

Introduced by

Human Services Committee

(At the request of the North Dakota Board of Medicine)

1 A BILL for an Act to create and enact sections 43-17-44 and 43-17-45 of the North Dakota  
2 Century Code, relating to the practice of telemedicine; and to amend and reenact subsection 3  
3 of section 26.1-14-02 and sections 43-17-01 and 43-17-02.3 of the North Dakota Century Code,  
4 relating to the definitions of the practice of medicine and telemedicine and the practice of  
5 medicine.

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

7 **SECTION 1. AMENDMENT.** Subsection 3 of section 26.1-14-02 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 3. "Practice of medicine" means the practice of medicine, surgery, and obstetrics and has  
10 the same meaning specified in ~~subsection 2 of~~ section 43-17-01.

11 **SECTION 2. AMENDMENT.** Section 43-17-01 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **43-17-01. Definitions.**

14 1. "Board" means the North Dakota board of medicine.

15 2. "Licensee" means a physician or physician assistant licensed to practice in North  
16 Dakota.

17 3. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and  
18 surgeon (D.O.).

19 ~~3.4.~~ "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The  
20 following persons must be regarded as practicing medicine:

21 a. One who holds out to the public as being engaged within this state in the  
22 diagnosis or treatment of diseases or injuries of human beings.

- 1           b. One who suggests, recommends, or prescribes any form of treatment for the  
2           intended relief or cure of any physical or mental ailment of any person, with the  
3           intention of receiving, directly or indirectly, any fee, gift, or compensation.
- 4           c. One who maintains an office for the examination or treatment of persons afflicted  
5           with disease or injury of the body or mind.
- 6           d. One who attaches the title M.D., surgeon, doctor, D.O., osteopathic physician  
7           and surgeon, or any other similar word or words or abbreviation to the person's  
8           name, indicating that the person is engaged in the treatment or diagnosis of the  
9           diseases or injuries of human beings ~~must~~shall be held to be engaged in the  
10          practice of medicine.
- 11          5. "Telemedicine" means the practice of medicine using electronic communication,  
12          information technologies, or other means between a licensee in one location and a  
13          patient in another location, with or without an intervening health care provider.  
14          "Telemedicine" includes direct interactive patient encounters, asynchronous store-and-  
15          forward technologies, and remote monitoring.

16          **SECTION 3. AMENDMENT.** Section 43-17-02.3 of the North Dakota Century Code is  
17          amended and reenacted as follows:

18          **43-17-02.3. Practice of medicine or osteopathy by holder of permanent, unrestricted**  
19          **license - Exceptions.**

20          The practice of medicine is deemed to occur in the state the patient is located. A practitioner  
21          providing medical care to a patient located in this state is subject to the licensing and  
22          disciplinary laws of this state and shall possess an active North Dakota license for the  
23          practitioner's profession. Notwithstanding anything in this chapter to the contrary, any physician  
24          who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any  
25          state or territory of the United States, the District of Columbia, or a province of Canada may  
26          practice medicine or osteopathy in this state without first obtaining a license from the North  
27          Dakota board of medicine under one or more of the following circumstances:

- 28          1. As a member of an organ harvest team;
- 29          2. On board an air ambulance and as a part of its treatment team;
- 30          3. To provide one-time consultation or teaching assistance for a period of not more than  
31          twenty-four hours; or

- 1           4. To provide consultation or teaching assistance previously approved by the board for  
2           charitable organizations.

3           **SECTION 4.** Section 43-17-44 of the North Dakota Century Code is created and enacted as  
4 follows:

5           **43-17-44. Standard of care and professional ethics.**

6           A licensee is held to the same standard of care and same ethical standards, whether  
7 practicing traditional in-person medicine or telemedicine. The following apply in the context of  
8 telemedicine:

- 9           1. Professional ethical standards require a practitioner to practice only in areas in which  
10 the practitioner has demonstrated competence, based on the practitioner's training,  
11 ability, and experience. In assessing a licensee's compliance with this ethical  
12 requirement, the board shall give consideration to board certifications and specialty  
13 groups' telemedicine standards.
- 14           2. A licensee practicing telemedicine shall establish a valid relationship with the patient  
15 before the diagnosis or treatment of a patient. A licensee practicing telemedicine shall  
16 verify the identity of the patient seeking care and shall disclose, and ensure the patient  
17 has the ability to verify, the identity and licensure status of any licensee providing  
18 medical services to the patient.
- 19           3. Before initially diagnosing or treating a patient for a specific illness or condition, an  
20 examination or evaluation must be performed. An examination or evaluation may be  
21 performed entirely through telemedicine, if the examination or evaluation is equivalent  
22 to an in-person examination.
- 23           a. A video examination utilizing appropriate diagnostic testing and use of  
24 peripherals that would be deemed necessary in a like in-person examination or  
25 evaluation meets this standard, as does an examination conducted with an  
26 appropriately licensed intervening health care provider, practicing within the  
27 scope of the provider's profession, providing necessary physical findings to the  
28 licensee. An examination or evaluation consisting only of a static online  
29 questionnaire or an audio conversation does not meet the standard of care.
- 30           b. Once a licensee conducts an acceptable examination or evaluation, whether  
31 in-person or by telemedicine, and establishes a patient-licensee relationship,

1           subsequent followup care may be provided as deemed appropriate by the  
2           licensee, or by a provider designated by the licensee to act temporarily in the  
3           licensee's absence. In certain types of telemedicine utilizing asynchronous store-  
4           and-forward technology or electronic monitoring, such as teleradiology or  
5           intensive care unit monitoring, it is not medically necessary for an independent  
6           examination of the patient to be performed.

7       4. A licensee practicing telemedicine is subject to all North Dakota laws governing the  
8       adequacy of medical records and the provision of medical records to the patient and  
9       other medical providers treating the patient.

10      5. A licensee must have the ability to make appropriate referrals of patients not amenable  
11      to diagnosis or complete treatment through a telemedicine encounter, including a  
12      patient in need of emergent care or complementary in-person care.

13      **SECTION 5.** Section 43-17-45 of the North Dakota Century Code is created and enacted as  
14 follows:

15      **43-17-45. Prescribing - Controlled substances.**

16      1. A licensee who has performed a telemedicine examination or evaluation meeting the  
17      requirements of this chapter may prescribe medications according to the licensee's  
18      professional discretion and judgment. Opioids may only be prescribed through  
19      telemedicine if prescribed as a federal food and drug administration approved  
20      medication assisted treatment for opioid use disorder. Opioids may not be prescribed  
21      through a telemedicine encounter for any other purpose.

22      2. A licensee who, pursuant to this chapter, prescribes a controlled substance, as defined  
23      by North Dakota law, shall comply with all state and federal laws regarding the  
24      prescribing of a controlled substance, and shall participate in the North Dakota  
25      prescription drug monitoring program.