

Spotlight on State: North Dakota

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See [North Dakota](#) page.

North Dakota is one of the few states that bans most-favored nation clauses in provider contracts. It is also one of the even fewer states that prohibits most noncompete agreements, by making them generally unenforceable. Specifically, state law provides that a contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind is void, except in the sale of a business or in dissolution of a partnership. The Supreme Court of North Dakota ruled in a 1992 case that a noncompete agreement between physicians and a group supplying emergency room physicians was void.

In provider merger review authority, North Dakota law requires notice to the attorney general for all transactions involving non-profit hospitals. However, the statute provides limited review and approval authority. In a notable antitrust enforcement challenge, the FTC and North Dakota AG sued to block the merger of Sanford Health of South Dakota and Mid Dakota of North Dakota, challenging the merger of the two hospital systems on the grounds that it would reduce competition for healthcare services in the region, resulting in higher prices and lower quality of services. The district court granted a preliminary injunction and the Eighth Circuit affirmed for the FTC and the hospitals abandoned the merger in 2019.

North Dakota law also provides coverage and reimbursement parity in telehealth services, with additional COVID-19 emergency cost-sharing requirements and coverage expansion. The state applied for and received Section 1332 waiver approval for federal pass through funding to partially finance the Reinsurance Association of North Dakota (RAND), which would reimburse insurers 75% of claims paid between \$100,000 and \$1,000,000.