

Introduced by

Judiciary Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new section to chapter 50-24.1 of the North Dakota  
2 Century Code, relating to sanctions against a provider who provides services under a provider  
3 agreement with medical assistance; and to provide a penalty.

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

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

7 **Civil sanction - Costs recoverable - Interest - Appeals.**

8 1. For purposes of this section:

9 a. "Affiliate" means a person having an overt or covert relationship each with  
10 another person in a manner that one person directly or indirectly controls or has  
11 the power to control another.

12 b. "Department" means the department of human services.

13 c. "Provider" means any individual or entity furnishing medicaid services under a  
14 provider agreement with the department of human services.

15 2. A provider, an affiliate of a provider, or any combination of provider and affiliates, is  
16 liable to the department for up to ~~ten thousand dollars~~ twenty-five percent of the  
17 amount the department was induced to pay as a result of each act of fraud or abuse.  
18 This sanction is in addition to the applicable rules established by the department.

19 3. A provider, an affiliate of a provider, or any combination of provider and affiliates, is  
20 liable to the department for up to five thousand dollars on each act of fraud or abuse  
21 which did not induce the department to make an erroneous payment. This sanction is  
22 in addition to the applicable rules established by the department.

23 4. A provider, an affiliate of a provider, or any combination of provider and affiliates, that  
24 is assessed a civil sanction by the department also shall reimburse the department

1 investigation fees, costs, and expenses for any investigation and action brought under  
2 this section.

3 4.5. Unless otherwise provided in a judgment entered against a provider or against an  
4 affiliate of the provider, overpayments and sanctions accrue interest at the legal rate  
5 beginning thirty days after the department provides written notice to the provider or the  
6 affiliate of the provider.

7 5.6. a. A provider or an affiliate of a provider who is assessed a sanction may request a  
8 review of the sanction by filing within thirty days of the date of the department's  
9 notice of sanction a written notice with the department which includes a  
10 statement of each disputed item and the reason or basis for the dispute.

11 b. A provider or an affiliate of a provider may not request review under this section if  
12 the sanction imposed is termination or suspension and the notice of sanction  
13 states that the basis for the sanction is either:

14 (1) The provider's or affiliate's failure to meet standards of licensure,  
15 certification, or registration where those standards are imposed by state or  
16 federal law as a condition to participation in the medicaid program; or

17 (2) The provider or affiliate has been similarly sanctioned by the medicare  
18 program or by another state's medicaid program.

19 c. Within thirty days after requesting a review, a provider or affiliate shall provide to  
20 the department all documents, written statements, exhibits, and other written  
21 information that supports the request for review.

22 d. The department shall assign a provider's or affiliate's request for review to  
23 someone other than an individual who was involved in imposing the sanction. A  
24 provider or affiliate who has requested review may contact the department for an  
25 informal conference regarding the review any time before the department has  
26 issued its final decision.

27 e. The department shall make and issue its final decision within seventy-five days of  
28 receipt of the notice of request for review. The department's final decision must  
29 conform to the requirements of section 28-32-39. A provider or affiliate may  
30 appeal the final decision of the department to the district court in the manner  
31 provided in section 28-32-42, and the district court shall review the department's

1           final decision in the manner provided in section 28-32-46. The judgment of the  
2           district court in an appeal from a request for review may be reviewed in the  
3           supreme court on appeal by any party in the same manner as provided in section  
4           28-32-49.

5           f. Upon receipt of notice that the provider or affiliate has appealed its final decision  
6           to the district court, the department shall make a record of all documents, written  
7           statements, exhibits, and other written information submitted by the provider,  
8           affiliate, or the department in connection with the request for review and the  
9           department's final decision on review, which constitutes the entire record. Within  
10          thirty days after an appeal has been taken to district court as provided in this  
11          section, the department shall prepare and file in the office of the clerk of the  
12          district court in which the appeal is pending the original and a certified copy of the  
13          entire record, and that record must be treated as the record on appeal for  
14          purposes of section 28-32-44.

15          ~~6.7.~~ Determinations of medical necessity may not lead to imposition of remedies, duties,  
16          prohibitions, and sanctions under this section.

17          8. The remedies, duties, prohibitions, and sanctions of this section are not exclusive and  
18          are in addition to all other causes of action, remedies, penalties, and sanctions  
19          otherwise provided by law or by provider agreement.

20          ~~7.9.~~ The state's share of all civil sanctions, investigation fees, costs, expenses, and interest  
21          received by the department under this section must be deposited into the general  
22          fund.