

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 medically necessary"
11 on a written prescription or expressly indicates that an oral prescription is to be
12 dispensed as communicated. If the prescription is created electronically by the
13 prescriber, the required legend must appear on the practitioner's screen. The
14 practitioner must take a specific overt action to include the "brand medically
15 necessary" language with the electronic transmission~~as set forth in this subsection.~~
16 ~~For example, the practitioner or the practitioner's agent must type out "brand-~~
17 ~~necessary" letter by letter.~~ The pharmacist shall note the instructions on the file copy
18 of the prescription, or maintain the digital record as transmitted if it is an electronic
19 prescription. A reminder legend must be placed on all prescription forms or appear on
20 the computer screen of the electronic prescribing system. The legend must state "In
21 order to require that a brand name product be dispensed, the practitioner must
22 handwrite ~~or type letter by letter~~ the words 'brand medically necessary'. The legend
23 printed on the prescription form or appearing on the prescriber's computer screen
24 must be in at least six-point uppercase print or font. The pharmacist may not substitute

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

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

- 1 ~~signed by the practitioner and the words "brand necessary" must also be written~~
2 ~~on the prescription in the practitioner's own handwriting.~~
- 3 c. If the practitioner has not instructed the pharmacist to dispense a brand name
4 drug or medicine and the patient specifically requests a brand name drug or
5 medicine, the patient shall pay the difference between the price to the patient of
6 the brand name drug or medicine and the therapeutically equivalent generic
7 name drug or medicine if the price of the brand name drug or medicine is higher.