

Sixty-second  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2122**

Introduced by

Human Services Committee

(At the request of the State Board of Pharmacy)

1 A BILL for an Act to amend and reenact subsections 3 and 4 of section 19-02.1-14.1 of the  
2 North Dakota Century Code, relating to electronic prescriptions.

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

4 **SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 19-02.1-14.1 of the North  
5 Dakota Century Code are amended and reenacted as follows:

6 3. If a practitioner prescribes a drug by its brand name, the pharmacist may exercise  
7 professional judgment in the economic interest of the patient by selecting a drug  
8 product with the same generic name and demonstrated therapeutical equivalency as  
9 the one prescribed for dispensing and sale to the patient unless the practitioner  
10 specifically indicates in the practitioner's own handwriting "brand necessary" on a  
11 written prescription or expressly indicates that an oral prescription is to be dispensed  
12 as communicated. If the prescription is created electronically by the prescriber, the  
13 required legend must appear on the practitioner's screen. The practitioner must take a  
14 specific overt action to include the "brand necessary" language with the electronic  
15 transmission as set forth in this subsection. For example, the practitioner or the  
16 practitioner's agent must type out "brand necessary" letter by letter. The pharmacist  
17 shall note the instructions on the file copy of the prescription, or maintain the digital  
18 record as transmitted if it is an electronic prescription. A reminder legend must be  
19 placed on all prescription forms or appear on the computer screen of the electronic  
20 prescribing system. The legend must state "In order to require that a brand name  
21 product be dispensed, the practitioner must handwrite or type letter by letter the words  
22 'brand necessary'.". The legend printed on the prescription form or appearing on the  
23 prescriber's computer screen must be in at least six-point uppercase print or font. The  
24 pharmacist may not substitute a generic name drug product unless its price to the

1 purchaser is less than the price of the prescribed drug product. In addition, a  
2 pharmacist may not substitute drug products in the following dosage forms: enteric  
3 coated tablets, controlled release products, injectable suspensions other than  
4 antibiotics, suppositories containing active ingredients for which systemic absorption is  
5 necessary for therapeutic activity, and different delivery systems for aerosol and  
6 nebulizer drugs. In the event that any drug listed above is, subsequent to January 1,  
7 1982, determined to be therapeutically equivalent, then the previously mentioned  
8 substitution ban is automatically removed for that drug. The pharmacist shall inform  
9 the person receiving the drug when a prescription for a brand name drug product does  
10 not require that the prescribed drug be dispensed and of the person's right to refuse a  
11 generic name drug product selected by the pharmacist. The pharmacy file copy of  
12 every prescription must include the brand name, if any, or the name of the  
13 manufacturer, packer, or distributor of the generic name drug dispensed. A pharmacist  
14 who selects and dispenses a therapeutically equivalent generic name drug product  
15 shall assume no greater liability for selecting the dispensed drug product than would  
16 be incurred in filling a prescription for a drug product prescribed by its generic name.  
17 The practitioner is not liable for the substitution made by a pharmacist.

- 18 4. In the case of a prescription for which a maximum allowable cost program for  
19 purposes of reimbursement has been established under title XIX of the federal Social  
20 Security Act, the following also apply:
- 21 a. If the practitioner has instructed the pharmacist to dispense as written, the words  
22 "brand necessary" must also be written on the prescription in the practitioner's  
23 own handwriting, or appear as part of the electronic prescription as noted in  
24 subsection 3. The pharmacist may dispense a therapeutically equivalent generic  
25 name drug product if this handwritten or electronic instruction does not appear on  
26 the prescription.
- 27 b. If the pharmacist is instructed orally to dispense a brand name drug as  
28 prescribed, the pharmacist shall reduce the prescription to writing and shall note  
29 the instructions on the file copy of the prescription. ~~The prescription must then be~~  
30 ~~signed by the practitioner and the words "brand necessary" must also be written~~  
31 ~~on the prescription in the practitioner's own handwriting.~~

- 1           c.   If the practitioner has not instructed the pharmacist to dispense a brand name
- 2               drug or medicine and the patient specifically requests a brand name drug or
- 3               medicine, the patient shall pay the difference between the price to the patient of
- 4               the brand name drug or medicine and the therapeutically equivalent generic
- 5               name drug or medicine if the price of the brand name drug or medicine is higher.