

Sixty-second  
Legislative Assembly  
of North Dakota

REENGROSSED SENATE BILL NO. 2276

Introduced by

Senators J. Lee, Dever, Heckaman

Representatives Kaldor, Weisz

1 A BILL for an Act to create and enact a new chapter to title 23 of the North Dakota Century  
2 Code, relating to creating a state vaccine fund and a North Dakota vaccine group purchasing  
3 board; to amend and reenact section 23-01-05.3 of the North Dakota Century Code, relating to  
4 reporting immunization data; and to provide a penalty.

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

6 **SECTION 1.** A new chapter to title 23 of the North Dakota Century Code is created and  
7 enacted as follows:

8 **Definitions.**

9 As used in this chapter:

- 10 1. "Board" means the North Dakota vaccine group purchasing board.
- 11 2. "Department" means the state department of health.
- 12 3. "Director" means the director of the North Dakota vaccine group purchasing program.
- 13 4. "Fund" means the North Dakota vaccine fund.
- 14 5. "Health insurance coverage" means any hospital and medical expense-incurred policy,  
15 nonprofit health care service plan contract, health maintenance organization  
16 subscriber contract, or any other health care plan or arrangement that pays for or  
17 furnishes benefits that pay the costs of or provide medical, surgical, or hospital care or,  
18 if selected by the eligible individual, chiropractic care.
- 19 a. Health insurance coverage does not include any one or more of the following:
  - 20 (1) Coverage only for accident, disability income insurance, or any combination  
21 of the two;
  - 22 (2) Coverage issued as a supplement to liability insurance;
  - 23 (3) Liability insurance, including general liability insurance and automobile  
24 liability insurance;

- 1           (4) Workforce safety and insurance or similar insurance;  
2           (5) Automobile medical payment insurance;  
3           (6) Credit-only insurance;  
4           (7) Coverage for onsite medical clinics; and  
5           (8) Other similar insurance coverage, specified in federal regulations, under  
6                 which benefits for medical care are secondary or incidental to other  
7                 insurance benefits.
- 8           b. Health insurance coverage does not include the following benefits if the benefits  
9                 are provided under a separate policy, certificate, or contract of insurance or are  
10                otherwise not an integral part of the plan:
- 11           (1) Limited scope dental or vision benefits;  
12           (2) Benefits for long-term care, nursing home care, home health care,  
13                 community-based care, or any combination of this care; and  
14           (3) Other similar limited benefits specified under federal regulations issued  
15                 under the Health Insurance Portability and Accountability Act of 1996  
16                 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.].
- 17           c. Health insurance coverage does not include any of the following benefits if the  
18                 benefits are provided under a separate policy, certificate, or contract of insurance;  
19                 there is no coordination between the provision of the benefits; any exclusion of  
20                 benefits under any group health insurance coverage maintained by the same  
21                 plan sponsor; and the benefits are paid with respect to an event without regard to  
22                 whether benefits are provided with respect to such an event under any group  
23                 health plan maintained by the same sponsor:
- 24           (1) Coverage only for specified disease or illness; and  
25           (2) Hospital indemnity or other fixed indemnity insurance.
- 26           d. Health insurance coverage does not include the following if offered as a separate  
27                 policy, certificate, or contract of insurance:
- 28           (1) Coverage supplemental to the coverage provided under chapter 55 of  
29                 United States Code title 10 [10 U.S.C. 1071 et seq.] relating to armed forces  
30                 medical and dental care; and  
31           (2) Similar supplemental coverage provided under a group health plan.

- 1       6. "Health officer" means the state health officer.
- 2       7. "Insurer" means any insurance company, nonprofit health service organization,  
3       fraternal benefit society, health maintenance organization, and any other entity  
4       providing or selling health insurance coverage or health benefits that are subject to  
5       state insurance regulation.
- 6       8. "North Dakota immunization advisory committee" means the group of private health  
7       care providers, local public health units, department staff, and other applicable  
8       individuals which makes immunization and vaccine selection recommendations to the  
9       North Dakota immunization program.
- 10      9. "North Dakota immunization information system" is the population-based  
11      computerized information system established under section 23-01-05.3.
- 12      10. "North Dakota immunization program" means the program administered by the  
13      department to provide vaccinations to North Dakota children consistent with state and  
14      federal law.
- 15      11. "Plan of operation" means the plan of operation of the fund as established by the  
16      board.
- 17      12. "Program-eligible child" means any child, who is under nineteen years of age, whose  
18      custodial parent or legal guardian resides in this state, who receives vaccinations from  
19      a North Dakota provider, and who is not eligible for the federal vaccines for children  
20      program.
- 21      13. "Third-party administrator" means a person that administers payments for health care  
22      services on behalf of a client health plan in exchange for an administrative fee.
- 23      14. "Vaccine" means any vaccine recommended by the federal advisory committee on  
24      immunization practices of the centers for disease control and prevention.
- 25      15. "Vaccines for children program" is a federally funded program that provides vaccines  
26      at no cost to eligible children pursuant to section 1928 of the Social Security Act  
27      [42 U.S.C. 1396s].

28      **State department of health - Duties.**

- 29      1. There is established in the department a vaccine group purchasing program.
- 30      2. The health officer shall appoint the director of the North Dakota vaccine group  
31      purchasing program who may be an employee of the department.

1       3. The health officer, or the health officer's designee, in consultation with the North  
2       Dakota immunization advisory committee shall determine which brands of vaccines  
3       are purchased under this chapter.

4       **North Dakota vaccine group purchasing board.**

5       1. There is created in the department the North Dakota vaccine group purchasing board,  
6       which shall operate as a governmental authority as defined in subsection 7 of section  
7       32-12.2-01.

8       2. The board consists of nine members:

9       a. Six members must be appointed by the health officer and serve at the pleasure of  
10       the health officer. In selecting the members of the board, the health officer shall  
11       appoint:

12       (1) Three members representing insurers, one of whom shall represent  
13       administrators or third-party administrators;

14       (2) One member representing business managers of private health care  
15       practices;

16       (3) One member representing local public health units; and

17       (4) One member representing the North Dakota business community involved  
18       in biotechnology with an emphasis in immunization vaccine research;

19       b. The department's immunization program manager;

20       c. One member designated by the insurance commissioner; and

21       d. The health officer, or the director as the health officer's designated  
22       representative, shall serve as an ex officio, nonvoting member of the board.

23       3. Board members appointed by the health officer pursuant to subdivision a of  
24       subsection 2 shall serve for terms of three years, except the initial board members  
25       appointed by the health officer pursuant to subdivision a of subsection 2 must be  
26       appointed as follows:

27       a. Two members, as determined by the health officer, shall serve an initial term of  
28       two years;

29       b. Two members, as determined by the health officer, shall serve an initial term of  
30       three years; and

1           c. Two members, as determined by the health officer, shall serve an initial term of  
2           four years.

3           4. The health officer shall fill any vacancy on the board appointed by the health officer  
4           pursuant to subdivision a of subsection 2.

5           5. Members of the board who are not state employees or employees of a political  
6           subdivision are entitled to receive reimbursement for their necessary mileage and  
7           travel expenses as provided in sections 44-08-04 and 54-06-09 while attending board  
8           meetings.

9           **Plan of operation.**

10          1. Annually, the board shall submit a plan of operation to the director. Amendments to the  
11          plan may be made as needed. The plan of operation, and any amendments to the  
12          plan, become effective upon board approval.

13          2. The plan of operation must:

14           a. Identify methodology and procedures for determining assessments that are fair  
15           and equitable for insurers and third-party administrators, including a third-party  
16           administrator for a self-insurance plan. The board may assess a subgroup of the  
17           insurers and third-party administrators to be assessed based on immunization  
18           volume or other factors as approved by the board;

19           b. Establish and approve procedures for the director to collect assessments from  
20           insurers and third-party administrators as identified in the plan of operation to  
21           fund vaccine purchases by the state;

22           c. Establish a policy for conducting a reconciliation process to ascertain that  
23           assessments were fair and equitable and to consider adjustments to future  
24           assessments;

25           d. Identify the frequency of board meetings; and

26           e. Provide for any additional matters necessary for the implementation and  
27           administration of the fund.

28          3. Administrative costs associated with establishing and operating the fund must be paid  
29          out of the fund.

30          **Power and liability of the board.**

31          1. The board may:

- 1           a. Enter contracts necessary or proper to carry out this chapter;
- 2           b. Determine the method and frequency of assessment and assess insurers and
- 3           third-party administrators in accordance with rules adopted by the board;
- 4           c. Require insurers and third-party administrators to provide to the board all
- 5           statements and reports the board considers necessary to fulfill the board's duties
- 6           under this chapter; and
- 7           d. Establish policies and procedures as necessary or proper for the implementation
- 8           of this chapter and the collection and use of the assessments authorized by this
- 9           chapter.
- 10          2. Neither the board nor any member of the board is liable for any obligations of the
- 11          vaccine assessments. A member or employee of the board is not liable, and a cause
- 12          of action of any nature may not arise against the member or employee of the board,
- 13          for any act or omission related to the performance of the member's or employee of the
- 14          board's powers and duties under this chapter, unless the act or omission constitutes
- 15          willful or wanton misconduct. Participation by an insurer or third-party administrator in
- 16          the assessments authorized by this chapter or on the board under this chapter is not
- 17          grounds for any legal action, criminal or civil liability, or penalty against the fund or any
- 18          of its insurers, third-party administrators, or board members, either jointly or
- 19          separately.
- 20          3. The board is exempt from the requirements of chapter 28-32 if the board provides
- 21          notice and the opportunity to comment to any health insurer or third-party
- 22          administrator, subject to an assessment under this chapter, except that an insurer or
- 23          third-party administrator may appeal any assessment or rule of the board as provided
- 24          under section 28-32-47.

25          **Assessments.**

- 26          1. Annually, the department shall report to the board the total number of program-eligible
- 27          children in the North Dakota immunization information system who received vaccines,
- 28          the doses administered, and the total cost of vaccines purchased through the North
- 29          Dakota vaccine fund for the previous state fiscal year.
- 30          2. Each insurer's or third-party administrator's proportion of the assessment and the
- 31          dates upon which the insurer or third-party administrator must pay the assessment into

1           the fund must be determined by the board based on annual statements and other  
2           reports considered necessary by the board. In making the assessment determination,  
3           the board also shall consider such factors as the number of vaccine doses  
4           administered in the pertinent time period and the number of program-eligible children  
5           in the pertinent time period, as well as any necessary costs and expenses to  
6           administer the fund and discharge the duties of the board.

7           3. Each insurer or third-party administrator shall pay the insurer's or third-party  
8           administrator's annual assessment in at a minimum of quarterly installments on the  
9           date specified by the board.

10          4. An insurer or third-party administrator shall pay an assessment made by the board  
11          within sixty days of the notice of assessment being sent to the insurer or third-party  
12          administrator.

13          5. For late or nonpayment of assessments by an insurer or third-party administrator, the  
14          board shall impose interest at the rate of one percent of the unpaid assessment due  
15          for each month or fraction of a month during which the assessment remains unpaid,  
16          computed from the due date of the assessment to the date paid, excepting the month  
17          in which the assessment was required to be paid or the assessment became due. If an  
18          insurer's or third-party administrator's assessment remains partly or fully unpaid for  
19          more than ninety days from the due date, the board may impose a penalty of up to two  
20          times the amount of the unpaid assessment. In addition, the board may refer the  
21          insurer or third-party administrator to the insurance commissioner who may use any  
22          sanctions available to penalize for nonpayment of the assessment.

23          6. For good cause, an insurer or third-party administrator may seek from the board a  
24          deferment from all or part of an assessment imposed by the board. The board may  
25          defer all or part of the assessment if the board determines that the payment of the  
26          assessment would place the insurer or third-party administrator in a financially  
27          impaired condition, as provided in title 26.1. If all or part of an assessment against an  
28          insurer or third-party administrator is deferred, the amount deferred may be assessed  
29          against the other insurers and third-party administrators in a manner consistent with  
30          the basis for assessment provided under this section. The insurer or third-party  
31          administrator receiving the deferment remains liable to the fund for the amount

1           deferred and may be referred to the insurance commissioner who may use any  
2           sanctions available.

3           7. The initial assessments as determined by the board must be paid to the fund before  
4           October 1, 2011.

5           8. The moneys raised by the assessment authorized in this section must be used solely  
6           for the purposes expressly authorized by this chapter.

7           **North Dakota vaccine fund.**

8           There is created in the state treasury the North Dakota vaccine fund. Moneys in the fund  
9           must be appropriated by the legislative assembly solely for purposes established by this  
10          chapter. All interest and earnings of the fund must be retained in the fund. Any entity subject to  
11          this assessment is not entitled to a credit for this assessment against tax due under section  
12          26.1-03-17.

13          **SECTION 2. AMENDMENT.** Section 23-01-05.3 of the North Dakota Century Code is  
14          amended and reenacted as follows:

15          **23-01-05.3. Immunization data.**

16          1. The state department of health may establish an immunization information system and  
17          may require the childhood immunizations specified in subsection 1 of section  
18          23-07-17.1 and other information be reported to the department. The state department  
19          of health may only require the reporting of childhood immunizations and other data  
20          upon completion of the immunization information reporting system. A health care  
21          provider who administers a childhood immunization shall report the patient's  
22          identifying information, the immunization that is administered, and other required  
23          information to the department. The report must be submitted using electronic media,  
24          and must contain the data content and use the format and codes specified by the  
25          department.

26          2. A health care provider that fails to submit a required immunization report within four  
27          weeks of vaccination may not order or receive any vaccines from the North Dakota  
28          immunization program until the provider submits all reports required by this section.

29          3. Notwithstanding any other provision of law, a health care provider, elementary or  
30          secondary school, early childhood facility, public or private postsecondary educational  
31          institution, city or county board of health, district health unit, and the state health officer



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1            may exchange immunization data in any manner with one another. Immunization data  
2            that may be exchanged under this section is limited to the date and type of  
3            immunization administered to a patient and may be exchanged regardless of the date  
4            of the immunization.