

C.W.
47 3/23/21

Introduced by

Representatives Devlin, Rohr, M. Ruby, Weisz

Senators Lee, K. Roers

1 A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota
 2 Century Code, relating to telehealth and the practice of dentistry; ~~and~~ to amend and reenact
 3 ~~section~~sections 43-28-01, 43-28-03, and 43-28-04, and subsection 5 of section 43-28-06 of the
 4 North Dakota Century Code, relating to the membership and duties of the state board of dental
 5 examiners and the definition of telehealth; to provide for application; and to declare an
 6 emergency.

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

8 **SECTION 1. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is
 9 amended and reenacted as follows:

10 **43-28-01. Definitions.**

11 As used in this chapter and chapter 43-20, unless the context otherwise requires:

- 12 1. "Accredited dental school" means a dental school, college, or university accredited by
 13 the commission on dental accreditation of the American dental association or its
 14 successor.
- 15 2. "Advertising" means to invite the attention of or give notice to the public, by any
 16 means, medium, or manner whatsoever of any fact, information, or data pertaining to
 17 or being conducive of the practice of dentistry in this state.
- 18 3. "Board" means the state board of dental examiners.
- 19 4. "Certificate of registration" means a written statement of the board declaring that a
 20 licensed dentist has paid the biennial registration fee required by this chapter.
- 21 5. "Dentist" means an individual who has a license to practice in this state and who holds
 22 a valid biennial certificate of registration.
- 23 6. "License" means the right, authority, or permission granted by the board to practice
 24 dentistry in this state.

1 7. "Practice of dentistry" means examination, diagnosis, treatment, repair, administration
2 of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder,
3 deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral
4 cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive
5 treatment of the diseases, injuries, and defects of the upper and lower human jaw and
6 associated structures.

7 8. "Telehealth" has the same meaning as in section 26.1-36-09.15.

8 **SECTION 2. AMENDMENT.** Section 43-28-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-28-03. State board of dental examiners - Members - Appointment - Terms of office -**
11 **Oath - Vacancies.**

12 The state board of dental examiners consists of ~~seven~~nine members appointed by the
13 governor. The membership of the board must include ~~five~~six dentist members, at least one of
14 whom is a board-eligible or board-certified oral and maxillofacial surgeon; ~~one dental hygienist~~
15 ~~member;~~ one dental assistant member; and one independent consumer member. Appointment
16 to the board is for a term of five years, with terms of office arranged so ~~that one term expires no~~
17 ~~more than two terms expire~~ on March sixteenth of each year, ~~except that each fifth year there~~
18 ~~must be two new board members appointed, one of whom is a dentist and the other a dental~~
19 ~~hygienist and two years later two new board members must be appointed, one of whom is a~~
20 ~~dentist, and one of whom is a consumer member. The first five-year term of the consumer~~
21 ~~member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of
22 the board shall hold office until a successor is appointed and qualified. ~~Persons~~An individual
23 appointed to the board ~~shall qualify~~qualifies by taking the oath required of civil officers. ~~No~~A
24 member may not serve more than ten years or two 5-year terms of office. If a member of the
25 board is absent from two consecutive regular meetings, the board may declare a vacancy to
26 exist. All vacancies on the board must be filled by the governor by appointment.

27 **SECTION 3. AMENDMENT.** Section 43-28-04 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **43-28-04. Qualifications and appointment of members of the board - Limited vote.**

30 1. An individual may not be appointed as a dentist member of the board unless that
31 individual:

- 1 a. Is a dentist licensed and registered under this chapter; and
2 b. Is actively engaged in the practice of dentistry and has been so engaged in this
3 state for at least five years immediately preceding the appointment.
- 4 2. An individual may not be appointed as the dental hygienist member of the board
5 unless that individual:
- 6 a. Is a licensed and registered dental hygienist in accordance with chapter 43-20;
7 and
8 b. Is actively engaged in the practice of dental hygiene and has been so engaged in
9 this state for at least five years immediately preceding the dental hygienist's
10 appointment.
- 11 3. An individual may not be appointed as the dental assistant member of the board
12 unless that individual:
- 13 a. Is a registered dental assistant in accordance with chapter 43-20; and
14 b. Is actively practicing as a registered dental assistant and has been so practicing
15 in this state for at least five years immediately preceding the dental assistant's
16 appointment.
- 17 4. An individual may not be appointed as the independent consumer member of the
18 board unless that individual:
- 19 a. Has been a resident of North Dakota for five years immediately preceding
20 appointment;
21 b. Has no personal ~~or~~ family or financial relationship with the dental profession;
22 and
23 c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the
24 spouse of an individual engaged in any of those occupations.
- 25 ~~4-5.~~ The dental hygienist, dental assistant, and independent consumer member of the
26 board shall exercise full voting privileges in all areas except that the dental hygienist
27 may not participate in the clinical examination of dentists for licensure and the dental
28 assistant and independent consumer member may not participate in the clinical
29 examination of dentists or hygienists for licensure.

30 **SECTION 4. AMENDMENT.** Subsection 5 of section 43-28-06 of the North Dakota Century
31 Code is amended and reenacted as follows:

- 1 5. Employ and compensate an executive director, who must be an attorney or a dentist,
2 attorneys, investigative staff, and clerical assistants and may perform any other duties
3 imposed upon the board by this chapter.

4 **SECTION 5.** A new section to chapter 43-28 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Standard of care and professional ethics - Telehealth.**

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

- 9 1. Professional ethical standards require a dentist to practice only in areas in which the
10 dentist has demonstrated competence, based on the dentist's training, ability, and
11 experience.
- 12 2. ~~A dentist practicing telehealth shall establish a bona fide relationship with a patient~~
13 ~~before the diagnosis or treatment of the patient.~~ may not practice telehealth unless a
14 bona fide dentist-patient relationship is established in person or through telehealth. A
15 dentist practicing telehealth shall verify the identity of the patient seeking care and
16 shall disclose and ensure to the patient has the ability to verify the dentist's identity,
17 physical location, contact information, and licensure status of a dentist providing dental
18 ~~services to the patient.~~
- 19 3. Before a dentist initially diagnoses or treats a patient for a specific illness, disease, or
20 condition, the dentist shall perform an examination or evaluation. A dentist may
21 perform an examination or evaluation entirely through telehealth if the examination or
22 evaluation is equivalent to an in-person examination may be performed in accordance
23 with the standard of care required for an in-person dental examination or evaluation. A
24 dentist may not use telehealth to perform an initial examination or evaluation in
25 circumstances in which the standard of care necessitates an in-person dental
26 examination.
- 27 a. An appropriate telehealth examination or evaluation may include an examination
28 utilizing secure videoconferencing or in conjunction with store-and-forward
29 technology for or appropriate diagnostic testing and use of peripherals that would
30 be deemed necessary in a like required during an in-person examination or
31 evaluation meets this standard, as does or an examination conducted with an

1 appropriately licensed intervening dental health care provider, practicing within
2 the scope of the dental health care provider's profession, providing necessary
3 physical findings to the dentist during a live, two-way telehealth encounter. An
4 examination or evaluation consisting only of a static online questionnaire or an
5 audio conversation does not meet the standard of care.

6 b. The use of telehealth does not expand the scope of practice for a dental health
7 care provider, and may not be used to circumvent the licensure requirements
8 established for dental health care providers in this state.

9 c. A dentist who practices telehealth in this state must have adequate knowledge of
10 the availability and location of local dentists and dental health care providers to
11 provide followup care to a patient following a dental telehealth encounter,
12 including emergent and acute care facilities, in order to enable a patient to
13 receive followup care. Once a dentist conducts an ~~acceptable~~appropriate
14 examination or evaluation, whether in-person or by telehealth, and establishes a
15 patient-dentist relationship, subsequent followup care may be provided as
16 deemed appropriate by the treating dentist, or by ~~a provider~~another dentist
17 licensed by the board designated by the treating dentist to act temporarily in the
18 treating dentist's absence. ~~In certain types of telehealth utilizing asynchronous-~~
19 ~~store and forward technology or electronic monitoring, it is not medically~~
20 ~~necessary for an independent examination of the patient to be performed.~~

21 4. A dentist practicing telehealth is subject to all North Dakota laws governing the
22 adequacy of dental records and the provision of dental records to the patient and other
23 dental health care providers treating the patient.

24 5. A dentist ~~may make appropriate referrals of patients not amenable to diagnosis or~~
25 ~~complete treatment through a telehealth encounter, including a patient in need of~~
26 ~~emergent care or complementary in-person care~~practicing telehealth must have
27 procedures for providing in-person services or for the referral of a patient requiring
28 dental services that cannot be provided by telehealth to another dentist who practices
29 in the area of the state and the patient can readily access.

30 ~~SECTION 3. A new section to chapter 43-28 of the North Dakota Century Code is created~~
31 ~~and enacted as follows:~~

1 ~~**Prescribing -- Controlled substances:**~~

2 ~~1. A dentist who has performed a telehealth examination or evaluation meeting the~~
3 ~~requirements of this chapter may prescribe medications according to the dentist's~~
4 ~~professional discretion and judgment. Opioids may be prescribed through telehealth~~
5 ~~only if prescribed to a patient in a hospital or long-term care facility. Opioids may not~~
6 ~~be prescribed through a telehealth encounter for any other purpose.~~

7 ~~2. Pursuant to this chapter, a dentist who prescribes a controlled substance, as defined~~
8 ~~by state law, shall comply with all state and federal laws regarding the prescribing of a~~
9 ~~controlled substance, and shall participate in the North Dakota prescription drug~~
10 ~~monitoring program.~~

11 **SECTION 6.** A new section to chapter 43-28 of the North Dakota Century Code is created
12 and enacted as follows:

13 **Prohibition - Waivers.**

14 A dentist practicing dentistry may not require a patient to sign a form or statement waiving
15 the patient's right to file a complaint against the dentist with an appropriate state entity or
16 shielding the dentist from liability for injury resulting from a dental encounter.

17 **SECTION 7. APPLICATION.** Notwithstanding section 43-28-03, on the effective date of this
18 Act, the term of every member of the state board of dental examiners expires. In making the
19 new appointments, the governor shall appoint the members of the board for staggered terms so
20 no more than two members' terms expire each year. A member appointed under this section
21 may not serve more than two full five-year terms but may serve more than ten years.

22 **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

March 23, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1151

Page 1, line 2, remove the second "and"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-28-01" insert ", 43-28-03, and 43-28-04, and subsection 5 of section 43-28-06"

Page 1, line 3, after the second "the" insert "membership and duties of the state board of dental examiners and the"

Page 1, line 3, after "telehealth" insert "; to provide for application; and to declare an emergency"

Page 2, after line 4, insert:

"SECTION 2. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners - Members - Appointment - Terms of office - Oath - Vacancies.

The state board of dental examiners consists of ~~seven~~nine members appointed by the governor. The membership of the board must include ~~five~~six dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon; ~~one dental hygienist member;~~ one dental assistant member; and one independent consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that ~~one term expires~~ no more than two terms expire on March sixteenth of each year, ~~except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. ~~Persons~~An individual appointed to the board shall ~~qualify~~qualifies by taking the oath required of civil officers. ~~No~~A member may not serve more than ten years or two 5-year terms of office. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment.

SECTION 3. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is amended and reenacted as follows:

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. An individual may not be appointed as a dentist member of the board unless that individual:
 - a. Is a dentist licensed and registered under this chapter; and

- b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.
2. An individual may not be appointed as the dental hygienist member of the board unless that individual:
 - a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
 - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
 3. An individual may not be appointed as the dental assistant member of the board unless that individual:
 - a. Is a registered dental assistant in accordance with chapter 43-20; and
 - b. Is actively practicing as a registered dental assistant and has been so practicing in this state for at least five years immediately preceding the dental assistant's appointment.
 4. An individual may not be appointed as the independent consumer member of the board unless that individual:
 - a. Has been a resident of North Dakota for five years immediately preceding appointment;
 - b. Has no personal ~~or~~ family or financial relationship with the dental profession; and
 - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
 - ~~4.5.~~ The dental hygienist, dental assistant, and independent consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the dental assistant and independent consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

SECTION 4. AMENDMENT. Subsection 5 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

5. Employ and compensate an executive director, who must be an attorney or a dentist, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter."

Page 2, line 13, remove "practicing telehealth shall establish a bona fide relationship with a patient"

Page 2, line 14, replace "before the diagnosis or treatment of the patient." with "may not practice telehealth unless a bona fide dentist-patient relationship is established in person or through telehealth."

Page 2, line 15, replace "and ensure" with "to"

Page 2, line 16, remove "has the ability to verify."

Page 2, line 16, after the second "the" insert "dentist's"

Page 2, line 16, after "identity" insert ", physical location, contact information."

Page 2, line 16, remove "of a dentist providing dental"

Page 2, line 17, remove "services to the patient"

Page 2, line 21, replace "is equivalent to an in-person examination" with "may be performed in accordance with the standard of care required for an in-person dental examination or evaluation. A dentist may not use telehealth to perform an initial examination or evaluation in circumstances in which the standard of care necessitates an in-person dental examination"

Page 2, line 22, after "An" insert "appropriate telehealth examination or evaluation may include an"

Page 2, line 22, replace "or" with "in conjunction with"

Page 2, line 23, replace "for" with "or"

Page 2, line 23, remove "and use of peripherals"

Page 2, line 24, replace "deemed necessary in a like" with "required during an"

Page 2, line 24, remove "meets this"

Page 2, line 25, replace "standard, as does" with "or"

Page 2, line 26, after "intervening" insert "dental"

Page 2, line 26, after the second "the" insert "dental health care"

Page 2, line 27, after "dentist" insert "during a live, two-way telehealth encounter"

Page 2, line 30, after "b." insert "The use of telehealth does not expand the scope of practice for a dental health care provider, and may not be used to circumvent the licensure requirements established for dental health care providers in this state."

- c. A dentist who practices telehealth in this state must have adequate knowledge of the availability and location of local dentists and dental health care providers to provide followup care to a patient following a dental telehealth encounter, including emergent and acute care facilities, in order to enable a patient to receive followup care.

Page 2, line 30, replace "acceptable" with "appropriate"

Page 3, line 1, after "the" insert "treating"

Page 3, line 2, replace "a provider" with "another dentist licensed by the board"

Page 3, line 2, after the first "the" insert "treating"

Page 3, line 2, after the second "the" insert "treating"

Page 3, line 3, remove "In certain types of telehealth utilizing asynchronous"

Page 3, remove lines 4 and 5

Page 3, line 8, after "dental" insert "health care"

Page 3, line 9, remove "may make appropriate referrals of patients not amenable to diagnosis or"

Page 3, remove line 10

Page 3, line 11, replace "emergent care or complementary in-person care" with "practicing telehealth must have procedures for providing in-person services or for the referral of a patient requiring dental services that cannot be provided by telehealth to another dentist who practices in the area of the state and the patient can readily access"

Page 3, replace lines 12 through 23 with:

"SECTION 6. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

Prohibition - Waivers.

A dentist practicing dentistry may not require a patient to sign a form or statement waiving the patient's right to file a complaint against the dentist with an appropriate state entity or shielding the dentist from liability for injury resulting from a dental encounter.

SECTION 7. APPLICATION. Notwithstanding section 43-28-03, on the effective date of this Act, the term of every member of the state board of dental examiners expires. In making the new appointments, the governor shall appoint the members of the board for staggered terms so no more than two members' terms expire each year. A member appointed under this section may not serve more than two full five-year terms but may serve more than ten years.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly