

**FIRST ENGROSSMENT
with House Amendments**

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2278

Introduced by

Senators DeMers, LaFountain, St. Aubyn

Representatives Mahoney, Price, Wald

1 A BILL for an Act to create and enact subsections 14, 15, and 16 to section 26.1-04-03 of the
2 North Dakota Century Code, relating to the restriction or interference with medical
3 communications between health care providers and patients and unfair indemnification
4 provisions in contracts with health care providers.

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

6 **SECTION 1.** Subsections 14, 15, and 16 to section 26.1-04-03 of the North Dakota
7 Century Code are created and enacted as follows:

- 8 14. In subsections 15 and 16, unless the context otherwise requires:
 - 9 a. "Entity" includes any third-party administrator or other person with
 - 10 responsibility for contracts with health care providers under a health plan.
 - 11 b. "Health care provider" means any person that delivers, administers, or
 - 12 supervises health care products or services, for profit or otherwise, in the
 - 13 ordinary course of business or professional practice.
 - 14 c. "Health plan" means any public or private plan arrangement that provides or
 - 15 pays the cost of health care providers that furnishes health services under a
 - 16 contract or agreement with this type of plan.
 - 17 d. "Medical communication" means any communication, other than a knowing
 - 18 and willful misrepresentation, made by a health care provider to a patient
 - 19 regarding the health care needs or treatment options of the patient and the
 - 20 applicability of the health plan to the patient's needs or treatment. The term
 - 21 includes communications concerning:
 - 22 (1) Any test, consultations, and treatment options;
 - 23 (2) Any risks or benefits associated with tests, consultations, and options;

- 1 (3) Variation in experience, quality, or outcome among any health care
2 providers or health care facilities providing any medical service;
- 3 (4) The process, basis, or standard used by any entity to determine
4 whether to authorize or deny health care services or benefits; and
- 5 (5) Any financial incentives or disincentives based on service utilized
6 provided by an entity to a health care provider.
- 7 e. "Patients" includes any former, current, or prospective patient or the guardian
8 or legal representative of any former, current, or prospective patient.
- 9 15. Interference with certain medical communications.
- 10 a. An entity offering a health plan may not restrict or interfere with any medical
11 communication and may not take any of the following actions against a health
12 care provider solely on the basis of a medical communication:
- 13 (1) Refusal to contract with the health care provider;
- 14 (2) Termination of or refusal to renew a contract with the health care
15 provider;
- 16 (3) Refusal to refer patients to or allow others to refer patients to the health
17 care provider; or
- 18 (4) Refusal to compensate the health care provider for covered services
19 that are medically necessary.
- 20 b. This subsection does not prohibit an entity from enforcing, as part of a
21 contract or agreement to which a health care provider is a party, any mutually
22 agreed upon terms and conditions, including terms and conditions requiring a
23 health care provider to participate in, and cooperate with, all programs,
24 policies, and procedures developed or operated by a health plan to assure,
25 review, or improve the quality and effective utilization of health care services,
26 if the utilization is according to guidelines or protocols that are based on
27 clinical or scientific evidence and only if the guidelines or protocols under the
28 utilization do not prohibit or restrict medical communications between
29 providers and their patients.
- 30 16. Unfair indemnification. A contract between an entity and a health care provider
31 may not require the health care provider to indemnify the entity for the entity's

1 negligence, willful misconduct, or breach of contract, and may not require a health
2 care provider as a condition of participation to waive any right to seek legal redress
3 against the entity. In addition to the proceedings and penalties provided in this
4 chapter, a contract provision violating this subsection is void.