

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; to provide a penalty; and to declare an emergency.

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" and "insurer" have the same meaning as provided under
15 section 26.1-08-01.
16 6. "Health officer" means the state health officer.
17 7. "North Dakota immunization advisory committee" means the group of private health
18 care providers, local public health units, department staff, and other applicable
19 individuals which makes immunization and vaccine selection recommendations to the
20 North Dakota immunization program.
21 8. "North Dakota immunization information system" is the population-based
22 computerized information system established under section 23-01-05.3.

- 1 9. "North Dakota immunization program" means the program administered by the
2 department to provide vaccinations to North Dakota children consistent with state and
3 federal law.
- 4 10. "Plan of operation" means the plan of operation of the fund as established by the
5 board.
- 6 11. "Program-eligible child" means any child, who is under nineteen years of age, whose
7 custodial parent or legal guardian resides in this state and who is not eligible for the
8 federal vaccines for children program.
- 9 12. "Vaccine" means any vaccine recommended by the federal advisory committee on
10 immunization practices of the centers for disease control and prevention.
- 11 13. "Vaccines for children program" is a federally funded program that provides vaccines
12 at no cost to eligible children pursuant to section 1928 of the Social Security Act
13 [42 U.S.C. 1396s].

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

- 15 1. There is established in the department a vaccine group purchasing program.
- 16 2. The health officer shall appoint the director of the North Dakota vaccine group
17 purchasing program who may be an employee of the department.
- 18 3. The health officer, or the health officer's designee, in consultation with the North
19 Dakota immunization advisory committee shall determine which brands of vaccines
20 are purchased under this chapter.

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

- 22 1. There is created in the department the North Dakota vaccine group purchasing board,
23 which shall operate as a governmental authority as defined in subsection 7 of section
24 32-12.2-01.
- 25 2. The board consists of nine members:
- 26 a. Six members must be appointed by the health officer and serve at the pleasure of
27 the health officer. In selecting the members of the board, the health officer shall
28 appoint:
- 29 (1) Three members representing insurers, one of whom shall represent
30 administrators or third-party administrators;

- 1 (2) One member representing business managers of private health care
2 practices;
- 3 (3) One member representing local public health units; and
- 4 (4) One member representing the North Dakota business community;
- 5 b. The department's immunization program manager;
- 6 c. One member designated by the insurance commissioner; and
- 7 d. The health officer, or the director as the health officer's designated
8 representative, shall serve as an ex officio, nonvoting member of the board.
- 9 3. Board members appointed by the health officer pursuant to subdivision a of
10 subsection 2 shall serve for terms of three years, except the initial board members
11 appointed by the health officer pursuant to subdivision a of subsection 2 must be
12 appointed as follows:
- 13 a. Two members, as determined by the health officer, shall serve an initial term of
14 two years;
- 15 b. Two members, as determined by the health officer, shall serve an initial term of
16 three years; and
- 17 c. Two members, as determined by the health officer, shall serve an initial term of
18 four years.
- 19 4. The health officer shall fill any vacancy on the board appointed by the health officer
20 pursuant to subdivision a of subsection 2.
- 21 5. Members of the board who are not state employees or employees of a political
22 subdivision are entitled to receive reimbursement for their necessary mileage and
23 travel expenses as provided in sections 44-08-04 and 54-06-09 while attending board
24 meetings.
- 25 **Plan of operation.**
- 26 1. Annually, the board shall submit a plan of operation to the director. Amendments to the
27 plan may be made as needed. The plan of operation, and any amendments to the
28 plan, become effective upon board approval.
- 29 2. The plan of operation must:
- 30 a. Identify methodology and procedures for determining assessments that are fair
31 and equitable for insurers and third-party administrators, including a third-party

1 administrator for a self-insurance plan. The board may assess a subgroup of the
2 insurers and third-party administrators to be assessed based on immunization
3 volume or other factors as approved by the board;

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

7 c. Identify the frequency of board meetings; and

8 d. Provide for any additional matters necessary for the implementation and
9 administration of the fund.

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

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

13 1. The board may:

14 a. Enter contracts necessary or proper to carry out this chapter;

15 b. Determine the method and frequency of assessment and assess insurers and
16 third-party administrators in accordance with rules adopted by the board;

17 c. Require insurers and third-party administrators to provide to the board all
18 statements and reports the board considers necessary to fulfill the board's duties
19 under this chapter; and

20 d. Establish policies and procedures as necessary or proper for the implementation
21 of this chapter and the collection and use of the assessments authorized by this
22 chapter.

23 2. Neither the board nor any member of the board is liable for any obligations of the
24 vaccine assessments. A member or employee of the board is not liable, and a cause
25 of action of any nature may not arise against the member or employee of the board,
26 for any act or omission related to the performance of the member's or employee of the
27 board's powers and duties under this chapter, unless the act or omission constitutes
28 willful or wanton misconduct. Participation by an insurer or third-party administrator in
29 the assessments authorized by this chapter or on the board under this chapter is not
30 grounds for any legal action, criminal or civil liability, or penalty against the fund or any

1 of its insurers, third-party administrators, or board members, either jointly or
2 separately.

3 3. The board is exempt from the requirements of chapter 28-32 if the board provides
4 notice and the opportunity to comment to any health insurer or third-party
5 administrator, subject to an assessment under this chapter, except that an insurer or
6 third-party administrator may appeal any assessment or rule of the board as provided
7 under section 28-32-47.

8 **Assessments.**

- 9 1. Annually, the department shall report to the board the total number of program-eligible
10 children in the North Dakota immunization information system who received vaccines,
11 the doses administered, and the total cost of vaccines purchased through the North
12 Dakota vaccine fund for the previous state fiscal year.
- 13 2. Each insurer's or third-party administrator's proportion of the assessment and the
14 dates upon which the insurer or third-party administrator must pay the assessment into
15 the fund must be determined by the board based on annual statements and other
16 reports considered necessary by the board. In making the assessment determination,
17 the board also shall consider such factors as the number of vaccine doses
18 administered in the pertinent time period and the number of program-eligible children
19 in the pertinent time period, as well as any necessary costs and expenses to
20 administer the fund and discharge the duties of the board.
- 21 3. Each insurer or third-party administrator shall pay the insurer's or third-party
22 administrator's annual assessment in at a minimum of quarterly installments on the
23 date specified by the board.
- 24 4. An insurer or third-party administrator shall pay an assessment made by the board
25 within sixty days of the notice of assessment being sent to the insurer or third-party
26 administrator.
- 27 5. For late or nonpayment of assessments by an insurer or third-party administrator, the
28 board shall impose interest at the rate of one percent of the unpaid assessment due
29 for each month or fraction of a month during which the assessment remains unpaid,
30 computed from the due date of the assessment to the date paid, excepting the month
31 in which the assessment was required to be paid or the assessment became due. If an

1 insurer's or third-party administrator's assessment remains partly or fully unpaid for
2 more than ninety days from the due date, the board may impose a penalty of up to two
3 times the amount of the unpaid assessment. In addition, the board may refer the
4 insurer or third-party administrator to the insurance commissioner who may use any
5 sanctions available to penalize for nonpayment of the assessment.

6 6. For good cause, an insurer or third-party administrator may seek from the board a
7 deferment from all or part of an assessment imposed by the board. The board may
8 defer all or part of the assessment if the board determines that the payment of the
9 assessment would place the insurer or third-party administrator in a financially
10 impaired condition, as provided in title 26.1. If all or part of an assessment against an
11 insurer or third-party administrator is deferred, the amount deferred must be assessed
12 against the other insurers and third-party administrators in a manner consistent with
13 the basis for assessment provided under this section. The insurer or third-party
14 administrator receiving the deferment remains liable to the fund for the amount
15 deferred and may be referred to the insurance commissioner who may use any
16 sanctions available.

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

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

21 9. Notwithstanding any other provision of this section, if the market share of an insurer or
22 third-party administrator changes by more than ten percent because of merger,
23 withdrawal, or any other reason or the assessments are insufficient to pay for the
24 costs for that year, the board may adjust the assessments of all insurers and
25 third-party administrators for that year.

26 **North Dakota vaccine fund.**

27 There is created in the state treasury the North Dakota vaccine fund. Moneys in the fund
28 must be appropriated by the legislative assembly solely for purposes established by this
29 chapter. Any entity subject to this assessment is not entitled to a credit against tax due under
30 section 26.1-03-17.

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

3 **23-01-05.3. Immunization data.**

- 4 1. The state department of health may establish an immunization information system and
5 may require the childhood immunizations specified in subsection 1 of section
6 23-07-17.1 and other information be reported to the department. The state department
7 of health may only require the reporting of childhood immunizations and other data
8 upon completion of the immunization information reporting system. A health care
9 provider who administers a childhood immunization shall report the patient's
10 identifying information, the immunization that is administered, and other required
11 information to the department. The report must be submitted using electronic media,
12 and must contain the data content and use the format and codes specified by the
13 department.
- 14 2. A health care provider that fails to submit an immunization report required by this
15 section may not order or receive any vaccines from the North Dakota immunization
16 program until the provider submits all reports required by this section.
- 17 3. Notwithstanding any other provision of law, a health care provider, elementary or
18 secondary school, early childhood facility, public or private postsecondary educational
19 institution, city or county board of health, district health unit, and the state health officer
20 may exchange immunization data in any manner with one another. Immunization data
21 that may be exchanged under this section is limited to the date and type of
22 immunization administered to a patient and may be exchanged regardless of the date
23 of the immunization.

24 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.