

HOUSE BILL NO. 1373

Introduced by

Representatives M. Nelson, Adams, Holman

1 A BILL for an Act to create and enact a new section to chapter 23-01 of the North Dakota
2 Century Code, relating to state medical anti-kickback laws; to provide a penalty; and to provide
3 an effective date.

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

5 **SECTION 1.** A new section to chapter 23-01 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Anti-kickback statute - Rules - Penalty.**

- 8 1. As used in this section the term "federal anti-kickback statute" means the federal
9 Medicare anti-kickback statute under section 1128B(b) of the Social Security Act
10 [42 U.S.C. 1320a-7b(b)] and regulations adopted under this federal law.
- 11 2. The health council shall adopt rules restricting financial relationships or payment
12 arrangements involving health care providers under which a person benefits financially
13 by referring a patient to another person, recommending another person, or furnishing
14 or recommending an item or service. The rules must be compatible with, and more
15 restrictive than, the federal anti-kickback statute. The rules must apply to all provider
16 groups and business and professional arrangements. If the rules restrict an
17 arrangement or relationship permissible under federal laws and regulations, including
18 an arrangement or relationship expressly permitted under the federal anti-kickback
19 statute safe harbor regulations, the fact that the state requirement is more restrictive
20 than federal requirements must be stated clearly in the rule.
- 21 3. a. Until the health council adopts rules under this section, the restrictions in the
22 federal anti-kickback statute apply to all persons in the state, regardless of
23 whether the person participates in a state health care program.

- 1 b. Subdivision a does not prohibit an individual from receiving a discount or other
2 reduction in price or a limited-time free supply or samples of a prescription drug,
3 medical supply, or medical equipment offered by a pharmaceutical manufacturer,
4 medical supply or device manufacturer, health plan company, or pharmacy
5 benefit manager, if:
- 6 (1) The discount or reduction in price is provided to the individual in connection
7 with the purchase of a prescription drug, medical supply, or medical
8 equipment prescribed for that individual;
- 9 (2) The discount or reduction in price otherwise complies with the requirements
10 of state and federal law applicable to enrollees of state and federal public
11 health care programs;
- 12 (3) The discount or reduction in price does not exceed the amount paid directly
13 by the individual for the prescription drug, medical supply, or medical
14 equipment; and
- 15 (4) The limited-time free supply or samples are provided by a physician or
16 pharmacist, as provided by the federal Prescription Drug Marketing Act of
17 1987 [Pub. L. 100-293, 102 Stat. 95].
- 18 c. A benefit, reward, remuneration, or incentive for continued product use may not
19 be provided to an individual or the family of that individual by a pharmaceutical
20 manufacturer, medical supply or device manufacturer, or pharmacy benefit
21 manager, except this prohibition does not apply to:
- 22 (1) Activities permitted under subdivision b;
- 23 (2) A pharmaceutical manufacturer, medical supply or device manufacturer,
24 health plan company, or pharmacy benefit manager providing to a patient, at
25 a discount or reduced price or free of charge, ancillary products necessary
26 for treatment of the medical condition for which the prescription drug,
27 medical supply, or medical equipment was prescribed or provided; and
- 28 (3) A pharmaceutical manufacturer, medical supply or device manufacturer,
29 health plan company, or pharmacy benefit manager providing to a patient a
30 trinket or memento of insignificant value.

- 1 d. This subsection does not prohibit a health plan company from offering a tiered
2 formulary with different copayment or cost-sharing amounts for different drugs.
- 3 4. The state health officer may assess a fine against a person that violates this section.
4 The amount of the fine is one thousand dollars or one hundred ten percent of the
5 estimated financial benefit the person realized as a result of the prohibited financial
6 arrangement or payment relationship, whichever is greater.
- 7 5. A health provider cooperative operating under chapter 26.1-49 is not in violation of this
8 section.

9 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on January 1, 2020.