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Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1422

Introduced by

Representatives Weisz, Devlin, Kilichowski

Senators Dever, Uglem, Heckaman

A BILL ~~for an Act to create and enact chapter 43-15.4 of the North Dakota Century Code, relating to electronic prescription transmission.~~for an Act to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to electronic drug prior authorization standards; and to provide for a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1.** Chapter 43-15.4 of the North Dakota Century Code is created and enacted as follows:~~

~~**43-15.4-01. Application.**~~

~~This chapter applies to all electronic prescribing devices used within this state and to all software and hardware vendors and content managers with respect to such electronic prescribing devices regardless of location. Relevant sections of this chapter also apply to all requirements for prior authorization requests used within this state, and to all software and hardware vendors and content managers with respect to electronic prior authorization requests, regardless of location.~~

~~**43-15.4-02. Electronic prescribing transmission standards.**~~

~~All prescription drug orders communicated by way of electronic transmission to a pharmacy or pharmacist must identify the transmitter's telephone number or any other suitable means to contact the transmitter for verbal confirmation, written confirmation, or verbal and written confirmation; the time and date of transmission; the identity of the pharmacy intended to receive the transmission; and any other information required by federal or state law. An electronic transmission is deemed the original prescription drug order, if the electronic transmission meets the requirements of this section.~~

~~**43-15.4-03. Electronic transmission devices.**~~

~~Electronic transmission devices used to communicate a prescription to a pharmacist must:~~

1. Allow any legal prescription to be written and entered into the device without interference or limitations before submission to a pharmacist.
2. Allow the prescription to be written through a neutral and open platform that does not use any means, program, or device, including advertising, instant messaging, and popup messaging, to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of an authorized prescriber at the point of care. This subsection applies if such means, program, or device is triggered by, initiated by, or is in specific response to the input, selection, or act or any combination of these of a prescribing health care professional or that prescribing health care professional's agent prescribing a covered outpatient drug or selecting a pharmacy for a patient.
3. Make available information regarding a plan's specific formulary according to the following conditions:
    a. All available covered outpatient drugs shall be readily disclosed to the authorized prescriber;
    b. All available pharmacies, both in and out of network, must be readily disclosed to the authorized prescriber;
    c. Nothing is designed to preclude or make more difficult the authorized prescriber's or patient's selection of any particular pharmacy or covered outpatient drug;
    d. Copay and cost-sharing data, specific to the patient's relevant formulary and entitled benefits, are electronically accessible to the physician for reference; and
    e. An electronic prior authorization process for allowing approval of an exception to the plan formulary or other restriction is available on the device as required under section 43-15.4-04, providing real-time adjudication.
4. As provided under subsection 2, alerts and messages to the prescriber and the prescriber's staff which are related to the formulary must support better clinical decisionmaking, including alerts to adverse events and access to formulary information. These messages and alerts must be consistently supported by scientific evidence. This information must be:
    a. Consistent with the federal food and drug administration regulations for advertising pharmaceutical products and be categorized or prioritized based on their clinical importance, including severity and likelihood of any adverse events;

~~b. Individually suppressible by the prescriber;~~

~~c. Able to be overridden by the prescriber so that the prescriber can prescribe the prescriber's medication of choice for the patient; and~~

~~d. Provide access to the decision support rules underlying each alert or message to include the date of the last update and the source of any financial support received in connection with the development of those rules.~~

~~**43-15.4-04. Electronic prior authorization.**~~

~~An electronic prior authorization process for allowing approval of an exception to the plan formulary or other restriction must:~~

~~1. Be required as a part of all electronic medical record systems that facilitate electronic submission of prescriptions;~~

~~2. Utilize a universal format for a prior authorization request;~~

~~3. Provide specific feedback to the provider on acceptable and approvable reasons for approval of a prior authorization request for a medication prescribed for a patient; and~~

~~4. Provide real-time adjudication of the prior authorization request which facilitates an explanation of benefits for the patient with information on how to appeal the denial of the requested medication.~~

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Electronic drug prior authorization and transmission - Limitations.

1. Effective August 1, 2013, a drug prior authorization request must be accessible and submitted by a health care provider and must be accepted by a group purchaser electronically through a secure electronic transmission. For purposes of this section, a facsimile is not an electronic transmission.
2. Effective August 1, 2013, electronic transmission devices used to communicate a prescription to a pharmacist may not use any means or permit any other person to use any means, including alerts, advertising, messaging, and popup advertisements, to influence or attempt to influence through economic incentives or otherwise the prescribing decision of a prescribing practitioner at the point of care. Such means may not be triggered by or be in specific response to the input, selection, or act of a prescribing practitioner or the prescribing practitioner's staff in prescribing a certain

pharmaceutical or directing a patient to a certain pharmacy. Any alert, advertising, messaging, or popup advertisements must be supported by scientific evidence and must be consistent with the federal food and drug administration regulations for advertising pharmaceutical products.

SECTION 2. ELECTRONIC DRUG PRIOR AUTHORIZATION STANDARDIZATION AND TRANSMISSION - REPORT TO LEGISLATIVE MANAGEMENT. During the 2011-12 interim, the state department of health and the health information technology advisory committee shall work together to establish an outline on how best to standardize drug prior authorization request transactions between providers and group purchasers. The outline must be designed with the goal of maximizing administrative simplification and efficiency in preparation for electronic transmissions and alignment with standards that are or will potentially be used nationally. By January 1, 2012, the state department of health and the health information technology advisory committee shall provide a report to the legislative management regarding the outline on how best to standardize drug prior authorization request transactions between providers and group purchasers.