

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2114
(Judiciary Committee)
(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to sanctions against a provider who provides services under a provider agreement with medical assistance; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Civil sanction - Costs recoverable - Interest - Appeals.

1. For purposes of this section:
 - a. "Affiliate" means a person having an overt or covert relationship each with another person in a manner that one person directly or indirectly controls or has the power to control another.
 - b. "Department" means the department of human services.
 - c. "Provider" means any individual or entity furnishing medicaid services under a provider agreement with the department of human services.
2. A provider, an affiliate of a provider, or any combination of provider and affiliates, is liable to the department for up to twenty-five percent of the amount the department was induced to pay as a result of each act of fraud or abuse. This sanction is in addition to the applicable rules established by the department.
3. A provider, an affiliate of a provider, or any combination of provider and affiliates, is liable to the department for up to five thousand dollars on each act of fraud or abuse which did not induce the department to make an erroneous payment. This sanction is in addition to the applicable rules established by the department.
4. A provider, an affiliate of a provider, or any combination of provider and affiliates, that is assessed a civil sanction by the department also shall reimburse the department investigation fees, costs, and expenses for any investigation and action brought under this section.
5. Unless otherwise provided in a judgment entered against a provider or against an affiliate of the provider, overpayments and sanctions accrue interest at the legal rate beginning thirty days after the department provides written notice to the provider or the affiliate of the provider.
6.
 - a. A provider or an affiliate of a provider who is assessed a sanction may request a review of the sanction by filing within thirty days of the date of the department's notice of sanction a written notice with the department which includes a statement of each disputed item and the reason or basis for the dispute.
 - b. A provider or an affiliate of a provider may not request review under this section if the sanction imposed is termination or suspension and the notice of sanction states that the basis for the sanction is either:

- (1) The provider's or affiliate's failure to meet standards of licensure, certification, or registration where those standards are imposed by state or federal law as a condition to participation in the medicaid program; or
 - (2) The provider or affiliate has been similarly sanctioned by the medicare program or by another state's medicaid program.
- c. Within thirty days after requesting a review, a provider or affiliate shall provide to the department all documents, written statements, exhibits, and other written information that supports the request for review.
- d. The department shall assign a provider's or affiliate's request for review to someone other than an individual who was involved in imposing the sanction. A provider or affiliate who has requested review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- e. The department shall make and issue its final decision within seventy-five days of receipt of the notice of request for review. The department's final decision must conform to the requirements of section 28-32-39. A provider or affiliate may appeal the final decision of the department to the district court in the manner provided in section 28-32-42, and the district court shall review the department's final decision in the manner provided in section 28-32-46. The judgment of the district court in an appeal from a request for review may be reviewed in the supreme court on appeal by any party in the same manner as provided in section 28-32-49.
- f. Upon receipt of notice that the provider or affiliate has appealed its final decision to the district court, the department shall make a record of all documents, written statements, exhibits, and other written information submitted by the provider, affiliate, or the department in connection with the request for review and the department's final decision on review, which constitutes the entire record. Within thirty days after an appeal has been taken to district court as provided in this section, the department shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original and a certified copy of the entire record, and that record must be treated as the record on appeal for purposes of section 28-32-44.
7. Determinations of medical necessity may not lead to imposition of remedies, duties, prohibitions, and sanctions under this section.
8. The remedies, duties, prohibitions, and sanctions of this section are not exclusive and are in addition to all other causes of action, remedies, penalties, and sanctions otherwise provided by law or by provider agreement.
9. The state's share of all civil sanctions, investigation fees, costs, expenses, and interest received by the department under this section must be deposited into the general fund.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2114.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 86 Nays 8 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State