

Sixty-ninth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2402**

Introduced by

Legislative Management  
(Joint Policy Committee)

1 A BILL for an Act to create and enact two new sections to chapter 43-15 and a new subsection  
2 to section 43-48-03 of the North Dakota Century Code, relating to the prescriptive authority of  
3 pharmacists and therapeutic substitution; to amend and reenact subsection 1 of section  
4 26.1-36.11-01 and section 43-15-01 of the North Dakota Century Code, relating to the scope of  
5 practice of pharmacists; to repeal section 43-15-25.3 of the North Dakota Century Code,  
6 relating to approved laboratory tests; and to provide an effective date.

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

8 **SECTION 1. AMENDMENT.** Subsection 1 of section 26.1-36.11-01 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10 1. a. "Comprehensive medication management" means medication management  
11 pursuant to a standard of care that ensures each enrollee's medications, both  
12 prescription and nonprescription, are individually assessed to determine each  
13 medication is appropriate for the enrollee, effective for the medical condition, and  
14 safe, given the comorbidities and other medications being taken and able to be  
15 taken by the enrollee as intended. Services provided in comprehensive  
16 medication management are, as follows:  
17 (1) Performing or obtaining necessary assessments of the enrollee's health  
18 status;  
19 (2) Formulating a medication treatment plan;  
20 (3) Monitoring and evaluating the enrollee's response to therapy, including  
21 safety and effectiveness;  
22 (4) Performing a comprehensive medication review to identify, resolve, and  
23 prevent medication-related problems, including adverse drug events;

- (5) Providing verbal or written, or both, counseling, education, and training designed to enhance enrollee understanding and appropriate use of the enrollee's medications;
- (6) Providing information, support services, and resources designed to enhance enrollee adherence with the enrollee's therapeutic regimens;
- (7) Coordinating and integrating medication therapy management services within the broader health care management services being provided to the enrollee;
- (8) Initiating or modifying drug therapy under a collaborative agreement with a practitioner in accordance with section 43-15-31.4;
- (9) Prescribing medications pursuant to protocols approved by the state board of pharmacy in accordance with subsection 24 of section 43-15-10;
- (10) Administering medications in accordance with requirements in section 43-15-31.5; and
- (11) Ordering, performing, and interpreting laboratory tests authorized by section 43-15-25.3 under chapter 43-15 and North Dakota Administrative Code section 61-04-10-06.

**SECTION 2. AMENDMENT.** Section 43-15-01 of the North Dakota Century Code is

amended and reenacted as follows:

## **43-15-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Administration" means the direct application of a drug to the body of a patient. The term includes:
  - a. The emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist if nursing service is not available;
  - b. Immunization and vaccination by injection of an individual who is at least three years of age upon an order by a practitioner authorized to prescribe such a drug or by written protocol with a physician or nurse practitioner and subsequently



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1           who is authorized by the practitioner to orally transmit the order that has been reduced  
2           to writing in the patient's record, in a suitable container appropriately labeled for  
3           subsequent administration to or use by a patient or other individual entitled to receive  
4           the prescription drug.

5           9. "Distribute" means the delivery of a drug other than by dispensing or administering.

6           10. "Drug" or "drugs" means:

- 7           a. Articles recognized as drugs in the official United States pharmacopeia, official  
8           national formulary, official homeopathic pharmacopeia, other drug compendium,  
9           or any supplement to any of them;
- 10           b. Articles intended for use in the diagnosis, cure, mitigation, treatment, or  
11           prevention of disease in man or other animal;
- 12           c. Articles other than food intended to affect the structure or any function of the  
13           body of man or other animals; and
- 14           d. Articles intended for use as a component of any articles specified in  
15           subdivision a, b, or c.

16           11. "Drug regimen review" includes the following activities:

- 17           a. Evaluation of the prescription drug orders and patient records for:
  - 18           (1) Known allergies;
  - 19           (2) Rational therapy-contraindications;
  - 20           (3) Reasonable dose and route of administration; and
  - 21           (4) Reasonable directions for use.
- 22           b. Evaluation of the prescription drug orders and patient records for duplication of  
23           therapy.
- 24           c. Evaluation of the prescription drug orders and patient records for interactions:
  - 25           (1) Drug-drug;
  - 26           (2) Drug-food;
  - 27           (3) Drug-disease; and
  - 28           (4) Adverse drug reactions.
- 29           d. Evaluation of the prescription drug orders and patient records for proper  
30           utilization, including overutilization or underutilization, and optimum therapeutic  
31           outcomes.

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1       12. "Emergency pharmacy practice" means in the event a pharmacist receives a request  
2       for a prescription refill and the pharmacist is unable to obtain refill authorization from  
3       the prescriber, the pharmacist may dispense and bill using a pharmacist national  
4       provider identifier a one-time emergency refill of up to a thirty-day supply of the  
5       prescribed medication, provided that:  
6           a. The prescription is not for a controlled substance listed in schedule II;  
7           b. The pharmaceutical is essential to the maintenance of life or to the continuation  
8           of therapy;  
9           c. In the pharmacist's professional judgment, the interruption of therapy might  
10          reasonably produce undesirable health consequences or may cause physical or  
11          mental discomfort;  
12          d. The pharmacist properly records the dispensing; and  
13          e. The dispensing pharmacist notifies the prescriber of the emergency dispensing  
14          within a reasonable time after the one-time emergency refill dispensing.

15       13. "Labeling" means the process of preparing and affixing of a label to any drug container  
16          exclusive, however, of the labeling by a manufacturer, packer, or distributor of a  
17          nonprescription drug or commercially packaged legend drug or device. Any label shall  
18          include all information required by federal and North Dakota law or regulation.

19       14. "Manufacture" means the production, preparation, propagation, compounding,  
20          conversion, or processing of a device or a drug, either directly or indirectly by  
21          extraction from substances of natural origin or independently by means of chemical  
22          synthesis or by a combination of extraction and chemical synthesis and includes any  
23          packaging or repackaging of the substances or labeling or relabeling of its container,  
24          except that this term does not include the preparation or compounding of a drug by an  
25          individual for the individual's own use or the preparation, compounding, packaging, or  
26          labeling of a drug:  
27           a. By a pharmacist or practitioner as an incident to dispensing or administering of a  
28            drug in the course of the person's professional practice; or  
29           b. By a practitioner or by the practitioner's authorization under supervision for the  
30            purpose of or as an incident to research, teaching, or chemical analysis and not  
31            for sale.

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15. "Manufacturer" means a person engaged in the manufacture of drugs in facilities located within North Dakota.
16. "Medicine" means a drug or combination of drugs, used in treating disease in man or other animals.
17. "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.
18. "Original package" means the original carton, case, can, box, vial, bottle, or other receptacle, put up by the manufacturer or wholesaler or distributor, with label attached, making one complete package of the drug article.
19. "Patient-pharmacist relationship" means the required relationship between a patient and a pharmacist as defined under the rules of the board which authorizes the pharmacist to independently prescribe drugs, drug categories, and devices as limited by this chapter.
20. "Person" means an individual, corporation, limited liability company, partnership, association, or any other legal entity.
- 20-21. "Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.
- 21-22. "Pharmacist" means a person to whom the board has issued a license to practice the profession of pharmacy whose license has not expired or been suspended.
- 22-23. "Pharmacy" or "drugstore" means every store or shop where drugs, medicines, or chemicals are dispensed, displayed for sale, or sold, at retail for medicinal purposes, or where prescriptions are compounded, and which is duly registered by the board.
- 23-24. "Pharmacy technician" means a person registered by the board who is employed by a pharmacy to assist licensed pharmacists in the practice of pharmacy by performing specific tasks delegated by and under the immediate personal supervision and control of a licensed pharmacist, as permitted by the board.
- 24-25. "Practice of pharmacy" means the:

- 1       a. The interpretation, evaluation, and monitoring of prescription orders and patient  
2                   drug therapy; the
- 3       b. The compounding, dispensing, and labeling of drugs and devices except labeling  
4                   by a manufacturer, packer, or distributor of nonprescription drugs and  
5                   commercially packaged legend drugs and devices; the
- 6       c. The participation in drug selection, drug monitoring, drug administration, drug  
7                   regimen review, the provision of these acts or services necessary as a primary  
8                   health care provider of pharmaceutical care, and drug utilization evaluations; the
- 9       d. The proper and safe storage of drugs and devices and the maintenance of proper  
10                   records for this storage; the
- 11       e. The responsibility for advising, consulting, and educating if necessary or if  
12                   regulated, patients, the public, and other health care providers on the rational,  
13                   safe, and cost-effective use of drugs including therapeutic values, content,  
14                   hazards, and appropriate use of drugs and devices; the
- 15       f. The participation in interpreting and applying pharmacokinetic data and other  
16                   pertinent laboratory data to design safe and effective drug dosage regimens; if
- 17       g. If appropriate and if regulated, the participation in scientific or clinical drug  
18                   research either scientific or clinical as an investigator or in collaboration with  
19                   other investigators for the purposes of studying the effects of drugs on animals or  
20                   human subjects, with other drugs or chemicals, and with drug delivery devices;  
21                   emergency
- 22       h. Emergency pharmacy practice; prescriptive
- 23       i. Prescriptive practices as limited under this chapter; the
- 24       j. The ordering of laboratory tests:
- 25       k. The performance of laboratory tests to provide pharmaceutical care services  
26                   which are waived under the Federal Clinical Laboratory Improvement Act of 1988  
27                   [Pub. L. 100-578, section 2; 102 Stat. 2903; 42 U.S.C. 263a et seq.], as  
28                   amended; and the
- 29       l. The offering or performing of those acts, services, operations, or transactions  
30                   necessary in the conduct, operation, management, and control of pharmacy.

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3       **SECTION 3.** A new section to chapter 43-15 of the North Dakota Century Code is created  
4        and enacted as follows:

## Prescriptive authority.

1. A pharmacist whose practice is physically located within this state, acting in good faith and exercising reasonable care, may independently prescribe drugs, drug categories, and devices as provided in this section if each of the following requirements are met:
  - a. A pharmacist may prescribe drugs or devices only for conditions for which the pharmacist is educationally prepared and competence has been achieved and maintained.
  - b. A pharmacist may issue a prescription only for a legitimate medical purpose arising from a patient-pharmacist relationship.
  - c. A pharmacist shall obtain adequate information about the patient's health status to make appropriate decisions based on the applicable standard of care.
  - d. For each drug or drug category a pharmacist intends to prescribe, the pharmacist shall maintain a patient assessment protocol based on current clinical guidelines, when available, or evidence-based research findings that specify the following:
    - (1) Patient inclusion and exclusion criteria; and
    - (2) Explicit medical referral criteria.
  - e. A pharmacist shall revise the patient assessment protocol when necessary to ensure continued compliance with clinical guidelines or evidence-based research findings. The pharmacist's patient assessment protocol, and any related forms, must be made available to the board upon request.
  - f. A pharmacist shall consult with and refer to other health care professionals as appropriate, including in situations where the pharmacist's knowledge or experience is limited.
  - g. A pharmacist shall develop and implement an appropriate follow-up care plan, including any monitoring parameters, in accordance with clinical guidelines. The plan may include follow-up care with the patient and communication with the patient's primary care provider.

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- 1       h. A pharmacist shall inquire about the identity of the patient's primary care provider  
2                   or provider of record. If a primary care provider or provider of record is identified,  
3                   the pharmacist shall provide notification to the primary care provider or provider  
4                   of record within three business days following the prescription of a drug.
- 5       i. A pharmacist shall maintain documentation adequate to justify the care provided,  
6                   including information collected as part of the patient assessment, the prescription  
7                   record, any notification provided under this section, and the follow-up care plan.
- 8       2. A pharmacist may prescribe any drug approved by the federal food and drug  
9                   administration which is indicated for the following conditions:
  - 10       a. Lice;
  - 11       b. Cold sores;
  - 12       c. Motion sickness;
  - 13       d. Hypoglycemia; and
  - 14       e. Uncomplicated urinary tract infections.
- 15       3. A pharmacist may prescribe any of the following devices approved by the federal food  
16                   and drug administration:
  - 17       a. Inhalation spacer;
  - 18       b. Nebulizer;
  - 19       c. Diabetes blood sugar testing supplies; and
  - 20       d. Pen needles.
- 21       4. A pharmacist may prescribe any drug approved by the federal food and drug  
22                   administration which is indicated for the following conditions, provided the  
23                   symptomatic patient first tests positive to a test that is waived under the Federal  
24                   Clinical Laboratory Improvement Act of 1988 [Pub. L. 100-578, section 2; 102 Stat.  
25                   2903; 42 U.S.C. 263a et seq.], as amended:
  - 26       a. Influenza;
  - 27       b. Group A streptococcal pharyngitis; and
  - 28       c. Severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2.
- 29       5. If a patient tested positive for influenza, a pharmacist may prescribe an antiviral drug  
30                   to an individual who has been exposed to the infected patient and for whom the  
31                   clinical guidelines recommend chemoprophylaxis.

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- 1       6. A pharmacist may prescribe any drug approved by the federal food and drug  
2       administration for the purpose of closing a gap in clinical guidelines as follows:  
3       a. Statins for a patient who has been diagnosed with diabetes; and  
4       b. Short-acting beta agonists for a patient with asthma who has had a prior  
5       prescription for a short-acting beta agonist and who has a current prescription for  
6       a long-term asthma control drug.
- 7       7. A pharmacist who successfully completes an accredited continuing pharmacy  
8       education or continuing medical education course on travel medicine may prescribe  
9       any noncontrolled drug recommended for individuals traveling outside the United  
10       States which is specifically listed in the federal centers for disease control and  
11       prevention health information for international travel publication. The pharmacist only  
12       may prescribe drugs that are indicated for the patient's intended destination for travel.
- 13       8. If an emergency situation exists which in the professional judgment of the pharmacist  
14       threatens the health or safety of the patient, a pharmacist may prescribe the following  
15       drugs approved by the federal food and drug administration in the minimum quantity  
16       necessary until the patient is able to be seen by a provider:  
17       a. Diphenhydramine;  
18       b. Epinephrine; and  
19       c. Short-acting beta agonists.
- 20       9. A pharmacist may prescribe antimicrobial prophylaxis for the prevention of lyme  
21       disease in accordance with the federal centers for disease control and prevention  
22       guidelines.

23       **SECTION 4.** A new section to chapter 43-15 of the North Dakota Century Code is created  
24 and enacted as follows:

25       **Therapeutic substitution.**

- 26       1. A pharmacist whose practice is physically located within this state may substitute a  
27       drug for a therapeutically equivalent drug as limited by this section. Therapeutic  
28       equivalence may be established by clinical publications comparing dosages of drugs  
29       in a therapeutic class.
- 30       2. A pharmacist may not substitute a drug for a therapeutically equivalent drug if:  
31       a. The prescriber indicates no substitution is to be made; or

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1           b. The board has determined a therapeutically equivalent drug should not be  
2           substituted and notified pharmacists of that determination.

3           3. Before dispensing a therapeutically equivalent drug, a pharmacist shall:  
4           a. Verbally discuss the suggested substitution with the patient, including informing  
5           the patient that the therapeutically equivalent drug does not contain the identical  
6           active ingredient present in the prescribed drug and any differences in dosage  
7           and frequency between the prescribed drug and the therapeutically equivalent  
8           drug; and  
9           b. Inform the patient of the patient's right to refuse the substitution.

10          4. The pharmacist shall send notice of the substitution to the prescriber by electronic  
11          communication within twenty-four hours of dispensing the drug to the patient.

12          **SECTION 5.** A new subsection to section 43-48-03 of the North Dakota Century Code is  
13 created and enacted as follows:

14           Pharmacists duly and currently licensed to practice pharmacy.

15          **SECTION 6. REPEAL.** Section 43-15-25.3 of the North Dakota Century Code is repealed.

16          **SECTION 7. EFFECTIVE DATE.** This Act becomes effective upon its filing with the  
17 secretary of state.