

Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2284

Introduced by

Senators Krebsbach, Heitkamp

Representative Weisz

1 A BILL for an Act to create and enact a new section to chapter 50-24.6 of the North Dakota
2 Century Code, relating to a medical assistance preferred drug list; to amend and reenact
3 section 50-24.6-01, subsection 2 of section 50-24.6-02, and sections 50-24.6-03, 50-24.6-05,
4 and 50-24.6-07 of the North Dakota Century Code, relating to medical assistance drug use
5 review; and to repeal section 50-24.6-04 of the North Dakota Century Code, relating to the
6 medical assistance prior authorization program.

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

8 **SECTION 1. AMENDMENT.** Section 50-24.6-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **50-24.6-01. Definitions.** As used in this chapter, unless the context otherwise
11 requires:

- 12 1. "Board" means the drug use review board.
- 13 2. "Compendium" means the American hospital formulary service drug information,
14 United States pharmacopeia-drug information, the DRUGDEX information system,
15 American medical association drug evaluations, or nonproprietary peer-reviewed
16 medical literature.
- 17 3. "Department" means the department of human services.
- 18 4. "Drug use review" means a program as described in 42 U.S.C. 1396r-8(g)(2).
- 19 5. "Drug use review criteria" means standards approved by the board for use in
20 determining whether use of a drug is likely to be medically appropriate, to be
21 medically necessary, and not result in adverse medical outcomes.
- 22 6. ~~"Prior authorization" means a process requiring the prescriber or the dispenser to~~
23 ~~verify with the department or the department's contractor that proposed medical~~
24 ~~use of a particular drug for a medical assistance program recipient meets~~

~~predetermined criteria for coverage by the medical assistance program.~~ "Preferred drug list" means a list of prescription drugs within designated therapeutic classes selected by the department for which the department will not require a prior or retroactive approval process, will not require medical justification by the prescriber as a condition of coverage before the drugs may be dispensed to the patient, and will not establish other similar restrictions for coverage.

SECTION 2. AMENDMENT. Subsection 2 of section 50-24.6-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The board consists of fifteen members. The pharmacy administrator of the department and the medical consultant to the department are ex officio nonvoting board members who shall provide administrative services to the board. The executive director of the department shall appoint the remaining thirteen board members. A majority of the appointed members must be physicians and pharmacists participating in the medical assistance program. Four or more of the appointed members must have experience with a drug use review process or have participated in ~~programs in which prior authorization is used~~ the medical assistance program. The appointed members of the board must be:
 - a. Six physicians licensed in this state and actively engaged in the practice of medicine, one of whom is a psychiatrist, and four of whom are chosen from a list of nominees provided by the North Dakota medical association;
 - b. Six pharmacists licensed in this state and actively engaged in the practice of pharmacy, four of whom are chosen from a list of nominees provided by the North Dakota pharmaceutical association; and
 - c. One pharmacist or physician representing the pharmaceutical industry who is chosen from a list of nominees provided by the pharmaceutical research manufacturers of America.

SECTION 3. AMENDMENT. Section 50-24.6-03 of the North Dakota Century Code is amended and reenacted as follows:

50-24.6-03. Duties of the board. The board shall:

1. Cooperate with the department to create and implement a prospective and retrospective drug use review program for outpatient prescription drugs under the

1 medical assistance program. This drug use review program must be based on a
2 compendium and drug use review criteria and must comply with 42 U.S.C.
3 1396r-8(g)(3).

4 2. Advise and make recommendations regarding any rule proposed for adoption by
5 the department to implement the provisions of state and federal law related to drug
6 use review.

7 3. Receive and consider information regarding the drug use review process which is
8 provided by the department and by interested parties, including prescribers who
9 treat significant numbers of patients under the department's medical assistance
10 program.

11 4. ~~Review and recommend to the department any drugs to be included on prior~~
12 ~~authorization status.~~ Advise the department on standards and rules for the
13 preferred drug list and review and recommend to the department any drugs to be
14 included on the preferred drug list.

15 5. ~~Review no less than once each year the status of the list of drugs that have been~~
16 ~~placed on prior authorization.~~

17 6. ~~Review and approve the prior authorization program process used by the~~
18 ~~department, including the process to accommodate the provision of a drug benefit~~
19 ~~in an emergency situation.~~

20 7. Propose remedial strategies to improve the quality of care and to promote effective
21 use of medical assistance program funds or recipient expenditures.

22 **SECTION 4. AMENDMENT.** Section 50-24.6-05 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **50-24.6-05. Public notice - Applicability.**

25 1. The department shall provide thirty days' notice of all meetings of the board. The
26 notice requirement is met if the department provides notice of the meeting on the
27 department's web site and provides, by written or electronic means, individual
28 notice to each person that has requested such notice. If the meeting agenda
29 includes board consideration of a change to the ~~prior authorization program~~
30 preferred drug list, the department shall include in the notice a list of the affected
31 drugs, and upon request the board shall provide background information. Any

interested party may attend a meeting of the board and provide information or recommendations related to the inclusion or deletion of a drug ~~in a prior authorization program~~ on the preferred drug list.

2. ~~The department shall post on the department's web site:~~

~~a. The most current and applicable list of drugs requiring prior authorization, together with any limits on coverage of these drugs.~~

~~b. In downloadable format, forms necessary to complete prior authorization requests.~~

~~c. Decisions regarding changes to the prior authorization program list. The department shall allow a period of no less than thirty days for public comment following posting on the web site.~~

~~d. Meeting notice.~~

3. The department may not discontinue the provision of prescription drug benefits being provided to medical assistance recipients before April 14, 2003, based solely on the subsequent placement of the drug on the prior authorization program or the preferred drug list.

SECTION 5. A new section to chapter 50-24.6 of the North Dakota Century Code is created and enacted as follows:

Preferred drug list.

1. The department, in consultation with the board, shall adopt rules to implement a preferred drug list. The rules must:

a. Include a requirement that the department use scientific, evidence-based standards for placing or not placing a drug on the preferred drug list or for limiting medical assistance coverage for a drug by the department and use standards that include consideration for the needs of individual patients and do not unduly burden patients or physicians or other prescribers in accessing optimal drug therapy;

b. Include an opportunity for the board to receive public comment before the department places or determines not to place a drug on the preferred drug list or limits medical assistance coverage for a drug;

- c. Provide for periodic disclosure by the department to recipients regarding the existence and operation of the preferred drug list;
 - d. Include an appeal process for a person who is affected by a decision of the department to place or not to place a drug on the preferred drug list or to limit medical assistance coverage for a drug; and
 - e. Include a provision under which the department will provide coverage of a drug that is not on the preferred drug list without requiring additional medical justification or prior authorization if a physician or other prescriber documents on the prescription that the drug as prescribed is medically necessary for the patient as being the most effective drug available for the patient's condition by writing on the prescription the phrase "dispense as written", "medically necessary", or other wording with similar meaning.
 2. The department may not establish a preferred drug list for drugs used to treat mental illness or that would otherwise prohibit a recipient of medical assistance from having unrestricted access to drugs prescribed for the recipient for the treatment of mental illness. The department shall continue its psychiatric pharmacy program study of current prescribing practices and scientific efficacy of drugs prescribed for the treatment of mental illness.
 3. The department may add to, delete from, and otherwise modify the preferred drug list after consulting with the board and appropriate medical specialists as determined by the board and providing public notice and the opportunity for public comment pursuant to section 50-24.6-05. The department shall publish the preferred drug list and shall maintain an accurate and current list on the department web site.
 4. The department may contract with a vendor or one or more states for the purpose of participating in a multistate preferred drug list. The department shall ensure that any contract meets all federal requirements and maximizes federal financial participation.
 5. The department may administer the preferred drug list as part of the administration of a supplemental drug rebate program.

1 6. The department shall seek any federal waivers or approvals necessary to
2 implement this section.

3 **SECTION 6. AMENDMENT.** Section 50-24.6-07 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **50-24.6-07. Appeals.** A medical assistance recipient who is aggrieved by the
6 placement of a drug on ~~prior authorization~~ the preferred drug list may appeal as authorized
7 under chapter 28-32.

8 **SECTION 7. REPEAL.** Section 50-24.6-04 of the North Dakota Century Code is
9 repealed.