

Sixty-seventh
Legislative Assembly
of North Dakota

Introduced by

Legislative Management
(Health Care Committee)

*Moved
Anderson
and Hogan
passed
unanimous*

1 A BILL for an Act to amend and reenact section 19-02.1-14.3 of the North Dakota Century
2 Code, relating to prescribing of biosimilar drugs.

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

4 **SECTION 1. AMENDMENT.** Section 19-02.1-14.3 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **19-02.1-14.3. Biosimilar biological products.**

7 1. In this section:

8 a. "Biological product", "biosimilar", "interchangeable", "interchangeable biological
9 product", "license", and "reference product" mean the same as these terms mean
10 under section 351 of the federal Public Health Service Act [42 U.S.C. 262].

11 b. "Prescription" means a product that is subject to section 503(b) of the Federal
12 Food, Drug, and Cosmetic Act [21 U.S.C. 353(b)].

13 2. A pharmacy may not substitute a prescription biosimilar product for a prescribed
14 product ~~only if~~ unless each of the following requirements is met:

15 a. The biosimilar product has been determined by the United States food and drug
16 administration to be interchangeable with the prescribed product;

17 b. The prescribing practitioner does not specifically indicate in the practitioner's own
18 handwriting "brand medically necessary" on a written prescription, does not
19 expressly indicate that an oral prescription is to be dispensed as communicated,
20 or has not taken a specific overt action to include the "brand medically
21 necessary" language with an electronically transmitted prescription;

22 c. The pharmacist or the pharmacist's designee informs the individual receiving the
23 biological product that the biological product may be substituted with a biosimilar

- 1 product and that the individual has a right to refuse the biosimilar product
2 selected by the pharmacist and the individual chooses not to refuse;.
- 3 d. ~~The pharmacist notifies the prescribing practitioner orally, in writing, or by~~
4 ~~electronic transmission within twenty-four hours of the substitution; and~~Within two
5 business days following the dispensing of the biosimilar product, the pharmacist
6 or the pharmacist's designee notifies the prescribing practitioner of the
7 substitution. Notification under this subdivision must include the name of the
8 substitution product and the name of the manufacturer, and may be made using
9 facsimile, telephone, electronic transmission, an entry into an ~~electronic records~~
10 system, or other prevailing means.
- 11 ~~(1) An entry into an electronic records system may be made through:~~
- 12 ~~(a) An interoperable electronic medical records system;~~
- 13 ~~(b) An electronic prescribing technology;~~
- 14 ~~(c) A pharmacy benefit management system; or~~
- 15 ~~(d) A pharmacy record.~~
- 16 ~~(2) An entry into an electronic records system is presumed to provide notice to~~
17 interoperable electronic medical record accessible by the prescribing
18 practitioner, or other prevailing means accessible by the prescribing
19 practitioner.
- 20 e. The pharmacy and the prescribing practitioner retain a record of the
21 interchangeable biosimilar substitution for a period of no less than five years.
- 22 3. Subsection 2 does not apply to a biologic product refill prescription that is not changed
23 from the interchangeable biosimilar substitution dispensed on the previous filling of the
24 prescription.
- 25 4. The board of pharmacy shall maintain on ~~its~~the board's public website a current list, or
26 an internet link to a United States food and drug administration-approved list, of
27 biosimilar biological products determined to be interchangeable under subdivision a of
28 subsection 2.