioner~~office of administrative hearings before  
22          becoming effective. Within thirty days of receipt of the negotiated contract, the  
23          ~~commissioner~~office of administrative hearings shall review the proposed contract and  
24          provide a determination. If the ~~commissioner~~office of administrative hearings  
25          disapproves the contract, the ~~commissioner~~office of administrative hearings shall  
26          communicate to the joint negotiation representative any deficiencies and specific  
27          remedial measures for the deficiencies.
- 28          7. The ~~commissioner~~office 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.

# 2025 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Lincoln Room, State Capitol

SB 2375  
2/11/2025

Relating to joint negotiations by dental providers with dental insurers; and to provide a penalty.

10:56 a.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

### Discussion Topics:

- Impact on small businesses
- Move to Administration of Hearings

11:03 a.m. Senator Hogan moved amendment LC#25.1361.01001.

11:04 a.m. Senator Van Oosting seconded the motion.

Senators	Vote
Senator Judy Lee	Y
Senator Kent Weston	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	AB
Senator Desiree Van Oosting	Y

Motion passed 5-0-1.

11:05 a.m. Senator Hogan moved Do Pass as Amended.

11:05 a.m. Senator Clemens seconded the motion.

Senators	Vote
Senator Judy Lee	Y
Senator Kent Weston	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	AB
Senator Desiree Van Oosting	Y

Motion passed 5-0-1.

Chairman Lee will carry the bill.

Senate Human Services Committee

SB 2375

02/11/2025

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11:07 a.m. Chairman Lee closed the hearing.

*Andrew Ficek, Committee Clerk*

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### SENATE BILL NO. 2375

Introduced by

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- 5             of participating dentists.
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- 7             provider.
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- 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 ~~commissioner~~office 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



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

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

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

**REPORT OF STANDING COMMITTEE  
SB 2375**

**Human Services Committee (Sen. Lee, Chairman)** recommends **AMENDMENTS** ([25.1361.01001](#)) and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2375 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

**2025 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2375**

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2375  
3/11/2025

A BILL for an Act to create and enact a new section to chapter 43-28 of the North Dakota Century Code, relating to joint negotiations by dental providers with dental insurers; to amend and reenact section 54-57-07 of the North Dakota Century Code, relating to compensation for the provision of administrative law judges; and to provide a penalty.

10:16 a. m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, T. Brown, Finley-DeVillie, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Member Absent: Representative C. Brown

### Discussion Topics:

- Non-binding arbitration
- State oversight and policy
- No other state
- Less protection for consumers
- ND would be an outlier
- Antitrust laws

10:16 a.m. Senator Jose L. Castaneda, District 40, Minot, ND, introduced, testified and submitted testimony #40351.

10:34 a.m. William R. Sherwin, Executive Director, The ND Dental Association, testified in favor and submitted testimony #39655, #39656, #39657, #39658, #39659, #39660, #39661, #39667, #39668 and #40595.

10:44 a.m. Parrell Grossman, Lobbyist, American Council of Life Insurers, testified in opposition and submitted testimony #40406.

11:07 a.m. David J. Schaibley, Executive Director, ND State Board of Dental Examiners, testified as neutral and submitted testimony #40259.

11:10 a.m. Elin Alm, Director, Consumer Protection and Antitrust Division, Office of the ND Attorney General, testified as neutral and submitted testimony #40575.

### Additional written testimony:

Alex Young, Legislative Director, American Council of Life Insurers (ACLI), submitted testimony in opposition #40212.

House Industry, Business and Labor Committee

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Bianca Balale, Director of Government Relations, National Association of Dental Plans (NADP), submitted testimony in opposition #40284.

11:20 a.m. Chairman Warrey closed the meeting.

*Diane Lillis, Committee Clerk*

# Creating Value and Access in Dental Networks for Patients through Joint Negotiations



**In many markets, the dominance by a very small number of large insurance companies leaves dentists with almost no power in negotiating contracts that work for them and their patients. Passing legislation to allow Joint Negotiation can help level this playing field**

## Patient Concerns

Recent mergers of health and dental insurers have led to many markets where a small number of large insurance companies dominate.

Due to the lack of market competition, large insurers often approach contract negotiations with a "take it or leave it" approach without the opportunity for providers, such as dentists, to negotiate. Because most dental practices are also small businesses, the scales are tipped even further in the insurers' favor.

Dentists value consistency-of-care. They know that dropping from insurer networks could result in disruption of care for their patients. Insurance companies bet on the fact that dentists will be reluctant to leave their networks, taking advantage of dentists' commitment to patient care. Adding to the pressure dentists face, it has also become increasingly difficult for dentists to afford the radically reduced fees they must accept to remain "in network."

If this situation is left unchecked, patient access to their chosen provider will likely be diminished as dentists are compelled to drop from networks or seek more conducive environments in which to practice.

## Solution

The North Dakota Dental Association (NDDA) supports legislation that would help dentists in their negotiations with insurance companies fostering a more competitive market for dental coverage. The result would be more care provided at an affordable cost. NDDA is prepared to help dentists take advantage of a law that allows them to band together to benefit their patients once passed.

## What Are the Benefits of Joint Negotiation Laws?

Dentists in small practices are empowered to effectively negotiate contract terms with large insurers to the benefit of their patients.

Dental insurance contracts will reflect a better balance of the needs of patients, dentists, and insurers.

Improved coverage designs to help connect patients to the dental care they need.



**To learn more about Joint Negotiation legislation in North Dakota, please contact the North Dakota Dental Association at 701-223-8870 or William Sherwin at [wsherwin@smilenorthdakota.org](mailto:wsherwin@smilenorthdakota.org).**



## Joint Negotiations by Dentists with Carriers Federal and State Perspectives

### *Antitrust Law in General*

The goal of antitrust laws at the federal level is to promote marketplace competition by restricting unreasonable restraint of trade and joint activity by competitors. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) are the agencies that enforce antitrust laws. Generally speaking, these agencies regard joint negotiations over fees by independent health care providers with carriers as price-fixing-an antitrust violation.

There are legislative approaches that appear to be available to address the DOJ and FTC enforcement of antitrust laws at the state level. While there may be a number of approaches, we focus only on the legislative/advocacy effort.

Federal antitrust laws generally prohibit joint negotiations by competitors because they can reduce market competition. The *state action doctrine* appears to provide a nuance with respect to these antitrust laws for anticompetitive activity when a state legislature permits the activity and the state actively supervises the activity.

### *State Action Doctrine*

The state action doctrine, based on a 1943 Supreme Court decision, establishes that the Sherman Antitrust Act does not “restrain state action or official action directed by a state.” Application of the concept, born out of *Parker v. Brown*, ***shields certain anticompetitive conduct from federal scrutiny when such conduct is: a) in furtherance of a clearly stated state policy; and, b) actively supervised by the state.*** State supervision is required in order to ensure private parties are acting in the public good and not just furthering their own interests.

### *State Legislation*

Several states have taken some level of action in this area in the last decade or so. At least fourteen states have taken some form of public policy action for health care providers in general. Many state bills are limited to physicians, behavior health providers and/or dentists, while others are more general (i.e. applicable to ‘health care providers’). The states below are live linked to the state website that provides info on the bills.

- [Alaska](#)(p), [California](#), [Connecticut](#), [Florida](#) (bill available from ADA)(d)([New Jersey](#))(d)(S1033), [New York](#), [Massachusetts](#), [Michigan](#), [Ohio](#), [Rhode Island](#), [Tennessee](#), [Texas](#)\*, [Washington](#), [West Virginia](#).
  - **Bold type** = Enacted into law; (p) =Physician only; (d) = includes dentists either directly or indirectly virtue of broad definition
  - \* Law expired under sunset provision



## Joint Negotiations Model Law Suggested Provisions

### **Findings, declarations relative to joint negotiations by dentists with carriers**

*(ADA note: the "Findings" include verbiage relative to physicians. This can be edited appropriately depending upon the scope of the proposed law. The points below are copied directly from the New Jersey law version on 3/11/2016 [[52:17B-196](#) thru 52:17B-209] and are similar to the Alaska law version on 3/11/2016 [[23.50.010](#) thru 23.50.099])*

- Active, robust and fully competitive markets for health care and dental services provide the best opportunity for the residents of this State to receive high-quality health care and dental services at an appropriate cost;
- A substantial amount of health care and dental services in this State is purchased for the benefit of patients by health and dental insurance carriers engaged in the financing of health care and dental services or is otherwise delivered subject to the terms of agreements between carriers and physicians and dentists;
- Carriers are able to control the flow of patients to physicians and dentists through compelling financial incentives for patients in their health and dental benefits plans to utilize only the services of physicians and dentists with whom the carriers have contracted;
- Carriers also control the health care and dental services rendered to patients through utilization management and other managed care tools and associated coverage and payment policies;
- Carriers are often able to virtually dictate the terms of the contracts that they offer physicians and dentists and commonly offer these contracts on a take-it-or-leave-it basis;
- The power of carriers to unilaterally impose provider contract terms jeopardizes the ability of physicians and dentists to deliver the superior quality health care and dental services traditionally available in this State;
- Physicians and dentists do not have sufficient market power to reject unfair provider contract terms offered by carriers that impede their ability to deliver medically appropriate care without undue delay or difficulties;
- Inadequate reimbursement and other unfair payment terms offered by carriers adversely affect the quality of patient care and access to care by reducing the resources that physicians and dentists can devote to patient care and decreasing the time that physicians and dentists are able to spend with their patients;
- Inequitable reimbursement and other unfair payment terms also endanger the health care infrastructure and medical progress by diverting capital needed for reinvestment in the health care delivery system, curtailing the purchase of state-of-the-art technology, the pursuit of medical research, and expansion of medical services, all to the detriment of the residents of this State;
- The inevitable collateral reduction and migration of the health care work force will also have negative consequences for the economy of this State;
- Empowering independent physicians and dentists to jointly negotiate with carriers as provided in this act will help restore the competitive balance and improve competition in the markets for health care and dental services in this State, thereby providing benefits for consumers, physicians and dentists and less dominant carriers;
- This act is necessary and proper, and constitutes an appropriate exercise of the authority of this State to regulate the business of insurance and the delivery of health care and dental services;
- The pro-competitive and other benefits of the joint negotiations and related joint activity authorized by this act, including, but not limited to, restoring the competitive balance in the market for health care services, protecting access to quality patient care, promoting the health care infrastructure and medical progress, and improving communications, outweigh any potential anti-competitive effects of this act; and
- It is the intention of the Legislature to authorize independent physicians and dentists to jointly negotiate with carriers and to qualify such joint negotiations and related joint activities for the State-action exemption to the federal antitrust laws through the articulated State policy and active supervision provided under this act.

# **Summary of Pertinent Sections**

## **§ ONE: Definitions relative to joint negotiations**

- Most states will wish to publish definitions that relate to their statutory construct.
  - Drawn from the New Jersey law are the following examples:
  - 1. "Joint negotiation representative" means a representative selected by two or more independent physicians or dentists to engage in joint negotiations with a carrier on their behalf.
  - 2. "Carrier" (enter common state definition)
  - 3. "Covered person" (enter common state definition)
  - 4. "Covered service" means a health care or dental service provided to a covered person under a health benefits or dental plan for which the carrier is obligated to pay benefits or provide services.
  - 5. "Dental plan" means a benefits plan, which pays or provides dental expense benefits for covered services and is delivered or issued for delivery in this State by or through a dental carrier.
  - 6. "Health benefits plan" (enter common state definition-be certain to include dental care coverage only plans)
  - 7. Otherwise common definitions.

## **§ TWO: Joint negotiations regarding non-fee related matters**

- Two or more independent physicians or dentists who are practicing in the service area of a carrier may jointly negotiate with a carrier and engage in related joint activity regarding non-fee-related matters which may affect patient care, including, but not limited to, any of the following
  - Provisions of existing New Jersey law include items below that may be considered:
  - 1. The definition of medical necessity and other conditions of coverage;
  - 2. Utilization management criteria and procedures;
  - 3. Clinical practice guidelines;
  - 4. Preventive care and other medical management policies;
  - 5. Patient referral standards and procedures, including, but not limited to, those applicable to out-of-network referrals;
  - 6. Drug formularies and standards and procedures for prescribing off-formulary drugs;
  - 7. Quality assurance programs;
  - 8. Respective physician or dentist and carrier liability for the treatment or lack of treatment of covered persons;
  - 9. The methods and timing of payments;
  - 10. Other administrative procedures, including, but not limited to, eligibility verification systems and claim documentation requirements for covered persons;
  - 11. Credentialing standards and procedures for the selection, retention and termination of participating physicians or dentists;
  - 12. Mechanisms for resolving disputes between the carrier and physicians or dentists, including, but not limited to, the appeals process for utilization management and credentialing determinations;
  - 13. The health benefits or dental plans sold or administered by the carrier in which the physicians or dentists are required to participate;
  - 14. The formulation and application of reimbursement methodology;
  - 15. The terms and conditions of physician or dentist contracts, including, but not limited to, all products clauses, and the duration and renewal provisions of the contract; and
  - 16. The inclusion or alteration of a contractual term or condition, except when the inclusion or alteration is required by a federal or State regulation concerning that term or condition; however, the restriction shall not limit a physician's or dentist's rights to jointly petition the federal or State government, as applicable, to change the regulation.

**§ THREE: Joint negotiations regarding fees and fee related matters**

- Allow for a finding that a carrier has substantial market power in its service area, and that any of the terms or conditions of the contract with the carrier pose an actual or potential threat to the quality and availability of patient care among covered persons;
- Upon that finding, allow two or more independent physicians or dentists who are practicing in the service area of a carrier to jointly negotiate with the carrier and engage in related joint activity, as provided in the law regarding fees and fee-related matters, including, but not limited to, any of the following: (i.e. amount of payment, amount of discount and procedure code or other description of dental service covered by a payment and the appropriate grouping of the procedure codes, etc.)
- The (*proper agencies of the state involved in banking and insurance interests*), shall have the authority to collect and investigate such information as it reasonably believes is necessary to determine, on an annual basis:
  1. The average number of covered lives and geographical distribution of covered lives per quarter per county for every carrier in the State; and
  2. The impact of the provisions of this section on average physician or dentist fees in the State.

**§ FOUR: Details on exercising joint negotiation rights**

- The providers may communicate with each other concerning any contractual term or condition to be negotiated with the carrier;
- The providers may communicate with the joint negotiation representative authorized to negotiate on their behalf with the carrier concerning any contractual term or condition;
- The joint negotiation representative shall be the sole party authorized to negotiate with the carrier on behalf of the providers as a group;
- The providers may, at the option of each physician or dentist, agree to be bound by the terms and conditions negotiated by the joint negotiation representative; and
- When communicating or negotiating with a joint negotiation representative, a carrier may offer different contractual terms or conditions to, or may contract with, individual independent providers.

**§ FIVE: Inapplicability of act**

- This law does not apply to health benefits or dental plans providing covered services exclusively or primarily to persons who are eligible for Medicaid or SCHIP.

**§SIX: Requirements to act as joint negotiation representative**

- Set out procedures (and fee) a person or entity proposing to act as a joint negotiation representative must complete before engaging in negotiations. Must submit to the Attorney General a petition which identifies specified information including subject matter of the negotiations and the anticipated effect the negotiations may have on the quality and availability of health or dental care.
- Once a negotiated agreement on the contractual terms is reached, the joint negotiation representative must submit a copy of the proposed contract and any plan of action for implementing the contract terms to the Attorney General for approval.
- Provide for timelines on communications to decline or terminate negotiations.

**§ SEVEN: Powers, duties of Attorney General**

- Set up Attorney General participation parameters.
  - Examples of existing laws:
- 1. The Attorney General has up to 30 days to act on the petition or proposed contract, as applicable. Failure to do so provides avenue of relief via a court of competent jurisdiction. If the Attorney General disapproves the petition or the proposed contract, law requires the Attorney General to communicate to the negotiator any deficiencies and specific remedial measures for the deficiencies.

2. Negotiations cannot be launched without written Attorney General approval. A proposed contract between two or more independent physicians or dentists and a carrier cannot be implemented unless the Attorney General has approved the contract.
3. The Attorney General shall approve a petition to negotiate or a proposed contract if it is found that the benefits, which are likely to result from the joint negotiations, outweigh the disadvantages.
4. Require the Attorney General to consider physician or dentist distribution by specialty and its effect on competition in the geographic service area of the carrier.
5. Attorney General approval is effective for all subsequent negotiations between the joint negotiation representative and the identified carrier.
6. The Attorney General must notify the carrier of the petition to negotiate and provide the carrier with the opportunity to reply.

**§ EIGHT: Application for hearing**

- Model bill allows that within 30 days after Attorney General notice of disapproval of a petition to negotiate by joint negotiation representative, the petitioners may make a written application to the Attorney General for a hearing.
- Hearing must be granted.
- Model law provides for how the hearing is to transpire, referencing standard procedures under the state law for hearing processes.

**§ NINE: Confidentiality of information**

- All information is treated confidentially and is deemed proprietary. Require written consent of the petitioners to whom the information pertains before any publication by the Attorney General or any other person.

**§ TEN: Good faith negotiation required**

- Require both parties to negotiate in good faith regarding the terms and conditions of physician or dentist contracts.
- (CT H6431-2013) No managed care organization shall refuse to negotiate in good faith with parties to a joint negotiation authorized by the Attorney General. Any managed care organization that violates this section shall be subject to a civil penalty of not more than twenty-five thousand dollars per day for each violation. The Attorney General may institute proceedings to enforce the provisions of this section.

**§ ELEVEN: Construction of act**

- Model provides thoughts on what bill/law cannot be construed to do or achieve.
- As an example:
  - The bill/law:
    1. Does not permit a coordinated cessation reduction or limitation of the health care or dental services.
    2. Does not permit two or more physicians or dentists to meet or communicate in order to jointly negotiate a requirement that at least one of the physicians or dentists, as a condition of participation with a carrier, be allowed to participate in all of the products offered by the carrier.
    3. Does not permit two or more physicians or dentists to jointly negotiate with a carrier to exclude, limit or otherwise restrict a non-physician or non-dentist health care provider from participating in the carrier's health benefits or dental plan based substantially on the fact that the health care provider is not a physician or dentist, unless that exclusion, limitation or restriction is otherwise permitted by law.
    4. May not be construed to affect governmental approval of, or otherwise restrict activity by, physicians or dentists that is not prohibited under federal antitrust law; or require approval of physician or dentist contract terms to the extent that the terms are exempt from state regulation under section 514(a) of the "Employee Retirement Income Security Act of 1974," Pub.L.93-406 (29 U.S.C. §1144(a)).

- The law requires the joint negotiation representative for providers to notify the physicians or dentists of the provisions of this law and advise them as to their potential for legal action against physicians or dentists who violate federal antitrust law.

**§ TWELVE: Optional Sunset Related Language**

- The Attorney General, in consultation with pertinent state offices, must report to the Governor and the Legislature no later than four years after the effective date of this act on its implementation.
- The report shall include an assessment of the effect the joint negotiations have had in restoring the competitive balance in the market for health care or dental services and in protecting access to quality patient care, an assessment of the impact this act has had on health insurance premiums in the state.

## **Suggested Provisions -- Joint Negotiations by Dentists with Carriers**

### **Establish a set of findings and declarations relative to joint negotiations by dentists with carriers**

- In some states that have this law or a history of legislation, a fairly robust list of findings sets the tone for the reason behind the need for this legislation.
- Suggest accessing states such as New Jersey law 52:17B-196.

### **Set up definitions and provisions that set the framework for allowable joint negotiation activities**

- Existing state laws provide reasonable sets of definitions and what terms need to be defined.
- Similarly, existing laws provide some guidance on framework for joint negotiations such as the need for state oversight to meet certain federal requirements (such as the Attorney General providing oversight), a process for petitioning the defined state agency to launch negotiations.
- Include the critical provisions that allow joint negotiation to proceed.
- Upon findings by the state of market inequalities, allow two or more independent dentists to jointly negotiate with the carrier and engage in related joint activity, as provided in the law regarding fees and fee-related matters, including, but not limited to, any of the following: (i.e. amount of payment, amount of discount and procedure code or other description of dental service covered by a payment and the appropriate grouping of the procedure codes, etc.).
- Negotiated contracts and any plan of action for implementing the contract terms must be approved by the state (i.e. Attorney General).

### **Develop the powers and duties of the state agency (i.e. Attorney General)**

- Examples, the Attorney General has up to 30 days to act on the petition or proposed contract, as applicable.
- The Attorney General shall approve a petition or a proposed contract if it is found that the benefits which are likely to result from the joint negotiations outweigh the disadvantages.
- Require the Attorney General to consider dentist distribution by specialty and effect on competition in the geographic service area of the carrier.
- The Attorney General must notify the carrier of the petition to negotiate under and provide the carrier with the opportunity to reply.
- Provide for process to appeal Attorney General denials.
- Provide for confidentiality.
- Require all parties to negotiate in good faith.

### **Prohibitions**

- The law does not permit a coordinated cessation reduction or limitation of the health care or dental services.
- It does not permit two or more physicians or dentists to meet or communicate in order to jointly negotiate a requirement that at least one of the physicians or dentists, as a condition of participation with a carrier, be allowed to participate in all of the products offered by the carrier.
- It does not permit two or more physicians or dentists to jointly negotiate with a carrier to exclude, limit or otherwise restrict a non-physician or non-dentist health care provider from participating in the carrier's health benefits or dental plan based substantially on the fact that the health care provider is not a physician or dentist, unless that exclusion, limitation or restriction is otherwise permitted by law.
- Provide advisory to dentists the potential for legal action against for violating federal antitrust law.

## The Ease of Creating a Joint Negotiations Law

**Question:** Is it legal for a group of competing dentists to join together as a group to collectively negotiate the terms of their individual participating provider agreements? Can individual dentists bolster their bargaining power when negotiating carrier participation contracts through a unified, group effort? The likely answer might be that such activity would violate anti-trust laws. But is that always true?

Many have concluded the aforementioned joint activity would likely run afoul of federal anti-trust laws. What may have been missing from that conclusion, however, is a somewhat obscure safe harbor in the form of state legislation.

### *State Legislation Allows Joint Negotiation*

Setting aside voluminous legal narrative setting the stage for this approach, suffice it to say that embedded in all the trade laws, regulations and years of court cases is something known as the *State Action Doctrine*. Properly managed and executed, the doctrine creates a relatively safe avenue paving the way for dentists to join together to negotiate with insurers collectively. The good news is that it's rather simple to construct via state legislation. Such a law only needs two primary provisions:

- 1) A clearly articulated position statement adopted by the state; and,
- 2) Active state supervision.

Building the law is just that simple. A number of state legislative examples show how to establish the position statement and supervision required to satisfy the State Action Doctrine protection requirements.

The ADA has a number of examples available upon request.

An Act providing for joint contract negotiations by physicians and dentists with carriers.

Be It Enacted by the Senate and General Assembly of [STATE]:

Findings, declarations relative to joint negotiations by health care providers with carriers.

**1. The Legislature finds and declares that:**

- a. Healthcare is inclusive of many specific disciplines working together to promote well-being of patients, including the oral health care provided by general and specializing dentists.
- b. Active, robust and fully competitive markets for health care and dental services provide the best opportunity for the residents of this State to receive high-quality health care and dental services at an appropriate cost;
- b. A substantial amount of health care and dental services in this State is purchased for the benefit of patients by health and dental insurance carriers engaged in the financing of health care and dental services or is otherwise delivered subject to the terms of agreements between carriers and health care providers;
- c. Carriers are able to control the flow of patients to health care providers through compelling financial incentives for patients in their health and dental benefits plans to utilize only the services of health care providers with whom the carriers have contracted;
- d. Carriers also control the health care and dental services rendered to patients through utilization management and other managed care tools and associated coverage and payment policies;
- e. Carriers are often able to virtually dictate the terms of the contracts that they offer health care providers and commonly offer these contracts on a take-it-or-leave-it basis;



- f. The power of carriers to unilaterally impose provider contract terms jeopardizes the ability of health care providers to deliver the superior quality health care and dental services traditionally available in this State;
- g. Health care providers do not have sufficient market power to reject carriers' contract terms that impede their ability to deliver medically appropriate care without undue delay or difficulties;
- h. Inadequate reimbursement and other payment terms that are advantageous to carriers adversely affect the quality of patient care and access to care by reducing the resources that health care providers can devote to patient care and decreasing the time that health care providers are able to spend with their patients;
- i. Inequitable reimbursement and other unfair payment terms also endanger the health care infrastructure and progress by diverting capital needed for reinvestment in the health care delivery system, curtailing the purchase of state-of-the-art technology, the pursuit of medical research, and expansion of health care services, all to the detriment of the residents of this State;
- j. The inevitable collateral reduction and migration of the health care work force will also have negative consequences for the economy of this State;
- k. Empowering independent health care providers to jointly negotiate with carriers as provided in this act will help restore the competitive balance and improve competition in the markets for health care and dental services in this State, thereby providing benefits for consumers, health care providers and less dominant carriers;
- l. This act is necessary and proper, and constitutes an appropriate exercise of the authority of this State to regulate the business of insurance and the delivery of health care and dental services;
- m. The pro-competitive and other benefits of the joint negotiations and related joint activity authorized by this act, including, but not limited to, restoring the competitive balance in the market for health care services, protecting access to quality patient care, promoting the health care infrastructure and progress, and

improving communications, outweigh any potential anti-competitive effects of this act; and

n. It is the intention of the Legislature to authorize independent health care providers to jointly negotiate with carriers and to qualify such joint negotiations and related joint activities for the State-action exemption to the federal antitrust laws through the articulated State policy and active supervision provided under this act.

**Definitions relative to joint negotiations by health care providers with carriers.**

2. As used in this act:

"Carrier" means an insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization which is authorized to issue health benefits plans in this State and a dental service corporation or dental plan organization authorized to issue dental plans in this State.

"Covered person" means a person on whose behalf a carrier which offers a health benefits or dental plan is obligated to pay benefits or provide services pursuant to the plan.

"Covered service" means a health care or dental service provided to a covered person under a health benefits or dental plan for which the carrier is obligated to pay benefits or provide services.

"Dental plan" means a benefits plan which pays or provides dental expense benefits for covered services and is delivered or issued for delivery in this State by or through a dental carrier.

"Health care provider" means a person who is licensed to provide health care services by the State.

"Health benefits plan" means a plan which pays or provides hospital and medical expense benefits for covered services and is delivered or issued for delivery in this State by or through a carrier. For the purposes of this act, health benefits plan shall not include the following plans, policies or contracts: Medicare

supplement coverage and risk contracts, accident only, specified disease or other limited benefit, credit, disability, long-term care, CHAMPUS supplement coverage, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), or hospital expense or confinement indemnity coverage only.

"Joint negotiation representative" means a representative selected by two or more independent health care providers to engage in joint negotiations with a carrier on their behalf.

"Utilization management" means a system for reviewing the appropriate and efficient allocation of health care or dental services under a health benefits or dental plan in accordance with specific guidelines, for the purpose of determining whether, or to what extent, a health care or dental service that has been provided or is proposed to be provided to a covered person is to be covered under the health benefits or dental plan.

**Joint negotiations regarding non-fee related matters.**

3. Two or more independent health care providers who are practicing in the service area of a carrier may jointly negotiate with a carrier and engage in related joint activity, as provided in this act, regarding non-fee-related matters which may affect patient care, including, but not limited to, any of the following:

- a. the definition of medical necessity and other conditions of coverage;
- b. utilization management criteria and procedures;
- c. clinical practice guidelines;
- d. preventive care and other medical management policies;
- e. patient referral standards and procedures, including, but not limited to, those applicable to out-of-network referrals;
- f. drug formularies and standards and procedures for prescribing off-formulary drugs;

- g. quality assurance programs;
- h. respective health care providers and carrier liability for the treatment or lack of treatment of covered persons;
- i. the methods and timing of payments;
- j. other administrative procedures, including, but not limited to, eligibility verification systems and claim documentation requirements for covered persons;
- k. credentialing standards and procedures for the selection, retention and termination of participating health care providers;
- l. mechanisms for resolving disputes between the carrier and health care providers, including, but not limited to, the appeals process for utilization management and credentialing determinations;
- m. the health benefits or dental plans sold or administered by the carrier in which the health care providers are required to participate;
- n. the formulation and application of reimbursement methodology;
- o. any provider rating program and the ability to appeal a carrier's rating of a provider;
- p. the terms and conditions of health care provider contracts, including, but not limited to, all products clauses, and the duration and renewal provisions of the contract; and
- q. the inclusion or alteration of a contractual term or condition, except when the inclusion or alteration is required by a federal or State regulation concerning that term or condition; however, the restriction shall not limit a health care provider's right to jointly petition the federal or State government, as applicable, to change the regulation.

**Joint negotiations regarding fees, fee related matters.**

- 4. a. Upon a finding by the Attorney General, in consultation with the Department of Insurance, that a carrier has substantial market power in its

service area and that any of the terms or conditions of the contract with the carrier pose an actual or potential threat to the quality and availability of patient care among covered persons, two or more independent health care providers who are practicing in the service area of a carrier may jointly negotiate with the carrier and engage in related joint activity, as provided in this act regarding fees and fee-related matters, including, but not limited to, any of the following:

(1) the amount of payment or the methodology for determining the payment for a health care or dental service, including, but not limited to, cost of living increases;

(2) the conversion factor for a resource-based relative value scale or similar reimbursement methodology for health care or dental services;

(3) the amount of any discount on the price of a health care or dental service;

(4) the procedure code or other description of a health care or dental service covered by a payment and the appropriate grouping of the procedure codes;

(5) the amount of a bonus related to the provision of health care or dental services or a withholding from the payment due for a health care or dental service; and

(6) the amount of any other component of the reimbursement methodology for a health care or dental service.

b. The Department of Insurance, in consultation with the Attorney General, shall have the authority to collect and investigate such information as it reasonably believes is necessary to determine, on an annual basis:

(1) the average number of covered lives and geographical distribution of covered lives per quarter per county for every carrier in the State; and

(2) the impact of the provisions of this section on average physician or dentist fees in the State.

(3) the Medical Loss Ratio of each carrier for every line of insurance in which a plan is issued.

The Department of Insurance shall provide this information to the Attorney General on an annual basis.

**Criteria for exercise of joint negotiation rights.**

5. The exercise of joint negotiation rights by two or more independent health care providers who are practicing in the service area of a carrier pursuant to this act shall conform to the following criteria:

a. the health care providers may communicate with each other concerning any contractual term or condition to be negotiated with the carrier;

b. the health care providers may communicate with the joint negotiation representative authorized to negotiate on their behalf with the carrier concerning any contractual term or condition;

c. the joint negotiation representative shall be the sole party authorized to negotiate with the carrier on behalf of the health care providers as a group;

d. the health care providers may, at the option of each health care provider, agree to be bound by the terms and conditions negotiated by the joint negotiation representative; and

e. when communicating or negotiating with a joint negotiation representative, a carrier may offer different contractual terms or conditions to, or may contract with, individual independent health care providers.

**Inapplicability of act.**

6. The provisions of this act shall not apply to a health benefits, dental plan, or vision plan which is certified by the Commissioner of Human Services to the Attorney General as providing covered services exclusively or primarily to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), or the FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-1 et seq.).

Requirements to act as joint negotiation representative.

7. A person or entity which proposes to act as a joint negotiation representative shall satisfy the following requirements:

a. Before entering into negotiations with a carrier on behalf of two or more independent health care providers, the joint negotiation representative shall submit to the Attorney General, for his approval pursuant to section 8 of this act, on a form and in a manner prescribed by the Attorney General, a petition which identifies:

- (1) the representative's name and business address;
- (2) the names and business addresses of each health care provider who will be represented by the identified representative;
- (3) the ratio of the health care providers requesting joint representation to the total number of health care providers who are practicing within the geographic service area of the carrier;
- (4) the carrier with which the representative proposes to enter into negotiations on behalf of the identified health care providers;
- (5) the intended subject matter of the proposed negotiations with the identified carrier;
- (6) the representative's plan of operation and procedures to ensure compliance with the provisions of this act;
- (7) the anticipated effect of the proposed joint negotiations on the quality and availability of health and dental care among covered persons;
- (8) the anticipated benefits of a contract between the identified health care providers and a carrier;
- (9) such other data, information and documents as the petitioner desires to submit in support of their petition; and
- (10) such other data, information and documents as the Attorney General deems necessary.



The joint negotiation representative, upon submitting the petition, shall pay a fee to the Attorney General in an amount, as determined by the Attorney General, which shall be reasonable and necessary to cover the costs associated with carrying out the provisions of this act.

b. After the joint negotiation representative and the carrier identified pursuant to subsection a. of this section have reached an agreement on the contractual terms or conditions that were the subject matter of their negotiations, the joint negotiation representative shall submit to the Attorney General, for his approval in accordance with the provisions of section 8 of this act, a copy of the proposed contract between the health care providers identified pursuant to subsection a. of this section and the carrier, as well as any plan of action which the joint negotiation representative and the carrier shall formally agree to for the purpose of implementing the terms and conditions of the contract.

c. Within 14 days after either party notifies the other party of its decision to decline or terminate negotiations entered into pursuant to this act, or after the date that a joint negotiation representative requests that a carrier enter into such negotiations to which request the plan fails to respond, the joint negotiation representative shall report to the Attorney General that the negotiations have ended, on a form and in a manner to be prescribed by the Attorney General. The Attorney General may, within 30 days of a requested termination, make a binding determination as to the merits of the joint negotiation request. Should the Attorney General determine sufficient cause for the negotiation to occur, then the carrier shall be compelled to jointly negotiate with the negotiation representative as set forth in this Act.

Should Attorney General not find compelling need for a joint negotiation to occur, the joint negotiation representative may resume negotiations with the carrier no later than 90 days after reporting to the Attorney General that the negotiations have ended, on the basis of the petition submitted to the Attorney General pursuant to subsection a. of this section and approved by the Attorney General in accordance with the provisions of section 8 of this act. After that date, the joint negotiation representative shall be required to submit a new petition and pay an additional fee to the Attorney General pursuant to subsection a. of this section, to engage in negotiations with the carrier under this act.

## **Powers, duties of Attorney General.**

8. a. The Attorney General shall provide written approval or disapproval of a petition or a proposed contract furnished by a joint negotiation representative pursuant to section 7 of this act no later than 30 days after receipt of the petition or proposed contract, as applicable. If the Attorney General fails to provide written approval or disapproval within this time period, the joint negotiation representative may petition a court of competent jurisdiction for an order to require the Attorney General to take such action. If the Attorney General disapproves the petition or the proposed contract, he shall forward a written explanation of any deficiencies therein to the joint negotiation representative along with a statement of the specific remedial measures by which those deficiencies may be corrected.

A joint negotiation representative shall not engage in negotiations with a carrier over any contractual term or condition unless the petition furnished by the joint negotiation representative has been approved in writing by the Attorney General, nor shall a proposed contract between two or more independent health care providers and a carrier be implemented unless the Attorney General has approved the contract.

b. The Attorney General shall approve a petition or a proposed contract furnished by a joint negotiation representative pursuant to section 7 of this act if the Attorney General determines that the petition or proposed contract demonstrates that the benefits which are likely to result from the proposed joint negotiations over a contractual term or condition or the proposed contract, as applicable, outweigh the disadvantages attributable to a reduction in competition that may result from the proposed joint negotiations. In making his determination, the Attorney General shall consider health care provider distribution by specialty and its effect on competition in the geographic service area of the carrier.

c. The Attorney General's written approval of a petition which is furnished by a joint negotiation representative under section 7 of this act shall be effective for all subsequent negotiations between the joint negotiation representative and the identified carrier, subject to the provisions of subsection c. of section 7 of this act.

d. In the case of a petition submitted pursuant to subsection a. of section 7 of this act, the Attorney General shall notify the carrier of the petition and provide the carrier with the opportunity to submit written comments within a specified time frame that does not extend beyond the date by which the Attorney General is required to act on the petition.

**Application for hearing.**

9. a. Within 45 days from the mailing by the Attorney General of a notice of disapproval of a petition submitted under section 7 of this act, the petitioners may make a written application to the Attorney General for a hearing.

b. Upon receipt of a timely written application for a hearing, the Attorney General shall schedule and conduct a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The hearing shall be held within 45 days of the application unless the petitioner seeks an extension.

c. The sole parties with respect to any petition under section 7 of this act shall be the petitioners, and notwithstanding any other provision of law to the contrary, the Attorney General shall not be required to treat any other person as a party and no other person shall be entitled to appeal the Attorney General's determination.

**Confidentiality of information.**

10. All information, including documents and copies thereof, obtained by or disclosed to the Attorney General or any other person in a petition under section 7 of this act, shall be treated confidentially and shall be deemed proprietary and shall not be made public or otherwise disclosed by the Attorney General or any other person without the written consent of the petitioners to whom the information pertains.

**Good faith negotiation required.**

11. A carrier and a joint negotiation representative shall negotiate in good faith regarding the terms and conditions of health care provider contracts pursuant to this act.

## **Construction of act.**

12. a. The provisions of this act shall not be construed to:

(1) permit two or more health care providers to jointly engage in a coordinated cessation, reduction or limitation of the health care or dental services which they provide;

(2) permit two or more health care providers to meet or communicate in order to jointly negotiate a requirement that at least one of the health care providers, as a condition of participation with a carrier, be allowed to participate in all of the products offered by the carrier;

(3) permit two or more health care providers to jointly negotiate with a carrier to exclude, limit or otherwise restrict a non-health care provider from participating in the carrier's health benefits or dental plan based substantially on the fact that the health care provider is not a physician or dentist, unless that exclusion, limitation or restriction is otherwise permitted by law;

(4) prohibit or restrict activity by health care providers that is sanctioned under federal or State law or subject such activity to the requirements of this act;

(5) affect governmental approval of, or otherwise restrict activity by, health care providers that is not prohibited under federal antitrust law; or

(6) require approval of health care provider contract terms to the extent that the terms are exempt from State regulation under section 514(a) of the "Employee Retirement Income Security Act of 1974," Pub.L.93-406 (29 U.S.C. s.1144(a)).

b. Prior to entering into negotiations with a carrier on behalf of two or more independent health care providers over a contractual term or condition, a joint negotiation representative shall notify the health care providers in writing of the provisions of this act and advise them as to their potential for legal action against health care providers who violate federal antitrust law.

## **Report to Governor, Legislature by Attorney General.**

13. The Attorney General, in consultation with the Department of Insurance, shall report annually to the Governor and the Legislature on its implementation.

The report shall include the number of petitions submitted for approval to engage in joint negotiations and the outcome of the petitions and the negotiations, an assessment of the effect the joint negotiations provided for in this act has had in restoring the competitive balance in the market for health care or dental services and in protecting access to quality patient care, an assessment of the impact this act has had on health insurance premiums in the State, and such other information that the Attorney General deems appropriate. The report shall also include the Attorney General's recommendations as to whether the provisions of this act shall be expanded to include other types of health care professionals and facilities.

**Rules, regulations.**

14. The Attorney General, in consultation with the Department of Insurance, shall adopt rules and regulations to effectuate the purposes of this act.

15. This act shall take effect 90 days after enactment. The Attorney General, in consultation with the Department of Insurance, may take such anticipatory administrative action in advance of the effective date as shall be necessary to implement the act.

## Alaska Stat. § 23.50.020

\*\*\* Current through all 2024 legislation.\*\*\*

***Alaska Statutes > Title 23. Labor and Workers' Compensation. (Chs. 05 — 90) > Chapter 50. Collective Negotiation by Physicians. (§§ 23.50.010 — 23.50.099)***

### **Sec. 23.50.020. Collective action by competing physicians.**

(a) Competing physicians may meet and communicate in order to collectively negotiate with a health benefit plan concerning any of the contract terms and conditions described in this subsection, but may not negotiate the exclusion of providers who are non-physicians from direct reimbursement by a health benefit plan, and may not negotiate the setting in which providers who are non-physicians deliver services. Competing physicians may not engage in a boycott related to these terms and conditions. Competing physicians may meet and communicate concerning

- (1) physician clinical practice guidelines and coverage criteria;
- (2) the respective liability of physicians and the health benefit plan for the treatment or lack of treatment of insured or enrolled persons;
- (3) administrative procedures, including methods and timing of the payment of services to physicians;
- (4) procedures for the resolution of disputes between the health benefit plan and physicians;
- (5) patient referral procedures;
- (6) the formulation and application of reimbursement methodology;
- (7) quality assurance programs;
- (8) health service utilization review procedures; and
- (9) criteria to be used by health benefit plans for the selection and termination of physicians, including whether to engage in selective contracting.

(b) An authorized third party that intends to negotiate with a health benefit plan the items identified under (a) of this section shall provide the attorney general with written notice of the intended negotiations before the negotiations begin.

(c) In exercising the collective rights granted by (a) of this section,

- (1) physicians may communicate with each other with respect to the contractual terms and conditions to be negotiated with a health benefit plan;
- (2) physicians may communicate with an authorized third party regarding the terms and conditions of contracts allowed under this section;
- (3) the authorized third party is the sole party authorized to negotiate with a health benefit plan on behalf of a defined group of physicians;
- (4) physicians can be bound by the terms and conditions negotiated by the authorized third party that represents their interests;
- (5) a health benefit plan communicating or negotiating with the authorized third party may contract with, or offer different contract terms and conditions to, individual competing physicians;
- (6) an authorized third party may not represent more than 30 percent of the market of practicing physicians for the provision of services in the geographic service area or proposed geographic service

## Sec. 23.50.020. Collective action by competing physicians.

area, if the health benefit plan has less than a five percent market share as determined by the number of covered lives as reported by the director of insurance for the most recently completed calendar year or by the actual number of consumers of prepaid comprehensive health services; in this paragraph, "covered lives" means the total number of individuals who are entitled to benefits under the health benefit plan;

**(7)** the attorney general may limit the percentage of practicing physicians represented by an authorized third party; however, the limitation may not be less than 30 percent of the market of practicing physicians in the geographic service area or proposed geographic service area; when determining whether to impose a limitation described under this paragraph, the attorney general shall consider the provisions described under (f) — (h) of this section; this paragraph does not apply if the market of practicing physicians in the geographic service area or proposed geographic service area consists of 40 or fewer individuals; and

**(8)** the authorized third party shall comply with the provisions of (d) of this section.

**(d)** A person acting or proposing to act as an authorized third party under this section shall,

**(1)** before engaging in collective negotiations with a health benefit plan,

**(A)** file with the attorney general the information that identifies the authorized third party, the physicians represented by the third party, the authorized third party's plan of operation, and the authorized third party's procedures to ensure compliance with this section;

**(B)** furnish to the attorney general, for the attorney general's approval, a brief report that identifies the proposed subject matter of the negotiations or discussions with a health benefit plan and that contains an explanation of the efficiencies or benefits that are expected to be achieved through the collective negotiations; the attorney general shall review whether the group of physicians represented by the authorized third party is appropriate to represent the interests involved in the negotiations; the attorney general may not approve the report if the group of physicians is not appropriate to represent the interests involved in the negotiations or if the proposed negotiations exceed the authority granted in this chapter and, if the group is not appropriate or the negotiations exceed the granted authority, shall enter an order prohibiting the collective negotiations from proceeding; the authorized third party shall provide supplemental information to the attorney general as new information becomes available that indicates that the subject matter of negotiations with the health benefit plan has changed or will change;

**(2)** within 14 days after receiving a health benefit plan's decision to decline to negotiate or to terminate negotiations, or within 14 days after requesting negotiations with a health benefit plan that fails to respond within that time, report to the attorney general that negotiations have ended or have been declined;

**(3)** during the negotiation process, provide the attorney general upon the attorney general's request with a copy of all written communications that are between physicians and the health benefit plan, that are relevant to the negotiations, and that are in the possession of the authorized third party;

**(4)** before reporting the results of negotiations with a health benefit plan and before giving physicians an evaluation of any offer made by a health benefit plan, provide to the attorney general, for the attorney general's approval, a copy of all communications to be made to physicians related to the negotiations, discussions, and health benefit plan offers.

**(e)** The attorney general shall either approve or disapprove the contract that was the subject of the collective negotiation within 60 days after receiving the reports required under (d) of this section. If the contract is disapproved, the attorney general shall furnish a written explanation of any deficiencies along with a statement of specific remedial measures that would correct any identified deficiencies. An authorized third party who fails to obtain the attorney general's approval is considered to be acting outside the authority of this section.

**(f)** The attorney general shall approve a collective negotiation contract if



## Sec. 23.50.020. Collective action by competing physicians.

- (1) the competitive and other benefits of the contract terms outweigh any anticompetitive effects; and
  - (2) the contract terms are consistent with other applicable laws and regulations.
- (g) The competitive and other benefits of joint negotiations or negotiated provider contract terms must include
- (1) restoration of the competitive balance in the market for health care services;
  - (2) protections for access to quality patient care;
  - (3) promotion of health care infrastructure and medical advancement; or
  - (4) improved communications between health care providers and health care insurers.
- (h) When weighing the anticompetitive effects of contract terms, the attorney general shall consider whether the terms
- (1) provide for excessive payments; or
  - (2) contribute to the escalation of the cost of providing health care services.
- (i) This section does not authorize competing physicians to act in concert in response to a report issued by an authorized third party related to the authorized third party's discussion or negotiations with a health benefit plan. The authorized third party shall advise the physicians of the provisions of this subsection and shall warn them of the potential for legal action against those who violate state or federal antitrust laws by exceeding the authority granted under this section.
- (j) A contract allowed under this section may not exceed a term of five years.
- (k) The documents relating to a collective negotiation described under this section that are in the possession of the Department of Law are confidential and not open to public inspection.
- (l) Nothing in this section shall be construed as exempting from the application of the antitrust laws the conduct of providers or negotiations or agreements between providers and a health benefit plan if the purpose or effect of the conduct, negotiations, or agreements would be, directly or indirectly, to exclude, limit the participation or reimbursement of, or otherwise limit the scope of services to be provided by separate or competing classes of providers who practice or seek to practice within the scope of the occupational licenses held by the providers.
- (m) A contract entered into under this section must be consistent with AS 21.36.090(d).
- (n) Nothing in this section shall be construed to make any conduct by providers unlawful if the conduct was lawful before September 18, 2002.
- (o) In this section,
- (1) "geographic service area" means the geographic area of the physicians seeking to jointly negotiate;
  - (2) "provider" has the meaning given in AS 21.36.090(d).

## History

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(§ 1 ch 68 SLA 2002)

## Features

# Health Policy Perspectives



## Why we need more data on the dental insurance market

Marko Vujicic, PhD; Niodita Gupta, MD, MPH, PhD; Kamyar Nasseh, PhD

Economics teaches us that competition in markets is a good thing. The health care market is a special market, and competition among providers and insurers is closely monitored by the Federal Trade Commission (FTC). In recent years, the FTC has intervened on several occasions to prevent mergers and acquisitions in health care markets that would have reduced competition to a degree deemed harmful to consumers.<sup>1</sup> The theory goes that if, for example, there is only 1 hospital group in town, the hospital will end up charging patients more for its services than if there were many hospitals in town. The empirical evidence tends to confirm this, with less competition among providers leading to higher prices<sup>2</sup> for patients and less competition among insurers leading to higher premiums<sup>3</sup> and lower provider payment rates.<sup>4</sup> Competition matters.

So let us talk about competition in different parts of the dental care sector. The care delivery side is highly fragmented. Dentistry is the last cottage industry in health care composed mostly of small firms and few large firms with any appreciable market share. The most recent data indicate that 88% of dental offices in the United States have 3 or fewer dentists (Health Policy Institute, unpublished data, 2016). This is certainly changing over time, as more and more practices consolidate.<sup>5</sup> But for now, the dental care delivery side for the most part is highly fragmented.

The insurer side, as the [figure<sup>6,7</sup>](#) shows, is a different story. The data summarize the market share of various dental insurance carriers in California. This is the first time ever, as far as we know, that data of this nature were made publicly available. This was a big deal for us because the American Dental Association Health Policy Institute has been trying to obtain dental insurer market data for years, not just for California but for all states. We tried several avenues, including requests to the National Association of Insurance Commissioners and the National Association of Dental Plans. The data we obtained were made available as part of California's efforts to monitor the medical loss ratio of medical and dental insurance carriers under the Affordable Care Act (ACA).

The data for California show 1 dominant carrier and a long tail of carriers with much smaller market shares. Delta Dental of California has the highest market share (40.3%) and

Metropolitan Life Insurance Company has the second highest (8.0%). Furthermore, 31 of 52 insurers have a market share of less than 1%. The Herfindahl-Hirschman Index (HHI) is a fancy way economists measure the competitiveness of markets. Markets in which the HHI is between 1,500 and 2,500 are considered to be moderately concentrated, whereas levels greater than 2,500 are considered to be highly concentrated.<sup>8</sup> The HHI for the dental insurance market in California is 1,813.

What are possible implications of a moderately concentrated dental insurance market? Market concentration could result in higher premiums for consumers or lower reimbursement for providers.<sup>9</sup> More in-depth research is needed, but our preliminary analysis of newly released premiums data indicates that average premiums for most of Delta Dental of California beneficiaries actually decreased from 2014 through 2016 after adjusting for inflation ([Table](#)).<sup>6</sup> We do not have access to data for prior years. We also do not have access to data on Delta Dental of California's reimbursement rates to dentists, but a recent lawsuit settlement suggests reimbursement rates have indeed been declining.<sup>10</sup> Moreover, state-wide data covering all dental insurers indicate inflation-adjusted reimbursement rates have declined in recent years in California.<sup>11</sup> If more data were publicly available, a more thorough analysis could be conducted. In the meantime, our take on these preliminary data is that market power is being leveraged by insurers primarily to control costs rather than to increase premiums.

Cost control measures, unquestionably, are a good thing for beneficiaries if such measures do not adversely affect access to dentists, quality of care, or benefit levels. Or, more formally, if the adverse effects are outweighed by savings in premiums. Here again we have another important area for further study. The evidence we are aware of—and it is limited—suggests that younger patients are more willing to trade provider choice for savings in premiums than older patients.<sup>12</sup>

Another way to examine the extent to which market power might affect premiums and provider payments is through medical loss ratio (MLR) data. The MLR measures the share of premium revenue that is spent on patient care. The ACA included a provision that MLRs for medical insurers must be at least either 80% or 85%, depending on the type of insurance.

A bar chart titled 'PERCENTAGE' on the y-axis and 'DENTAL INSURANCE CARRIERS' on the x-axis. The y-axis ranges from 0 to 45 in increments of 5. The x-axis lists 40 dental insurance carriers. Each bar is blue and has its percentage value displayed above it. The carriers are ordered from highest to lowest percentage.

Dental Insurance Carrier	Percentage
Delta Dental of California	40.29
Metropolitan Life Insurance	7.97
Cigna Health and Life Insurance	4.16
SafeGuard Health & Health	4.16
California Health Plans	4.05
Aetna Physician's Service	3.85
Principal Life Insurance	3.05
Cigna Dental Health Insurance	2.71
Premier Providers of California	2.47
Ameritas Health Insurance	2.16
Liberty Dental of California	2.07
Liberty Dental of California	2.04
Western Dental of California	2.00
Blue Cross of California	1.80
United Concordia Dental Services	1.62
Managed Dental	1.46
Humana Dental Plans of CA	1.36
Kaiser Permanente Insurance	1.36
UnitedHealthcare Insurance	1.26
Dental Health Insurance	1.22
The Lincoln National Life Insurance	1.18
Access Dental Services	0.89
UDC Dental Plan	0.85
Dental Insurance	0.74
California Dental Insurance	0.61
National Guardian Life Insurance	0.59
Standard Life Insurance	0.58
Standard Life Insurance	0.52
US Branch of the Sun Life Assurance Company of Canada	0.51
Reliance Standard Life Insurance	0.34
Golden West Health Insurance	0.27
Reliance Standard Life Insurance	0.24
The Chesapeake Life Insurance	0.23
Physicians Mutual Health Insurance	0.22
Dedicated Mutual Insurance	0.21
Unimutual Insurance	0.18
Connecticut General Insurance	0.14
Nippon Life Insurance Company of America	0.13
Unicare Life & Health Insurance	0.10
Mid-West National Life Insurance	0.07
American National Life Insurance	0.07
Jaimini Insurance	0.05
Pan-American Life Insurance	0.04
Golden Rule Insurance	0.04
Dearborn National Life Insurance	0.03
Standard Life and Accident Insurance	0.02
Securian Life Insurance	0.01
Securian Life Insurance	0.01
Securian Life Insurance	0.01
Securian Life Insurance	0.01
Securian Life Insurance	0.00

**Table.** Premiums and covered lives for Delta Dental of California.\*

DENTAL PLAN TYPE	COVERED LIVES IN 2016 <sup>†</sup>	ESTIMATED AVERAGE MONTHLY PREMIUM			
		2014	2015	2016	Percentage Change (2014-2016)
Large Group DPPO <sup>‡</sup>	2,628,184 (69)	\$43.18	\$42.56	\$41.44	-4.05
Large Group DHMO <sup>§</sup>	683,667 (18)	\$14.64	\$14.40	\$14.00	-4.34
Small Group DPPO	251,858 (7)	\$53.45	\$50.55	\$49.37	-7.64
Individual DHMO	142,040 (4)	\$10.43	\$9.83	\$11.22	7.63
Small Group DHMO	76,771 (2)	\$18.27	\$17.30	\$16.67	-8.77
Individual DPPO	10,020 (< 1)	\$32.46	NA <sup>¶</sup>	\$52.84	62.82

\*The average monthly premium was calculated as the total direct premiums earned (as of March 31 of the next year) divided by the number of member months (as of March 31 of the next year). All amounts are adjusted to 2016 dollars using the Consumer Price Index for Dental Services. Premium data for individual DPPO plans were unavailable for 2015. The percentage of covered lives for each plan is the number of covered lives for that plan divided by the total number of covered lives by Delta Dental of California in 2016. Source: American Dental Association Health Policy Institute analysis of data from California Department of Managed Health Care.<sup>6</sup>; †Values are n (%); ‡DPPO: Dental preferred provider organization; §DHMO: Dental health maintenance organization; ¶NA: Not applicable.

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Dr. Gupta is a health services researcher, Health Policy Institute, American Dental Association, Chicago, IL.

Dr. Nasseh is a health economist, Health Policy Institute, American Dental Association, Chicago, IL.

This column represents the opinions of the author and not necessarily those of the American Dental Association.

**Disclosure.** The authors did not report any disclosures.

To receive Health Policy Institute reports and commentary, follow the ADA Health Policy Institute on Twitter @adahpi.

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## ND Insurance Department Data

Company Name	Domicile	Premiums Written	Market Share	Cumulative Market Share	Direct Loss Ratio
Delta Dental of MN	MN	26,487	55.79%	55.79%	82.03%
BCBS of ND	ND	19,784	41.67%	97.46%	81.69%
Humana Ins Co	WI	502	1.06%	98.52%	54.96%
Dentegra Ins Co	DE	386	0.81%	99.33%	66.23%
United Concordia Ins Co	AZ	134	0.28%	99.62%	90.30%
Golden Rule Ins Co	IN	95	0.20%	99.82%	72.63%
Healthpartners Ins Co	MN	87	0.18%	100%	91.95%
UnitedHealthcare Ins Co	IL	0	0%	100%	0%
Compbenefits Ins Co	TX	0	0%	100%	0%
Granular Ins Co	SC	0	0%	100%	0%
Medica Hlth Plans	MN	0	0%	100%	0%
All Savers Ins Co	IN	0	0%	100%	0%
Lasso Hlthcare Ins Co	TX	0	0%	100%	0%
SilverScript Ins Co	TN	0	0%	100%	0%
Accendo Ins Co	UT	0	0%	100%	0%
Group Hlth Plan Inc	MN	0	0%	100%	0%
Omaha Hlth Ins Co	NE	0	0%	100%	0%
Care Improvement Plus	NE	0	0%	100%	0%
Aetna Hlth Ins Co	PA	0	0%	100%	0%
Sanford Hlth Plan	SD	0	0%	100%	0%
Medco Containment Life	PA	0	0%	100%	0%
First Hlth Life & Hlth Ins	TX	0	0%	100%	0%
Humanadental Ins Co	WI	0	0%	100%	0%
Physicians Select Ins Co	NE	0	0%	100%	0%
Medica Ins Co	MN	0	0%	100%	0%



NextBlue of ND Ins Co ND	0	0%	100%	0%
Vision Serv Plan Ins Co OH	0	0%	100%	0%
Clear Spring Hlth Ins Co AZ	0	0%	100%	0%
Elixir Ins Co OH	0	0%	100%	0%
WellCare Prescription Ir AZ	0	0%	100%	0%
Southern Guar Ins Co WI	0	0%	100%	0%
Pacificare Life Assur Co CO	0	0%	100%	0%
Humana Benefit Plan of IL	0	0%	100%	0%
Aetna Hlth & Life Ins Co CT	0	0%	100%	0%
Sierra Hlth & Life Ins Co NV	0	0%	100%	0%
First Continental Life & /TX	0	0%	100%	0%
36 Companies in Report	47,475	100%	100%	81.50%



March 11, 2025

**RE: Senate Bill 2375**

Dear Chairman Warrey and members of the House Industry, Business and Labor Committee:

On behalf of the American Council of Life Insurers (ACLI)<sup>1</sup>, we appreciate the opportunity to provide comments to express our concerns associated with Senate Bill 2375. In its current form, this bill would create guidelines which allow two or more dental providers to jointly negotiate with dental insurers. This bill would make North Dakota the only state in the country that allows competing dentists to collectively bargain their fees and other contract terms with insurance companies in whose networks they choose to participate. We are concerned that if enacted as currently drafted, SB. 2375 would lessen competition among dental providers, increase costs for the job creators and individuals who buy insurance, and lower quality for patients.

**No Other State Permits Dentists to Collectively Bargain Their Fees and Other Terms**

This legislation would make North Dakota an outlier. We are not aware of any state in the nation that allows competing dentists to jointly negotiate their fees and fee-related contract terms with insurance carriers. This is confirmed by the American Dental Association handout entitled “*Joint Negotiation by Dentists with Carriers*,” which dental proponents distributed at the February 10, 2025 hearing of the Senate Human Services Committee.<sup>2</sup> SB 2375 would provide collective bargaining rights to competing dentists in North Dakota that are not available to dentists in other states and that are not available to physicians or other health care providers in North Dakota (or for that matter to other competing businesses in North Dakota).

**SB. 2375 Authorizes Joint Fee-Related Negotiations That Are Prohibited by Antitrust Laws**

In our free market, competition-based economy, competitors are generally prohibited from collectively negotiating fees and fee-related contract terms. The above ADA handout acknowledges that antitrust authorities “regard joint negotiations over fees by independent health care providers with carriers as price-fixing—an antitrust violation.” The paper further states, “Federal antitrust laws generally prohibit joint negotiations by competitors because they can reduce market competition.” Proponents of

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<sup>1</sup> ACLI is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long- term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 percent of industry assets in the United States.

<sup>2</sup> The ADA handout cites New Jersey and Texas, but those laws expired 17 (New Jersey) and 22 (Texas) years ago, and the Texas law did not apply to dentists. The handout also mentions Alaska, but that law does not apply to dentists either and Washington state, but its law is much narrower and more constrained and expressly prohibits health care providers from collectively bargaining fee-related terms.

the law recognized these prohibitions in testimony before the Senate Human Services Committee. The representative of the North Dakota Dental Association testified in the Senate Human Services Committee on February 10, "The reason that we need this bill today is because it is illegal for us to jointly negotiate with the carriers as it stands." Yet, SB 2375 would authorize competing dentists to jointly negotiate their fees and fee-related contract terms with dental carriers in whose networks they choose to participate, leading to higher costs for policyholders.

Proponents of SB 2375 have suggested that the bill creates immunity for conduct that would otherwise violate the antitrust laws (called "state action antitrust immunity"). As the ADA handout recognizes, state action antitrust immunity requires the anticompetitive conduct to be clearly expressed as state policy and "actively supervised" by the State. Because it authorizes conduct that would otherwise violate the antitrust laws, the state action immunity doctrine is narrowly-construed and disfavored by the courts. We are concerned that SB 2375 purports to authorize private parties to engage in conduct that is prohibited by federal antitrust laws and, if carried out, could embroil them in years of litigation that would do nothing other than to raise costs for policyholders. Despite claiming otherwise, Section 1(1) authorizes independent dental providers to engage in joint negotiations that directly impact provider fees, with no apparent state oversight (*see, e.g.*, Section 1(1)(n) (dentists may jointly negotiate "formulation and application of reimbursement methodology"); Section 1(1)(o) (dentists may jointly negotiate "inclusion or alteration of a contractual term or condition"). Sections 1(2) and (3) authorizes competing dentists to communicate among themselves and "engage in related joint activity relating to fees and fee-related matters" with no apparent state oversight. As for the remainder of Section 1(2), we have significant legal concerns that the bill does not provide sufficient state oversight to shield private parties' fee-related conduct from antitrust liability, and our members are concerned about being dragged into costly and unproductive litigation as a result of this legislation.

Thank you for your consideration of our anti-trust concerns as the bill is currently drafted and we look forward to working with you and other interested parties on this bill.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Young", with a stylized, cursive script.

Alex Young  
Legislative Director, State Relations  
ACLI



# North Dakota State Board of Dental Examiners

PO Box 7246, Bismarck, ND 58507-7246 • [info@nddentalboard.org](mailto:info@nddentalboard.org) • 701.258.8600 • <https://www.nddentalboard.org>

## House Industry, Business, and Labor Committee

March 11, 2025; 10:00 am

State Capitol; 327C

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Testimony of the North Dakota State Board of Dental Examiners

Neutral—SB 2375

Chairman Warrey and members of the House Industry, Business, and Labor Committee, my name is David Schaibley—Executive Director of the North Dakota State Board of Dental Examiners providing the Board's neutral testimony on SB 2375.

The Board takes no position on the substance of the Bill or the public policy underlying it. Instead, our testimony focuses on the fact that Section 1 of the Bill places these joint negotiations within Chapter 43-28 (Page 1; Line 6).

That placement is concerning because even though the Bill does not mention the Board, there is other language that already exists in Chapter 43-28 that makes the Board responsible for regulating the entirety of Chapter 43-28. So as written, the Bill unintentionally gives the Board some level of authority over these joint negotiations, which could cause the Board to be entangled in issues related to access to the marketplace. That creates legal and anti-trust issues that could expose the negotiating dentists and insurers, the Board, and the Office of Administrative Hearings to liability; could put the negotiated agreements themselves at risk; and could expose individual Board members to personal liability.

We understand that the North Dakota Dental Association seeks an amendment that moves this language out of NDCC ch. 43-28 and into an entirely new Chapter of Century Code. The Board greatly appreciates the Association's outreach on this issue and their proposed Amendment, and we ask that you support its adoption.

Thank you for your time and we welcome any questions.

### Prepared and Presented by:

David Schaibley

Executive Director of the North Dakota State Board of Dental Examiners

[david@nddentalboard.org](mailto:david@nddentalboard.org); 701-258-8600



March 11, 2025

**RE: Senate Bill 2375 – OPPOSE**

Dear Honorable Senator Lee and Members of the Committee,

On behalf of the National Association of Dental Plans (NADP), we appreciate the opportunity to provide comments on SB 2375. As introduced, this bill would allow two or more dental providers to jointly negotiate with dental insurers. SB 2375 would decrease competition, increase costs for employers, decrease quality of care for patients, and place plans at unnecessary risk for litigation.

Allowing providers to negotiate nearly every aspect of the provider-plan relationship would impede several internal processes put in place to protect consumers and providers, including claims review. Claims review protects patients from waste, fraud, and abuse which could harm their oral or overall health with serious long-term implications. The National Health Care Anti-Fraud Association estimates that dental fraud, waste and abuse costs approximately \$12.5 billion, or 5% of total spending on dental care in the U.S. each year. Allowing for the negotiation of utilization management criteria and procedures, clinical practice guidelines, definitions of medical necessity and other conditions of coverage would significantly reduce the ability of dental plans to protect patients, leaving them more susceptible to waste, fraud, and abuse. Preserving this patient protection is paramount because most patients are unable to determine themselves whether waste, fraud, or abuse has occurred. Patients rely on these processes to ensure that any services performed are necessary and appropriate.

SB 2375 would also make North Dakota an outlier. We are not aware of any state in the nation that allows competing dentists to jointly negotiate their fees and fee-related contract terms with insurance carriers. This is confirmed by the American Dental Association handout entitled “Joint Negotiation by Dentists with Carriers,” which dental proponents distributed at the February 10, 2025 hearing of the Senate Human Services Committee.<sup>1</sup> SB 2375 would provide collective bargaining rights to competing dentists in North Dakota that are not available to dentists in other states and that are not available to physicians or other health care providers in North Dakota (or for that matter to other competing businesses in North Dakota).

In our free market, competition-based economy, competitors are generally prohibited from collectively negotiating fees and fee-related contract terms. The above ADA handout acknowledges that antitrust authorities “regard joint negotiations over fees by independent health care providers with carriers as price-fixing—an antitrust violation.” The paper further states, “Federal antitrust laws generally prohibit joint negotiations by competitors because they can reduce market competition”, which was recognized by proponents of SB 2375 before the Senate Human Services Committee. It has been suggested that the bill creates immunity for conduct that would otherwise violate the antitrust laws (called “state action antitrust immunity”). As the ADA handout recognizes, state action antitrust immunity requires the anticompetitive conduct to be clearly expressed as state policy and “actively supervised” by the State. Because it authorizes conduct that would otherwise violate the antitrust laws, the state action immunity doctrine is

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<sup>1</sup> The ADA handout cites New Jersey and Texas, but those laws expired 17 (New Jersey) and 22 (Texas) years ago, and the Texas law did not apply to dentists. The handout also mentions Alaska, but that law does not apply to dentists either and Washington state, but its law is much narrower and more constrained and expressly prohibits health care providers from collectively bargaining fee-related terms.



narrowly-construed and disfavored by the courts. We are concerned that SB 2375 purports to authorize private parties to engage in conduct that is prohibited by federal antitrust laws and, if carried out, could embroil them in years of litigation that would do nothing other than to raise costs for policyholders.

Providers currently maintain the right to negotiate their contracts, including terms and fee schedules. Many of the other contract elements outlined in SB 2375 are already necessitated by state law or industry practice. For these reasons we believe that SB 2375, as written, would not be good for the insurance market, providers, or consumers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bianca", with a stylized flourish at the end.

Bianca Balale  
Director of Government Relations  
National Association of Dental Plans

*NADP is the largest non-profit trade association focused exclusively on the dental benefits industry. NADP's members provide dental HMO, dental PPO, dental indemnity and discount dental products to more than 200 million Americans with dental benefits. Our members include the entire spectrum of dental carriers: companies that provide both medical and dental coverage, companies that provide only dental coverage, major national carriers, regional, and single state companies, as well as companies organized as non-profit plans.*



# North Dakota Senate

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## Senator Jose Castaneda

District 40  
309 Seventh Street NW  
Minot, ND, 58703-3061  
[jcastaneda@ndlegis.gov](mailto:jcastaneda@ndlegis.gov)

## COMMITTEES:

Judiciary  
State and Local Government (Vice Chair)

### SB 2375 Testimony House Industry, Business and Labor March 11, 2025

Chair Warrey and Members of the House Industry, Business and Labor Committee,

For the record, I am Jose Castaneda, Senator from District 40, North Minot.

SB 2375 will have a lasting impact on the access that our constituents will have to dentists in North Dakota. Too often dental providers do not have the ability nor the opportunity to negotiate with insurance companies to work out a mutual agreement on contract terms or compensation for services rendered. When a dental provider is approached by an insurance company to see if they will become an in-network provider, it is often a take it or leave it scenario. With a limited ability to negotiate, dental providers may have to decline the insurance company. The ones that are being affected are our constituents. Since most patients usually only have one dental insurance plan, they are limited to only dental providers that honor their plan. The goal would be that every dental provider would honor as many insurance plans as possible, ultimately benefiting the consumer, our constituents.

This bill would authorize, two or more dental providers practicing in the service area of a dental insurer to jointly negotiate with the dental insurer and engage in related joint activity regarding non-fee-related matters. The Office of Administrative Hearings would arbitrate the negotiations.

As for fees and fee related matters: They can only be brought up for negotiation if it is found by the Office of Administrative Hearings that a dental insurer has substantial market power in a service area and any of the terms or conditions of the contract with the dental insurer pose an actual or potential threat to the quality and availability of patient care among covered individuals.

While we were able to make some positive substantial changes to the bill in the Senate Committee, there are still some required changes we are working on to the satisfaction of all parties here today. I would respectfully request you and your committee give us some time to ensure we have the bill in the proper format to carry out our intended policy. We just recently have been working with the Attorney General's Office on this bill and would appreciate the opportunity to conclude our work with them to their satisfaction on this bill. We are currently working on amendments after we received input from the AG's office, board of Dental Examiners, and the Insurance Industry. It is our goal to satisfy all of the concerns of the AG's office.

Bottom line, the policy we are working towards is to have a table that both dental providers and insurance carriers can actively negotiate to make progress on contracts that are offered in a take it or leave it manner. Our goal is to avoid using North Dakota's Century Code as the vehicle to mandate or prohibit contractual terms when a mediated negotiation can fix the disagreements with minimal to no government intervention.

Thank you. I am happy to stand for any questions that you may have.

SENATE BILL NO. 2375  
HOUSE BUSINESS, INDUSTRY AND LABOR COMMITTEE  
JONATHAN WARREY, CHAIR  
TESTIMONY IN OPPOSITION TO ENGROSSED SENATE BILL 2375  
MARCH 11, 2025

Chairman Warrey and members of the House Industry, Business and Labor Committee. I am Parrell Grossman, and I appear on behalf of the American Council of Life Insurers in opposition to Engrossed Senate Bill No. 2375.

For background purposes I was the former director of the Attorney General's Consumer Protection and Antitrust Division for 28 years, retiring in February, 2023.

In addition to my testimony, my client has filed its letter testimony. ACLI has objections to this Bill for many reasons, and I share those concerns. It is highly unusual legislation in terms of its occurrence, structure, enforcement, and legality.

**No Other State Permits Dentists to Collectively Bargain Their Fees and Other Terms**

Providing less competition in the marketplace or less protection for consumers has never been a purpose of state or federal antitrust law in this state. This legislation would make North Dakota an outlier. We are not aware of any state in the nation that allows competing dentists to jointly negotiate their fees and fee-related contract terms with insurance carriers. This is confirmed by the American Dental Association handout entitled "*Joint Negotiation by Dentists with Carriers*," which dental proponents distributed at the February 10, 2025 hearing of the Senate Human Services Committee. The ADA handout cites New Jersey and Texas, but those laws expired 17 years ago in New Jersey and 22 years ago in Texas, and the Texas law did not apply to dentists. This Bill would provide collective bargaining rights to competing dentists in North Dakota that are not available to dentists in other states and that are not available to physicians or other health care providers in North Dakota (or for that matter to other competing businesses in North Dakota).

**SB 2375 Authorizes Joint Fee-Related Negotiations That Are Prohibited by Antitrust Laws**

In our free market, competition-based economy, competitors are generally prohibited from collectively negotiating fees and fee-related contract terms. SB 2375 would authorize competing dentists to jointly negotiate their fees and fee-related contract terms with dental carriers in whose networks they choose to participate—leading to higher costs for policyholders.

Proponents of SB 2375 have suggested that the bill creates immunity for conduct that would otherwise violate the antitrust laws (called "state action antitrust immunity"). As the ADA handout recognizes, state action antitrust immunity requires the anticompetitive conduct to be clearly expressed as state policy and "actively supervised" by the State.

Because it authorizes conduct that would otherwise violate the antitrust laws, the state action immunity doctrine is narrowly construed and disfavored by the courts.

We are concerned that SB 2375 purports to authorize private parties to engage in conduct that is prohibited by state and federal antitrust laws and, if carried out, could embroil them in years of litigation that would do nothing other than raise costs for policyholders. Despite claiming otherwise, in Section 1 of the Bill, subsection (1) authorizes independent dental providers to engage in joint negotiations that directly impact provider fees, with no apparent state oversight (see, e.g., subsection (1)(n) (dentists may jointly negotiate “formulation and application of reimbursement methodology”); Subsection (1)(o) (dentists may jointly negotiate “inclusion or alteration of a contractual term or condition”).

Subsections (1), (2) and (3) authorize competing dentists to communicate among themselves and “engage in related joint activity relating to fees and fee-related matters” with no apparent state oversight. As for subsection (2), we have significant legal concerns that the bill does not provide sufficient state oversight to shield private parties’ fee-related conduct from antitrust liability, and our members are concerned about being dragged into costly and unproductive litigation as a result of this legislation.

### **SB 2375 Confuses the Role of the Office of Administrative Hearings, or “OAH”**

The role of OAH is unclear. During Senate Human Services testimony, proponents of the law alternatively stated that OAH would “arbitrate,” “mediate,” be the “arbiter,” “negotiate,” and hold “hearings.”

The law as drafted puts OAH in an untenable and seemingly unprecedented position—and one that threatens to undermine its independence and impartiality.

Since 1991, OAH’s panel of administrative law judges have presided over *adjudicative proceedings* on behalf of state agencies. In these cases, the state agencies first investigate matters within their subject matter expertise, after which OAH, as an impartial third party, adjudicates disputes in which the state agency is on one side the table and the individual or business is on the other side of the table. Unlike instances in which OAH handles adjudicative proceedings for state agencies, there will be no state agency here to gather the facts and conduct the underlying investigation necessary for OAH to render its decision—especially where “active state oversight” is required to create immunity for violations of the antitrust laws. That puts OAH in a seemingly unprecedented role of acting in a manner more akin to that of an *executive* agency, as opposed to an impartial *judicial* agency.

The statute also requires OAH to promulgate rules to implement the law, now placing it in a *quasi-legislative* role. Administrative rules are generally written by agencies with appropriate subject matter expertise.

Consistent with notions of due process and fair play, dental carriers would need to be afforded the opportunity to challenge OAH’s decisions into such topics as whether a dental insurer has “*substantial market power*” or whether “any of the terms or conditions

of the contract with the dental insurer pose an actual *or potential* threat to the quality and availability of patient care,” requirements set forth in the law as conditions to be met before joint negotiations would be authorized. Because it cannot adjudicate its own decisions, any challenges to OAH decisions on these topics would need to be appealed to state district court, which would be expensive for the parties and ultimately get passed on to policyholders in the form of higher premiums. OAH also would likely be a necessary party to these district court proceedings, just as other state agencies are parties to district court litigation when their decisions are appealed to district court.

### **SB 2375 Contains Unclear and Confusing Language**

SB 2375 contains provisions that makes the bill unclear and confusing. For example, subsection 1(5) states, “Upon the joint negotiation representative and dental insurer determining an agreement has been reached on contractual terms or conditions that will be the subject matter of negotiations....” But presumably any negotiations would precede any contract being reached. And subsections (5)(a) and (6) contain largely redundant language.

We have had discussions with the Attorney General’s Office regarding our concerns and believe that Office shares concerns with this legislation. However, we anticipate Ms. Elin Alm, the director of the Attorney General’s Consumer Protection and Antitrust Division, will testify today and this Committee certainly may find that information helpful.

ACLI is reviewing amendments that may be proposed by the prime sponsor, Senator Castaneda, and we possibly will have further discussions. In addition, it is possible the Attorney General will have proposed amendments that overlay other proposed amendments, and our clients would review those amendments, too, if any.

In the meantime, ACLI is strongly opposed to this legislation. For these reasons, we respectfully ask the House Industry, Business, and Labor Committee to give Engrossed Senate Bill No. 2375 a “DO NOT PASS” recommendation.

Thank you and I will try to answer any questions.

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE  
JONATHAN WARREY, CHAIRMAN  
MARCH 11, 2025

TESTIMONY OF ELIN ALM  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
SENATE BILL NO. 2375

Mr. Chairman, members of the Committee.

I am Elin Alm, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office, and I appear on behalf of the Attorney General to provide neutral testimony regarding Senate Bill 2375.

The conduct authorized by Senate Bill 2375 is by its nature anticompetitive, which means that without this legislation the conduct may violate state and federal antitrust law. Therefore, this bill is intended to grant dental providers immunity from antitrust liability that may otherwise result from the authorized conduct. To effectively grant such immunity, commonly referred to as state action immunity, the legislation must pass a two prong test: (1) the legislation must articulate a "clear ... policy to allow the anticompetitive conduct," and (2) the legislation "must provide active supervision of [the] anticompetitive conduct."<sup>1</sup>

The requirement that the policy be clearly articulated is generally met where the displacement of competition is the inherent, logical, or ordinary result of the conduct authorized by the legislature. It is understood that the legislature will consider, foresee, and

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<sup>1</sup> *N. Carolina State Bd. of Dental Examiners v. F.T.C.*, 574 U.S. 494, 506, 135 S. Ct. 1101, 1109, 191 L.Ed.2d 35 (2015); *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105, 100 S. Ct. 937, 943, 63 L.Ed.2d 233; *Parker v. Brown*, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943)



endorse any potential anticompetitive effects of the legislation that are consistent with its policy goals. It is important, though, when considering the policy advanced through Senate Bill 2375, to also consider the long-established policy that lies behind state and federal antitrust law. Antitrust law seeks to preserve rather than interfere with a free competitive market. The widely accepted purpose of antitrust law is to promote healthy market competition, which benefits both consumers and competitors in a market. Competition is generally known to bring important benefits to the economy, including lower prices, higher quality, more innovation and research, more consumer choice, and easy entry to the market by new market participants.

This bill is designed to increase market power for dental providers when negotiating with insurance carriers. There is a third group that would likely be affected by such negotiations, namely consumers or employers who purchase insurance coverage. Therefore, something to consider is whether the bill will consequently reduce or eliminate consumer or buyer power, which ordinarily shapes demand, trends, products, and services in a market and is an important driver of competition. Some questions to ask is: (1) What is the likelihood that this legislation will result in higher prices or lower quality for consumers? (2) Could this legislation result in the reduction of the number of insurance carriers or discourage the entry of new carriers in the market, thereby reducing consumer choice and effectively maintaining and increasing the market power of the carriers currently in the market and enhancing the problem that motivates this bill? (3) What are the potential effects on the competitive balance between the different dental providers within a geographic market?

The active supervision requirement stems from the recognition that where private parties are engaging in anticompetitive activity, there is a danger that they are acting to further their own interests, rather than the policy and interest of the state.<sup>2</sup> Any immunity should only shelter conduct that further this legislature's enacted policies. Therefore, to effectively grant immunity, the state must exercise active control over the allowed conduct to ensure that the authorized conduct promotes the state law policy and not private interests.

To ensure that this legislation complies with the requirement of active supervision, the committee may want to consider whether specific factors or guidelines should be included (1) to assure that the authorized coordinated conduct will focus on promoting only certain goals and purposes and (2) to specify what the government oversight function should or is required to consider.

To provide appropriate government oversight, the Attorney General recommends that the Attorney General, and not the Office of Administrative Hearings (OAH), should provide the oversight required by Senate Bill 2375, if enacted. This is largely consistent with how government oversight has been exercised in states with similar legislation. The Attorney General, as the enforcer of state and federal antitrust law, has the antitrust experience and knowledge required to effectively provide this government oversight. Therefore, the Attorney General recommend that the committee consider replacing OAH with the Attorney General in Senate Bill 2375.

Thank you for your time and consideration and I will stand for any questions.

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<sup>2</sup> F.T.C. v. Ticor Title Ins. Co., 504 U.S. 621, 634, 112 S. Ct. 2169, 119 L.Ed.2d 410 (1992)

Sixty-ninth  
Legislative Assembly  
of North Dakota

HOUSE BILL NO. 2375

Introduced by

Senators Castenda, Bekkedahl, Lee, Barta

Representatives Vigesaa, Ostlie

A BILL for an Act to create and enact a new ~~section to~~ chapter ~~to title~~ 43-28 of the North Dakota Century Code, relating to joint negotiations by dental providers with dental insurers; to amend and reenact section 54-57-07 of the North Dakota Century Code, relating to compensation for the provision of administrative law judges; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

You'd have to add the rest of the Bill language here but our idea for this Amendment seeks no other changes to the Bill.

Sixty-ninth  
Legislative Assembly  
of North Dakota

HOUSE BILL NO. 2375

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You'd have to add the rest of the Bill language here but our idea for this Amendment seeks no other changes to the Bill.

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2375  
3/25/2025

A BILL for an Act to create and enact a new section to chapter 43-28 of the North Dakota Century Code, relating to joint negotiations by dental providers with dental insurers; to amend and reenact section 54-57-07 of the North Dakota Century Code, relating to compensation for the provision of administrative law judges; and to provide a penalty.

10:02 a. m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, C. Brown, T. Brown, Finley-DeVile, Grindberg, Kasper, Koppelman, D. Ruby, z, Schauer, Vollmer

Member Absent: Representative Schatz

### Discussion Topics:

- Joint consent
- Negotiations
- No leverage
- Length of service

10:02 a.m. Parrell Grossman, Lobbyist, American Council of Life Insurers, testified in opposition and submitted testimony #43763

10:18 a.m. William R. Sherwin, Executive Director, The ND Dental Association, testified in favor and submitted testimony #43759.

10:23 a.m. Representative Koppelman moved the amendment language presented by Mr. Grossman, #43763.

10:23 a.m. Representative Ostlie seconded the motion.

Voice vote.

Motion passed.

10:24 a.m. Representative D. Ruby moved Do Not Pass as amended.

10:24 a.m. Representative Koppelman seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	N

Representative Jorin Johnson	N
Representative Landon Bahl	Y
Representative Collette Brown	Y
Representative Timothy Brown	Y
Representative Lisa Finley-DeVille	N
Representative Karen Grindberg	Y
Representative Jim Kasper	N
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Mike Schatz	AB
Representative Austin Schauer	Y
Representative Daniel R. Vollmer	N

Motion passed 8-5-1.

10:32 a.m. Representative Schauer will carry the bill.

10:32 a.m. Chairman Warrey closed the meeting.

*Diane Lillis, Committee Clerk*



cd  
3/25/25  
10f9

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO  
FIRST ENGROSSMENT**

**ENGROSSED SENATE BILL NO. 2375**

Introduced by

Senators Castaneda, Bekkedahl, Lee, Barta

Representatives Vigasaa, 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; to amend~~  
3 ~~and reenact section 54-57-07 of the North Dakota Century Code, relating to compensation for~~  
4 ~~the provision of administrative law judges; and to provide a penalty for an Act to create and~~  
5 enact a new section to chapter 43-28 of the North Dakota Century Code, relating to joint  
6 negotiations by dental providers with dental insurers.

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

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.~~

Sixty-ninth  
Legislative Assembly

- 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 office of administrative~~
- 14 ~~hearings that a dental insurer has substantial market power in a service area and any~~
- 15 ~~of the terms or conditions of the contract with the dental insurer pose an actual or~~
- 16 ~~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.~~



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- 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 office 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 office of~~  
8 ~~administrative hearings, for approval, a copy of the proposed contract between the~~  
9 ~~dental providers and dental insurer.~~
- 10 ~~a. Within thirty days of receipt of the proposed contract, the office of administrative~~  
11 ~~hearings shall review the proposed contract and provide a determination. If the~~  
12 ~~office of administrative hearings disapproves the contract, the office of~~  
13 ~~administrative hearings shall communicate to the joint negotiation representative~~  
14 ~~any deficiencies and specific remedial measures for the deficiencies.~~
- 15 ~~b. Upon approval of the proposed contract, the dental providers, through the joint~~  
16 ~~negotiation representative, and the dental insurer may engage in negotiations.~~
- 17 ~~c. The joint negotiation representative shall submit the negotiated contract to the~~  
18 ~~office of administrative hearings for review.~~
- 19 ~~6. A negotiated contract and any plan of action for implementing a negotiated contract~~  
20 ~~must be approved by the office of administrative hearings before becoming effective.~~  
21 ~~Within thirty days of receipt of the negotiated contract, the office of administrative~~  
22 ~~hearings shall review the proposed contract and provide a determination. If the office~~  
23 ~~of administrative hearings disapproves the contract, the office of administrative~~  
24 ~~hearings shall communicate to the joint negotiation representative any deficiencies~~  
25 ~~and specific remedial measures for the deficiencies.~~
- 26 ~~7. The office of administrative hearings shall adopt rules and procedures as necessary to~~  
27 ~~carry out the responsibilities of this section.~~
- 28 ~~8. This section does not apply to dental benefit plans providing covered services~~  
29 ~~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 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 anyan 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 anyan 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~~



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

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

~~a. For the office of administrative hearings to pay for salaries, wages, benefits, operating expenses, and equipment, including payment to temporary administrative law judges, as necessary, for the purpose of providing requested administrative law judges to agencies an agency, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch, or a nongovernmental entity.~~

~~b. For the office of administrative hearings to pay mileage, meals, and lodging to any administrative law judges, as necessary, in connection with the services to be provided under this chapter.~~

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

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

**1. As authorized under this section, a dental provider and a dental insurer may enter into voluntary non-fee-related joint negotiations. Before commencing voluntary joint negotiations, a joint negotiation representative shall notify the attorney general of its**



- 1 intent to engage in voluntary joint negotiations. The notice must be in writing and  
2 include:
- 3 a. The matters, including terms and conditions, to be negotiated;  
4 b. The identity and location of all dental providers participating in the voluntary joint  
5 negotiations;  
6 c. The identity, location, and market share of the dental insurer the dental providers  
7 seek to engage in voluntary joint negotiations;  
8 d. A statement explaining the circumstances create the need for voluntary joint  
9 negotiations and the benefits anticipated from the voluntary joint negotiations;  
10 and  
11 e. The joint negotiation representative's procedures to ensure compliance with this  
12 section.
- 13 2. At the time of the filing with the attorney general, the joint negotiation representative  
14 shall provide a copy to the dental insurer of its notice and any other materials  
15 submitted to the attorney general. The dental insurer may provide additional  
16 information to the attorney general regarding matters described in this section.
- 17 3. The attorney general shall review the notice to determine whether the proposed  
18 voluntary joint negotiations comply with law and public policy, and shall, within ninety  
19 days, unless a thirty day extension is approved by the parties, notify the joint  
20 negotiation representative and the dental insurer whether voluntary joint negotiations  
21 are authorized under this section. The attorney general, in determining whether  
22 voluntary joint negotiations are authorized, shall consider the following factors:
- 23 a. The stated necessity and anticipated benefits of voluntary joint negotiations;  
24 b. The market and bargaining power of the parties;  
25 c. A party's ability to control or steer consumers, dictate terms of contracts, impose  
26 final or non-negotiable terms, or dictate or limit products or services available or  
27 offered to consumers;  
28 d. The contract terms to be negotiated, and the contract terms' potential effect on  
29 the ability to provide quality care or medically appropriate care without delay and  
30 difficulty;  
31 e. The risk of anticompetitive effects; and



- 1            f. The potential effect on price, quality, choice, or access to products or services for  
2            consumers or others.
- 3            4. The attorney general may request additional information from the parties at any point  
4            during the process or during the parties' negotiations.
- 5            5. Upon a determination by the attorney general that voluntary joint negotiation is  
6            authorized under this section, and after a duly authorized officer of the dental insurer  
7            and all dental providers seeking voluntary joint negotiations have granted written  
8            consent, two or more dental providers practicing in the service area of the dental  
9            insurer may jointly engage in voluntary negotiations with the dental insurer regarding  
10           the following non-fee-related matters:
- 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. Administrative procedures.  
20           j. Credentialing standards and procedures for selection, retention, and termination  
21           of participating dentists.  
22           k. Mechanisms for resolving disputes between the dental insurer and dental  
23           providers.
- 24           l. Inclusion or alteration of a contractual term or condition, unless the inclusion or  
25           alteration is otherwise required by federal or state law.
- 26           6. As used in this section, "fee-related matters" includes the amount of payment, the  
27           amount of discount, procedure codes or descriptions of services covered by payment,  
28           appropriate grouping of procedure codes, and any other matter directly relating to the  
29           amount of reimbursements paid to or revenue received by dental providers.
- 30           7. a. Upon a determination by the attorney general that voluntary joint negotiations are  
31           authorized under this section, dental providers may communicate with each other



1 and a joint negotiation representative authorized to negotiate on behalf of the  
2 dental providers with the dental insurer concerning any contractual term or  
3 condition to be negotiated, subject to any limitations imposed by the attorney  
4 general. As used in this section, a "joint negotiation representative" means a  
5 representative selected by two or more independent dental providers to engage  
6 in voluntary joint negotiations with a dental insurer on behalf of the dental  
7 providers.

8 b. The dental providers may agree to be bound by the terms and conditions  
9 negotiated by the joint negotiation representative.

10 8. A person may not act as a joint negotiation representative without express permission  
11 from the office of the attorney general.

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

21 b. Within ninety days of receipt of the proposed contract or agreed upon terms, the  
22 attorney general shall review the proposed contract or agreed upon terms and  
23 provide a determination.

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

27 (1) Fairness of the contract and whether the contract terms are consistent with  
28 applicable laws and regulations;

29 (2) Details provided about the negotiation process;

30 (3) The market and bargaining power of the parties;

31 (4) The contract terms and the benefits achieved by the parties;



- 1                   (5) Potential benefit to consumers and other purchasers of dental insurance;
- 2                   (6) Risk of harm to consumers and others, including the likelihood of increase in
- 3                   prices or reduction in quality, choice, or access to dental care or dental
- 4                   insurance;
- 5                   (7) Risk of anticompetitive effects and potential effects on third parties,
- 6                   including creation of barriers to entry for new market participants, unfair
- 7                   competition, or exclusionary effects; and
- 8                   (8) Promotion of increased infrastructure and innovation in a market.
- 9                   d. Upon request from the attorney general, the joint negotiation representative, a
- 10                  participating dental provider, and the dental insurer shall provide additional
- 11                  information to inform the attorney general's determination under this section.
- 12                  10. The attorney general may adopt rules and procedures as necessary to carry out the
- 13                  responsibilities of this section.
- 14                  11. This section does not apply to dental benefit plans providing covered services
- 15                  exclusively or primarily to individuals who are eligible for medical assistance.
- 16                  12. This section may not be construed to:
- 17                   a. Permit a coordinated cessation, reduction, or limitation of dental services.
- 18                   b. Affect government approval of, or otherwise restrict activity by, dental providers
- 19                   which is not prohibited under federal antitrust law or require approval or contract
- 20                   terms to the extent the terms are exempt from state regulation under federal law.

**REPORT OF STANDING COMMITTEE  
ENGROSSED SB 2375**

**Industry, Business and Labor Committee (Rep. Warrey, Chairman)** recommends **AMENDMENTS** ([25.1361.02005](#)) and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). SB 2375 was placed on the Sixth order on the calendar.

25.1361.02004  
Title.

Prepared by the Legislative Council  
staff for Senator Castaneda  
March 24, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

### 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~~ to title 43 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 an~~  
5 effective date.

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

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

9 **SECTION 1.** A new chapter to title 43 of the North Dakota Century Code is created and  
10 enacted as follows:

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

- 11 1. As authorized under this ~~section~~ chapter and in accordance with rules adopted by the  
12 office of the attorney general, two or more dental providers practicing in the service  
13 area of a dental insurer may jointly negotiate with the dental insurer ~~and engage in~~  
14 ~~related joint activity~~ under the active supervision of the office of the attorney general  
15 regarding non-fee-related matters including:
  - 16 a. Definition of medical necessity and other conditions of coverage.
  - 17 b. Utilization management criteria and procedures.
  - 18 c. Clinical practice guidelines.
  - 19 d. Preventative care and other medical management policies.

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



1 joint negotiations with ~~at~~the duly authorized officer of the dental insurer on behalf of the  
2 dental providers.

3 b. The joint negotiation representative is the only party authorized to negotiate with  
4 the duly authorized officer of the dental insurer on behalf of the dental providers  
5 as a group.

6 c. The dental providers may agree to be bound by the terms and conditions  
7 negotiated by the joint negotiation representative.

8 d. The joint negotiation representative shall disclose to the duly authorized officer of  
9 the dental insurer the number of dental providers represented by the joint  
10 negotiation representative.

11 ~~4.3.~~ A person may not act as a joint negotiation representative without express permission  
12 from the office of ~~administrative hearings~~the attorney general.

13 ~~5.4.~~ The joint negotiation representative must receive authorization from the office of the  
14 attorney general before joint negotiations may begin. The joint negotiation  
15 representative shall notify the office of the attorney general of the dental providers'  
16 intent to engage in joint negotiations. The notice must be in writing and include:

17 a. The matters, including terms and conditions, to be negotiated;

18 b. The identity and location of all dental providers that will participate in the joint  
19 negotiations;

20 c. The identity, location, and market share of the dental insurer the dental providers  
21 intend to engage in the joint negotiations;

22 d. A statement explaining the circumstances that create the need for joint  
23 negotiations and the anticipated benefits of the joint negotiations; and

24 e. The procedure the joint negotiation representative intends to follow to ensure  
25 compliance with this chapter.

26 5. The office of the attorney general shall review the notice to determine whether the  
27 proposed joint negotiations comply with applicable law and public policy. Except as  
28 provided in subsection 11, within thirty days of receipt of the notice from the joint  
29 negotiation representative, the office of the attorney general shall notify the joint  
30 negotiation representative whether the proposed joint negotiations are authorized

under this chapter. In determining whether proposed joint negotiations are authorized, the office of the attorney general shall consider the following factors:

a. The stated necessity and anticipated benefits of the joint negotiations;

b. The market and bargaining power of the parties;

c. A party's ability to control or steer consumers, dictate terms of contract, impose final or nonnegotiable terms, or limit products or services available or offered to consumers;

d. The contract terms to be negotiated and the potential effect the terms have on the ability of the provider to provide quality care or medically appropriate care without delay and difficulty;

e. The risk of anticompetitive effects; and

f. The potential effect on price, quality, choice, or access to products or services for consumers or others.

6. a. Upon the joint negotiation representative and the duly authorized officer of the dental insurer determining an agreement has been reached on contractual terms or conditions ~~that will be the subject matter of the negotiations~~, the joint negotiation representative shall submit to the office of ~~administrative hearings~~ the attorney general, for approval, a copy of the proposed contract between the dental providers and dental insurer.

~~a. Within~~

b. Except as provided in subsection 11, within thirty days of receipt of the proposed contract, the office of ~~administrative hearings~~ the attorney general shall review the proposed contract and provide a determination. If the office of ~~administrative hearings~~ the attorney general disapproves the proposed contract, the office of ~~administrative hearings~~ the attorney general shall communicate to the joint negotiation representative any deficiencies and specific remedial measures for the deficiencies.

c. In reviewing a proposed contract, the office of the attorney general may consider the following factors:

(1) The fairness of the contract and whether the contract terms are consistent with applicable laws and regulations.

- 1                   (2) Details about the negotiation process.
- 2                   (3) The market and bargaining power of the parties.
- 3                   (4) The benefits achieved by the parties.
- 4                   (5) Potential benefit to consumers and other purchasers of dental insurance.
- 5                   (6) Risk of harm to consumers and others, including the likelihood of increase in  
6                   prices or reduction in quality, choice, or access to dental care or dental  
7                   insurance.
- 8                   (7) Risk of anticompetitive effects and potential effects on third parties,  
9                   including creation of barriers to entry for new market participants, unfair  
10                  competition, or exclusionary effects.
- 11                  (8) Promotion of increased infrastructure and innovation in a market.
- 12                  ~~b.d.~~ If the office of the attorney general disapproves the proposed contract, the office  
13                  of the attorney general shall communicate to the joint negotiation representative  
14                  any deficiencies and specific remedial measures for the deficiencies.
- 15                  e. Upon approval of the proposed contract, the dental providers, through the joint  
16                  negotiation representative, and the dental insurer, through the duly authorized  
17                  officer, may engage in negotiations.
- 18                  ~~c.~~ ~~The joint negotiation representative shall submit the negotiated contract to the~~  
19                  ~~office of administrative hearings for review.~~
- 20                  ~~6.7.~~ a. A negotiated contract and any plan of action for implementing a negotiated  
21                  contract must be approved by the office of ~~administrative hearings~~the attorney  
22                  general before becoming effective. Within
- 23                  b. Except as provided in subsection 11, within thirty days of receipt of the negotiated  
24                  contract, the office of ~~administrative hearings~~the attorney general shall review the  
25                  ~~proposed~~negotiated contract and provide a determination. In reviewing a  
26                  negotiated contract or plan of action, the office of the attorney general may  
27                  consider the factors under subdivision c of subsection 6.
- 28                  c. If the office of ~~administrative hearings~~the attorney general disapproves the  
29                  negotiated contract, the office of ~~administrative hearings~~the attorney general shall  
30                  communicate to the joint negotiation representative any deficiencies and specific  
31                  remedial measures for the deficiencies.

1 ~~7.8.~~ The office of ~~administrative hearings shall~~ the attorney general shall adopt rules and  
2 procedures as necessary to carry out the responsibilities of this ~~section~~ chapter.

3 ~~8.9.~~ 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 ~~9.~~ ~~Any negotiations under this section must be made in good faith. A person that does-~~  
6 ~~not negotiate in good faith may be subject to sanctions or penalties as determined by-~~  
7 ~~the office of administrative hearings.~~

8 10. This section may not be construed to:

9 a. Permit a coordinated cessation, reduction, or limitation of dental services.

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

13 11. ~~The dental insurer is responsible for costs for services rendered by the office of~~  
14 ~~administrative hearings and shall make payment for costs for services in accordance-~~  
15 ~~with section 54-57-07 and rules adopted by the office of administrative hearings~~ Upon  
16 notice to the parties, the office of the attorney general may extend for up to an  
17 additional thirty days the timeframe to review a notice under subsection 5, a proposed  
18 contract under subsection 6, and a negotiated contract or plan of action under  
19 subsection 7.

20 ~~SECTION 2. AMENDMENT. Section 54-57-07 of the North Dakota Century Code is~~  
21 ~~amended and reenacted as follows:~~

22 ~~54-57-07. Compensation for provision of administrative law judges -- Special fund~~  
23 ~~established -- Continuing appropriation.~~

24 ~~1.~~ ~~The office of administrative hearings shall require payment for services rendered by~~  
25 ~~any administrative law judge provided by it to any~~ an ~~agency, to any unit of local~~  
26 ~~government in this state, to any tribal government in this state, or to the judicial~~  
27 ~~branch, or a nongovernmental entity, in the conduct of an administrative hearing and~~  
28 ~~related proceedings, and proceedings under section 1 of this Act, and those entities~~  
29 ~~must make the required payment to the office. Payment must include payment for~~  
30 ~~support staff necessary to render administrative law judge services. Moneys received~~  
31 ~~by the office of administrative hearings in payment for providing an administrative law~~

1 judge to conduct an administrative hearing and related proceedings, ~~and proceedings~~  
2 ~~under section 1 of this Act~~, must be deposited into the operating fund of the office of  
3 administrative hearings.

4 ~~2.~~ The office of administrative hearings shall require payment for mileage, meals, and  
5 lodging in connection with services rendered by an administrative law judge provided  
6 to ~~any~~ an agency, to any unit of local government in this state, to any tribal government  
7 in this state, or to the judicial branch, ~~or a nongovernmental entity~~, in the conduct of an  
8 administrative hearing and related proceedings, ~~and proceedings under section 1 of~~  
9 ~~this Act~~, and those entities must make the required payment to the office. Payment for  
10 meals and lodging must be in the amounts allowable under section 44-08-04. Payment  
11 for mileage when using state vehicles must be in amounts set for user charges under  
12 section 24-02-03.5. All other payments must be in amounts allowed for other state  
13 officials and employees. Either general fund or special fund moneys, or other income,  
14 may be used for the payment of mileage, meals, and lodging under this subsection.

15 ~~3.~~ A special fund is established in the state treasury and designated as the  
16 administrative hearings fund. The office of administrative hearings shall deposit in the  
17 fund all moneys received by it in payment for providing services rendered by any  
18 administrative law judge in the conduct of an administrative hearing and related  
19 proceedings, ~~and proceedings under section 1 of this Act~~, under this chapter, as well  
20 as all moneys received by the office in payment for mileage, meals, and lodging in  
21 connection with providing any administrative law judge to conduct an administrative  
22 hearing and related proceedings, ~~and proceedings under section 1 of this Act~~. The  
23 moneys in the fund are a standing and continuing appropriation and are appropriated,  
24 as necessary, for the following purposes:

25 ~~a.~~ For the office of administrative hearings to pay for salaries, wages, benefits,  
26 operating expenses, and equipment, including payment to temporary  
27 administrative law judges, as necessary, for the purpose of providing requested  
28 administrative law judges to ~~agencies~~ an agency, to any unit of local government  
29 in this state, to any tribal government in this state, or to the judicial branch, ~~or a~~  
30 ~~nongovernmental entity~~.

1 ~~\_\_\_\_\_ b. For the office of administrative hearings to pay mileage, meals, and lodging to~~  
2 ~~any administrative law judges, as necessary, in connection with the services to be~~  
3 ~~provided under this chapter.~~

4 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on April 1, 2026.



**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.**

1. 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.

**2025 SENATE HUMAN SERVICES**

**SB 2375**

# 2025 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Lincoln Room, State Capitol

SB 2375  
4/7/2025

A BILL for an Act to create and enact a new section to chapter 43-28 of the North Dakota Century Code, relating to joint negotiations by dental providers with dental insurers.

2:58 p.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

### **Discussion Topics:**

- Office of Administrative Hearings
- Change of timeline

2:59 p.m. Senator Castaneda answered committee questions and submitted testimony #45248.

3:13 p.m. William Sherwin Executive Director with ND Dental Association, answered committee questions.

3:17 p.m. Parrell Grossman, American Council of Life Insurers, answered committee questions.

3:20 p.m. Chairman Lee closed the hearing.

*Andrew Ficek, Committee Clerk*



25.1361.02005  
Title.03000

Adopted by the House Industry,  
Business and Labor Committee  
March 25, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

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

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

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 office of administrative~~
- 14 ~~hearings that a dental insurer has substantial market power in a service area and any~~
- 15 ~~of the terms or conditions of the contract with the dental insurer pose an actual or~~
- 16 ~~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 office 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 office of~~  
8 ~~administrative hearings, for approval, a copy of the proposed contract between the~~  
9 ~~dental providers and dental insurer.~~
- 10 ~~a. Within thirty days of receipt of the proposed contract, the office of administrative~~  
11 ~~hearings shall review the proposed contract and provide a determination. If the~~  
12 ~~office of administrative hearings disapproves the contract, the office of~~  
13 ~~administrative hearings shall communicate to the joint negotiation representative~~  
14 ~~any deficiencies and specific remedial measures for the deficiencies.~~
- 15 ~~b. Upon approval of the proposed contract, the dental providers, through the joint~~  
16 ~~negotiation representative, and the dental insurer may engage in negotiations.~~
- 17 ~~c. The joint negotiation representative shall submit the negotiated contract to the~~  
18 ~~office of administrative hearings for review.~~
- 19 ~~6. A negotiated contract and any plan of action for implementing a negotiated contract~~  
20 ~~must be approved by the office of administrative hearings before becoming effective.~~  
21 ~~Within thirty days of receipt of the negotiated contract, the office of administrative~~  
22 ~~hearings shall review the proposed contract and provide a determination. If the office~~  
23 ~~of administrative hearings disapproves the contract, the office of administrative~~  
24 ~~hearings shall communicate to the joint negotiation representative any deficiencies~~  
25 ~~and specific remedial measures for the deficiencies.~~
- 26 ~~7. The office of administrative hearings shall adopt rules and procedures as necessary to~~  
27 ~~carry out the responsibilities of this section.~~
- 28 ~~8. This section does not apply to dental benefit plans providing covered services~~  
29 ~~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 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 anyan 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 anyan 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~~



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

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

~~a. For the office of administrative hearings to pay for salaries, wages, benefits, operating expenses, and equipment, including payment to temporary administrative law judges, as necessary, for the purpose of providing requested administrative law judges to agenciesan agency, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch, or a nongovernmental entity.~~

~~b. For the office of administrative hearings to pay mileage, meals, and lodging to any administrative law judges, as necessary, in connection with the services to be provided under this chapter.~~

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

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

**1. As authorized under this section, a dental provider and a dental insurer may enter into voluntary non-fee-related joint negotiations. Before commencing voluntary joint negotiations, a joint negotiation representative shall notify the attorney general of its**



- 1 intent to engage in voluntary joint negotiations. The notice must be in writing and
- 2 include:
- 3 a. The matters, including terms and conditions, to be negotiated;
- 4 b. The identity and location of all dental providers participating in the voluntary joint
- 5 negotiations;
- 6 c. The identity, location, and market share of the dental insurer the dental providers
- 7 seek to engage in voluntary joint negotiations;
- 8 d. A statement explaining the circumstances create the need for voluntary joint
- 9 negotiations and the benefits anticipated from the voluntary joint negotiations;
- 10 and
- 11 e. The joint negotiation representative's procedures to ensure compliance with this
- 12 section.
- 13 2. At the time of the filing with the attorney general, the joint negotiation representative
- 14 shall provide a copy to the dental insurer of its notice and any other materials
- 15 submitted to the attorney general. The dental insurer may provide additional
- 16 information to the attorney general regarding matters described in this section.
- 17 3. The attorney general shall review the notice to determine whether the proposed
- 18 voluntary joint negotiations comply with law and public policy, and shall, within ninety
- 19 days, unless a thirty day extension is approved by the parties, notify the joint
- 20 negotiation representative and the dental insurer whether voluntary joint negotiations
- 21 are authorized under this section. The attorney general, in determining whether
- 22 voluntary joint negotiations are authorized, shall consider the following factors:
- 23 a. The stated necessity and anticipated benefits of voluntary joint negotiations;
- 24 b. The market and bargaining power of the parties;
- 25 c. A party's ability to control or steer consumers, dictate terms of contracts, impose
- 26 final or non-negotiable terms, or dictate or limit products or services available or
- 27 offered to consumers;
- 28 d. The contract terms to be negotiated, and the contract terms' potential effect on
- 29 the ability to provide quality care or medically appropriate care without delay and
- 30 difficulty;
- 31 e. The risk of anticompetitive effects; and



- 1        f. The potential effect on price, quality, choice, or access to products or services for
- 2        consumers or others.
- 3        4. The attorney general may request additional information from the parties at any point
- 4        during the process or during the parties' negotiations.
- 5        5. Upon a determination by the attorney general that voluntary joint negotiation is
- 6        authorized under this section, and after a duly authorized officer of the dental insurer
- 7        and all dental providers seeking voluntary joint negotiations have granted written
- 8        consent, two or more dental providers practicing in the service area of the dental
- 9        insurer may jointly engage in voluntary negotiations with the dental insurer regarding
- 10       the following non-fee-related matters:
- 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. Administrative procedures.
- 20       j. Credentialing standards and procedures for selection, retention, and termination
- 21       of participating dentists.
- 22       k. Mechanisms for resolving disputes between the dental insurer and dental
- 23       providers.
- 24       l. Inclusion or alteration of a contractual term or condition, unless the inclusion or
- 25       alteration is otherwise required by federal or state law.
- 26       6. As used in this section, "fee-related matters" includes the amount of payment, the
- 27       amount of discount, procedure codes or descriptions of services covered by payment,
- 28       appropriate grouping of procedure codes, and any other matter directly relating to the
- 29       amount of reimbursements paid to or revenue received by dental providers.
- 30       7. a. Upon a determination by the attorney general that voluntary joint negotiations are
- 31       authorized under this section, dental providers may communicate with each other



1 and a joint negotiation representative authorized to negotiate on behalf of the  
2 dental providers with the dental insurer concerning any contractual term or  
3 condition to be negotiated, subject to any limitations imposed by the attorney  
4 general. As used in this section, a "joint negotiation representative" means a  
5 representative selected by two or more independent dental providers to engage  
6 in voluntary joint negotiations with a dental insurer on behalf of the dental  
7 providers.

8 b. The dental providers may agree to be bound by the terms and conditions  
9 negotiated by the joint negotiation representative.

10 8. A person may not act as a joint negotiation representative without express permission  
11 from the office of the attorney general.

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

21 b. Within ninety days of receipt of the proposed contract or agreed upon terms, the  
22 attorney general shall review the proposed contract or agreed upon terms and  
23 provide a determination.

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

27 (1) Fairness of the contract and whether the contract terms are consistent with  
28 applicable laws and regulations;

29 (2) Details provided about the negotiation process;

30 (3) The market and bargaining power of the parties;

31 (4) The contract terms and the benefits achieved by the parties;



- 1                   (5) Potential benefit to consumers and other purchasers of dental insurance;
- 2                   (6) Risk of harm to consumers and others, including the likelihood of increase in
- 3                   prices or reduction in quality, choice, or access to dental care or dental
- 4                   insurance;
- 5                   (7) Risk of anticompetitive effects and potential effects on third parties,
- 6                   including creation of barriers to entry for new market participants, unfair
- 7                   competition, or exclusionary effects; and
- 8                   (8) Promotion of increased infrastructure and innovation in a market.
- 9                   d. Upon request from the attorney general, the joint negotiation representative, a
- 10                  participating dental provider, and the dental insurer shall provide additional
- 11                  information to inform the attorney general's determination under this section.
- 12                  10. The attorney general may adopt rules and procedures as necessary to carry out the
- 13                  responsibilities of this section.
- 14                  11. This section does not apply to dental benefit plans providing covered services
- 15                  exclusively or primarily to individuals who are eligible for medical assistance.
- 16                  12. This section may not be construed to:
- 17                   a. Permit a coordinated cessation, reduction, or limitation of dental services.
- 18                   b. Affect government approval of, or otherwise restrict activity by, dental providers
- 19                   which is not prohibited under federal antitrust law or require approval or contract
- 20                   terms to the extent the terms are exempt from state regulation under federal law.