**2025 SENATE HUMAN SERVICES**

**SB 2076**

# 2025 SENATE STANDING COMMITTEE MINUTES

**Human Services Committee**
Fort Lincoln Room, State Capitol

SB 2076 9:31 a.m.
1/14/2025

| Relating to prior authorization. |
|---|

9:31 a.m. Chairman Lee called the meeting to order.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

**Discussion Topics:**

- Psychotropic Medication Usage Trends
- Type of prescribers
- Peer-to-Peer Healthcare collaboration

9:31 a.m. Brendan Joyce, Medical Services Clinical Services Director with the Department of Health and Human Services, testified in favor and submitted testimony #28846.

9:54 a.m. Krisanna Peterson, ND Citizen testified in opposition and submitted testimony #28979

10:00 a.m. Chairman Lee closed the hearing.

**Additional written testimony:**

Carlotta McCleary, Executive Director for NDFFCMH and MHAND submitted testimony in favor #28859

*Andrew Ficek, Committee Clerk*

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# Testimony
# Senate Bill No. 2076
# Senate Human Services Committee
# Senator Judy Lee, Chairman
January 14, 2025

Chairman Lee, and members of the Senate Human Services Committee, I am Brendan Joyce, Medical Services Clinical Services Director with the Department of Health and Human Services (Department). I appear before you in support of Senate Bill No. 2076, which was introduced at the request of the Department.

Senate Bill No. 2076 is being brought forward for two reasons. First, to remove a requirement for the Department to prior authorize psychotropic medications for children on five or more concurrent prescriptions for psychotropics. This requirement was passed in the 2019 session. The Department anticipated only 12 children being impacted by the bill. It was stated that some members of the legislature could accept that volume of children being impacted but would not be in agreement if many more than 12 children were impacted.

To implement the 2019 changes to the prior authorization requirements, some significant programming needed to occur. Once programming was completed, the number of children that would be impacted was 78, much higher than the 12 children identified in 2019.

The Department worked to determine if the data and final programming was accurate and equal to what was used for the estimate given to the legislature during the 2019 session, and everything was determined to be accurate. The number of children impacted has been as high as 120 and

currently is at 100. Given the legislative feedback in the 2019 session, the Department decided to not activate the prior authorization process for children on five or more psychotropic drugs, and instead bring forth Senate Bill No. 2076 to remove the requirement. This is what page 2, line 3 and lines 16-31, and page 3, lines 1-7 and line 18 are addressing. Page 3, lines 16 and 19 are grammatical modifications.

The second reason for the Department to bring forth Senate Bill No. 2076 is to address discriminatory supplemental rebate offers. While the Department cannot share specific offers or manufacturers, our multi-state rebate pool has received offers that would result in North Dakota receiving a lower supplemental rebate than other states because of the existence of our state law excluding classes of medications from prior authorization. Page 3, lines 10-13 adds language that would situationally allow the Department to access higher supplemental rebate rates in these situations. Our multi-state pool has discouraged manufacturers from submitting these discriminatory proposals, but the Department would simply like to be prepared for these situations.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

**SB 2076 Testimony**
**Senate Human Services Committee**
**Senator Judy Lee, Chairman**
**January 14, 2025**

Chairman Lee and members of the committee, my name is Carlotta McCleary. I am the Executive Director for both North Dakota Federation of Families for Children's Mental Health (NDFFCMH) and Mental Health America of North Dakota (MHAND). NDFFCMH is a parent run organization focused on the needs of children and youth with emotional, behavioral, or mental disorders and their families. MHAND's mission is to promote mental health through education, advocacy, understanding and access to quality care for all individuals.

We have concerns about SB 2076. NDFFCMH and MHAND continue to be supportive of the current law regarding the carve out for mental health medication. It is our belief that the prescribing of mental health medication must be between the individual and their doctor. We are also concerned with delays in appropriate treatment that a drug utilization review process would require. We know the sooner people receive the appropriate treatment the better. For example, with depression, we know that the longer it goes untreated, the worse the depression gets. The longer the depression lasts, it is more difficult to get back to the baseline, with some people never returning to baseline due to the length of time with untreated symptoms. There could also be additional negative consequences. Anything that delays the stabilization of the individual can lead to a decrease in family and other social interactions, an increase in hospitalizations, an increase in out-of-home placements, increased encounters with law enforcement,

increased risk for suicide, or a decrease in school attendance and academic achievement.

Decisions must be maintained between the doctor and their patient.

Carlotta McCleary, Executive Director
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Carlotta McCleary, Executive Director
Mental Health America of ND
1720 Burnt Boat Drive, Suite 108
Bismarck ND 58503

Email: cmccleary@mhand.org
Phone: (701)255-3692

Chairwomen Lee and Committee,
My name is Krisanna Peterson. I am coming here today to have you vote no on SB 2076. I have a son who is 18 years old and lives in Bismarck ND. The reason I am coming to talk to you today is the concern about Prior Auths being required for medicaid patients. My son qualifies for medicaid because he is on the DD waiver. He has multiple disabilities. But his mental health is most concerning as he can be suicidal. I believe that requiring Prior Auths for his psych medications would be a concern for others who have medicaid. Many who have medicaid also have a mental health diagnosis. My son's mental health struggles have been so severe that he can quickly act on suicidal thoughts.

I am not sure if anyone here has ever dealt with medicaid but it's very difficult and has gotten more difficult over the years. They are probably the most difficult insurance I have ever dealt with in my life. I am an advocate and have contacted people in the pharmacy before regarding my son's medication. We had a drug that worked and all of a sudden they wanted a generic, which didn't work. when they didnt work. They made my kid try every generic. Do you have any idea how that messed up my kid? He didn't even want to take them. Some trials of meds can ruin a person. It takes a long time for psych meds to work, to see if they will ever work for someone. To delay that is even harder on the person or the person taking care of the person.

I would like you to vote against this bill as It will affect kids or adults like my son. I am always afraid he may commit suicide and I know that is something that will ruin me. My son is capable of some amazing things. Maybe he can find the cure for cancer if he can get the proper accommodations while he is in college. He is interested in genetics.

Krisanna Peterson
7012619574

# 2025 SENATE STANDING COMMITTEE MINUTES

**Human Services Committee**
Fort Lincoln Room, State Capitol

SB 2076
1/14/2025
11:45 A.M.

| Relating to prior Authorization. |
|---|

11:45 a.m. Chairman Lee opened the meeting.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

**Discussion Topics:**

- Overmedication of youth
- Exploring non-medication treatment options

11:54 a.m. Senator Roers moved a Do Pass.

11:54 a.m. Senator Hogan seconded the motion.

| Senators | Vote |
|---|---|
| Senator Judy Lee | Y |
| Senator Kent Weston | Y |
| Senator David A. Clemens | Y |
| Senator Kathy Hogan | Y |
| Senator Kristin Roers | Y |
| Senator Desiree Van Oosting | Y |

Motion passed 6-0-0.

Senator Roers will carry the bill.

11:59 a.m. Chairman Lee closed the meeting.

*Andrew Ficek, Committee Clerk*

# REPORT OF STANDING COMMITTEE
## SB 2076 (25.8085.01000)

**Human Services Committee (Sen. Lee, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2076 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

**2025 HOUSE HUMAN SERVICES**

**SB 2076**

# 2025 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**
Pioneer Room, State Capitol

SB 2076
3/11/2025

Relating to prior authorization and certification of medically necessary medication.

10:40 a.m. Chairman M. Ruby opened the hearing.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Dobervich, Hendrix, Holle, Kiefert, Rios, Rohr
Members Absent: Representative Davis

**Discussion Topics:**

- Requirements for authorization

10:40 a.m. Brendan Joyce, ND Medicaid, testified in favor and submitted testimony, #40140.

**Additional written testimony:**
Chris Fox, Board Member of Voices for Non-Opioid Choices, submitted testimony in favor, #40254.
Carlotta McCleary, Executive Director of Mental Health America of North Dakota & ND Federation of Families for Children's Mental Health, submitted testimony in opposition, #40133

10:50 a.m. Vice Chairman Frelich closed the hearing.

*Jackson Toman, Committee Clerk*

**SB 2076 Testimony**
**House Human Services Committee**
**Representative Matthew Ruby, Chairman**
**March 11, 2025**

Chairman Ruby and members of the committee, my name is Carlotta McCleary. I am the Executive Director for both North Dakota Federation of Families for Children's Mental Health (NDFFCMH) and Mental Health America of North Dakota (MHAND). NDFFCMH is a parent run organization focused on the needs of children and youth with emotional, behavioral, or mental disorders and their families. MHAND's mission is to promote mental health through education, advocacy, understanding and access to quality care for all individuals.

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# Testimony
# Senate Bill No. 2076
# House Human Services Committee
# Representative Matthew Ruby, Chairman

March 11, 2025

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The Department worked to determine if the data and final programming was accurate and equal to what was used for the estimate given to the legislature during the 2019 session, and everything was determined to be accurate. The number of children impacted has been as high as 120 and

currently is at 100. Given the legislative feedback in the 2019 session, the Department decided to not activate the prior authorization process for children on five or more psychotropic drugs, and instead bring forth Senate Bill No. 2076 to remove the requirement. This is what page 2, line 3 and lines 16-31, and page 3, lines 1-7 and line 18 are addressing. Page 3, lines 16 and 19 are grammatical modifications.

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This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

*March 10, 2025*

Testimony Of
**Voices for Non-Opioid Choices**
Before The
**North Dakota House Human Services Committee**
**On Senate Bill 2076**

Dear Chair Matthew Ruby and Esteemed Members of the North Dakota House Human Services Committee,

I am Chris Fox, Executive Director of Voices for Non-Opioid Choices. I appreciate the opportunity to submit this testimony to the committee.

Thank you for holding this hearing on critical legislation that will benefit individuals across North Dakota. I am writing in strong support of **North Dakota Senate Bill 2076** and urge its swift passage to help prevent opioid addiction in the state.

This important piece of legislation builds on existing state policy to ensure that sodium channel pain signal inhibitors are treated similarly to other essential medications—such as antipsychotics, antidepressants, anticonvulsants, and antiretrovirals—by preventing prior authorization restrictions.

By reducing barriers to these effective, non-addictive pain management options, SB 2076 directly strengthens efforts to prevent opioid addiction before it starts.

Voices for Non-Opioid Choices ("Voices") applauds the Senate Human Services Committee for introducing this important legislation and fully supports its passage.

For too long, our response to the opioid addiction crisis focused solely on opioid overdose death prevention. Such a focus misses the opportunity to prevent addiction where we can, including by reducing and minimizing unnecessary exposure to opioids. One opportunity to do this is to increase the availability of non-opioid pain management approaches. In doing so, SB 2076 will prevent opioid addiction for many North Dakotans and save lives.

Voices for Non-Opioid Choices (www.nonopioidchoices.org) is a national, non-partisan, and nonprofit organization based in Washington, DC dedicated to preventing opioid addiction. Our coalition boasts over 20,000 advocates and 200 member organizations from across the country representing the leading patient, provider, and public health advocacy organizations. All told, Voices' members represent millions of Americans affected by the U.S. opioid epidemic.

Despite years of attention to combatting the opioid epidemic, the crisis persists. Last year, we lost 81,000 Americans to an opioid-related drug overdose.[i] This means that, on average, **we lose more than 220 Americans every day to an opioid-related drug overdose**.

North Dakota is not immune from this national epidemic. From 2019 to 2024, there were **490 opioid-related overdose deaths** in the state.[ii] For many, the path towards addiction begins after being prescribed opioids to manage an acute pain incident, such as for postsurgical pain, an accident, or sports injury. In North Dakota, there were **32.4 opioid prescriptions written for every 100 persons** in 2023.[iii]

Fortunately, this is a path to addiction that can be prevented by ensuring access to non-opioid approaches.

Prescription opioids are frequently used to treat acute pain. In fact, as many as **90 percent of all surgical patients** in the United States receive a prescription for opioids to manage postsurgical pain.[iv] It is easy to understand why prescription opioids are frequently used – medical professionals are trained to treat pain with opioids, they are seen as effective ways to treat pain, and, perhaps most importantly, generic prescription opioids are incredibly cheap. As such, health insurers frequently make generic opioids available to patients at little – or no – charge to the patient.

**This inadvertently incentivizes patients – and their healthcare providers – to treat pain with prescription opioids. We must change this care paradigm.**

SB 2076 strengthens non-opioid pain treatment access by ensuring that sodium channel pain signal inhibitors cannot be subject to prior authorization, reducing barriers for patients seeking these pain management options.

SB 2076 would not put prescription opioids out-of-reach for those patients who want – or require – those treatments. Rather, the legislation would ensure that more North Dakotans would have full access to the full suite of safe, effective, and FDA-approved pain management approaches, including both opioid and non-opioid options.

There are currently some FDA-approved, safe, and effective non-opioid pain management products on the market with more in the pipeline. These include sodium channel pain signal inhibitors, such as nerve blocks which provide regionally-specific pain relief and are commonly used during oral and soft tissue surgeries. There are also brand name non-steroidal anti-inflammatory drugs (NSAIDs) that are used in a variety of other acute pain incidents, such as sports injuries, migraines and other short-term pain incidents. Finally, there are other physician-administered products that are used instead of fentanyl for cataract surgeries. All of these products greatly diminish reliance on prescription opioids, provide effective analgesic support for patients, and reduce quantities of opioids prescribed and consumed in the United States. These are products that would be made more accessible through SB 2076.

On top of these currently available products, SB 2076 sends a strong market signal to innovators developing novel therapies. There has been a good deal of innovation in the non-opioid market that is starting to bear promise, and several non-addictive approaches may be approaching the market over the next year or so. This signal is clear: if you are successful in bringing new, innovative products to market that can treat pain without relying on opioids, patients will be able to access them.

There are several of such products on the market and there are more on the way.[v]

However, all of this work, innovation, and advocacy will be for naught if we do not ensure that patients and providers can easily access these products.

SB 2076 serves as a critical safeguard, ensuring that non-opioid alternatives remain accessible and removing barriers that could limit their use. By preventing health insurers from imposing unnecessary restrictions, this legislation offers a commonsense approach to addressing an opioid crisis that worsens each year.

The legislation being considered today mirrors a federal bill, the Alternatives to Prevent Addiction in the Nation (Alternatives to PAIN) Act, which was recently reintroduced in the 119th U.S. Congress. **Simply put, we must ensure that all patients can easily access non-opioid pain approaches across all care settings.**

Voices for Non-Opioid Choices urges the federal and state government to continue to work hand-in-hand to solve the opioid crisis currently taking place in North Dakota, and throughout the country. For too long, prescription opioids have been the default method for managing pain – and insurance company practices have reinforced this reality. This puts patients at unnecessary risk for misuse and addiction.

Voices applauds the advancements proposed in SB 2076 and would like to see these efforts come to fruition. This legislation would enable more patients to have access to non-addictive products and would improve care for the thousands of North Dakotans who experience an acute pain incident every year.

Once again, thank you for making the time today to recognize and examine the importance of expanding access to non-addictive opioid alternatives throughout North Dakota. I urge the committee to take action to prevent opioid addiction before it starts and pass SB 2076.

Thank you for your consideration of these comments. I stand ready to work with your committee and the full delegation to prevent opioid addiction and enact this important legislation. Should you have any questions, please feel free to contact me at chris@nonopioidchoices.org.

Sincerely,

Chris Fox
Executive Director
Voices for Non-Opioid Choices

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[i] Centers for Disease Control and Prevention (2024).US Overdose Deaths Decrease in 2023, First Time Since 2018. https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2024/20240515.htm

[ii] North Dakota Health and Human Services (2024). Unintentional Drug Overdose Deaths 2024 Legislative Report. https://ndlegis.gov/sites/default/files/pdf/committees/68-2023/25.5120.02000presentation0130b.pdf

[iii] Center for Disease Control and Prevention (2024). Opioid Dispensing Rate Maps. https://www.cdc.gov/overdose-prevention/data-research/facts-stats/opioid-dispensing-rate-maps.html

[iv] Singh, K., Murali, A., Stevens, H., Vydiswaran, V. G. V., Bohnert, A., Brummett, C. M., & Fernandez, A. C. (2022). Predicting persistent opioid use after surgery using electronic health record and patient-reported data. Surgery, 172(1), 241–248. https://doi.org/10.1016/j.surg.2022.01.008

[v] Kingwell, K. (2022, October 14). *New non-opioid pain drug pushes through to pivotal trials*. Nature. https://www.nature.com/articles/d41573-022-00175-2

# 2025 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**
Pioneer Room, State Capitol

SB 2076
3/19/2025

| Relating to prior authorization. |
|---|

9:16 a.m. Chairman M. Ruby opened the meeting.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rohr
Members Absent: Representatives Davis, Rios

**Discussion Topics:**

- Committee action

9:20 a.m. Representative Rohr moved a Do Not Pass.

9:20 a.m. Representative K. Anderson seconded the motion.

| Representatives | Vote |
|---|---|
| Representative Matthew Ruby | Y |
| Representative Kathy Frelich | Y |
| Representative Karen Anderson | Y |
| Representative Mike Beltz | Y |
| Representative Macy Bolinske | Y |
| Representative Jayme Davis | AB |
| Representative Gretchen Dobervich | N |
| Representative Cleyton Fegley | N |
| Representative Jared Hendrix | Y |
| Representative Dawson Holle | Y |
| Representative Dwight Kiefert | Y |
| Representative Nico Rios | AB |
| Representative Karen Rohr | Y |

9:21 a.m. Motion passed 9-2-2.

Representative Rohr will carry the bill.

9:22 a.m. Chairman M. Ruby closed the meeting.

*Jackson Toman, Committee Clerk*

*Bill was reconsidered on 3/24/25.*

# 2025 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**
Pioneer Room, State Capitol

SB 2076
3/24/2025

relating to prior authorization and certification of medically necessary medication

2:37 p.m. Chairman M. Ruby opened the meeting.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Davis, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rios, Rohr
Members Absent: Representative Bolinske

**Discussion Topics:**

- Committee action
- Certification programs

2:37 p.m. Representative Beltz moved to reconsider the committee's actions.

2:37 p.m. Vice-Chairman Frelich seconded the motion

2:38 p.m. Voice vote passed.

2:38 p.m. Brendan Joyce, North Dakota Pharmacy Administrator for North Dakota Medicaid, introduced amendments relating to certification programs, #43683.

2:44 p.m. Representative Rohr moved to amend the bill relating to certification.

2:44 p.m. Representative Dobervich seconded the motion.

2:45 p.m. Voice vote passed.

2:45 p.m. Representative Rohr moved a Do Pass as amended.

2:45 p.m. Representative K. Anderson seconded the motion.

| Representatives | Vote |
|---|---|
| Representative Matthew Ruby | Y |
| Representative Kathy Frelich | Y |
| Representative Karen Anderson | Y |
| Representative Mike Beltz | Y |
| Representative Macy Bolinske | AB |
| Representative Jayme Davis | Y |
| Representative Gretchen Dobervich | Y |
| Representative Cleyton Fegley | Y |
| Representative Jared Hendrix | Y |
| Representative Dawson Holle | Y |
| Representative Dwight Kiefert | Y |

| | |
|---|---|
| Representative Nico Rios | Y |
| Representative Karen Rohr | Y |

2:46 p.m. Motion passed 12-0-1.

Representative Rohr will carry the bill.

2:47 p.m. Chairman M. Ruby closed the meeting.

*Jackson Toman, Committee Clerk*

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO**

VC 3/24/25
1 of 4

# SENATE BILL NO. 2076

Introduced by

Human Services Committee

(At the request of the Department of Health and Human Services)

A BILL for an Act to amend and reenact section 50-24.6-04 of the North Dakota Century Code, relating to prior authorization and certification of medically necessary medication.

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

**SECTION 1. AMENDMENT.** Section 50-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.6-04. Prior authorization program - Certification program.**

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
   a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
   b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
   c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization. The department shall work with the

medical assistance recipient's health care provider to assure treatment can be found for diagnoses with no compendia supported medications.

2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.

3. a. ~~For individuals eighteen years of age and older, except~~Except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, or medications that are considered line extension drugs, the department may not prior authorize substantially all drugs in the following medication classes:

(1) Antipsychotics;

(2) Antidepressants;

(3) Anticonvulsants;

(4) Antiretrovirals, for the treatment of human immunodeficiency virus;

(5) Antineoplastic agents; and

(6) Immunosuppressants, for prophylaxis of organ transplant rejection.

b. ~~For individuals under eighteen years of age, except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, or medications that are considered line extension drugs, the department may not prior authorize substantially all drugs in the following medication classes:~~

~~(1) Antipsychotics;~~

~~(2) Antidepressants;~~

~~(3) Anticonvulsants;~~

~~(4) Antiretrovirals, for the treatment of human immunodeficiency virus;~~

3 of 4

~~(5) Antineoplastic agents; and~~

~~(6) Immunosuppressants, for prophylaxis of organ transplant rejection.~~

~~c. The restrictions of subdivision b do not apply for individuals under eighteen years of age, who have five or more concurrent prescriptions for psychotropic medications.~~

~~d. Prior authorization for individuals under eighteen years of age is required for five or more concurrent prescriptions for antipsychotics, antidepressants, anticonvulsants, benzodiazepines, mood stabilizers, sedative, hypnotics, or medications used for the treatment of attention deficit hyperactivity disorder. The department shall grant authorization to exceed the limits after a prescriber requesting authorization consults with a board certified child and adolescent psychiatrist approved by the department.~~

~~e.~~ The restrictions of this subsection do not apply if prior authorization is required by the centers for Medicare and Medicaid services.

~~f.~~c. The restrictions of this subsection do not apply to a medication class in subdivision a if a manufacturer of a drug in that class excludes the department from supplemental rebate offers or value-based purchasing agreement offers due to the existence of the prior authorization exclusion in subdivision a.

d. As used in this subsection, "line extension drug" means a new formulation of a drug. The term does not include an abuse-deterrent formulation of a drug.

~~g.~~e. As used in this subsection, "substantially all" means ~~that~~ all drugs and unique dosage forms in the medication classes outlined in paragraphs 1 through 6 of ~~subdivisions~~subdivision a ~~and b~~ are expected to be covered without prior authorization, ~~with the following exceptions~~except:

(1) Multisource brands of the identical molecular structure;

(2) Extended release products when the immediate-release product is included;

(3) Products that have the same active ingredient or moiety; and

(4) Dosage forms that do not provide a unique route of administration.

4. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.

5. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
   a. Establish policies and procedures necessary to implement the prior authorization program.
   b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
   c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.
6. The department may negotiate additional rebates from drug manufacturers to supplement the rebates required by federal law governing the medical assistance program. Additionally, the department may join a multistate supplemental drug rebate pool, and if the department negotiates additional rebates outside this pool, any other manufacturer must be allowed to match those rebates.
7. The department shall develop a certification program to verify the medical necessity of each medication in a regimen containing five or more concurrent prescriptions for antipsychotic, antidepressant, anticonvulsant, benzodiazepine, mood stabilizer, sedative hypnotic, or attention deficit hyperactivity disorder medications.
   a. The certification program shall require each prescriber of a medication in an impacted regimen to certify annually the medication prescribed is medically necessary for the patient.
   b. If a prescriber does not certify a medication as a medically necessary part of the patient's regimen, the department may deny payment of the medication until the medication is certified by the prescriber.
   c. The certification program shall apply to individuals under the age of twenty-two and may apply to other individuals at the discretion of the department.

# REPORT OF STANDING COMMITTEE
# SB 2076

**Human Services Committee (Rep. M. Ruby, Chairman)** recommends **AMENDMENTS (25.8085.01001)** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). SB 2076 was placed on the Sixth order on the calendar.

**PROPOSED AMENDMENT TO SENTATE BILL NO. 2076**

A BILL for an Act to amend and reenact section 50-24.6-04 of the North Dakota Century Code, relating to prior authorization and certification program.

**50-24.6-04. Prior authorization program – Certification program.**

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
   a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
   b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
   c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization. The department shall work with the medical assistance recipient's health care provider to assure treatment can be found for diagnoses with no compendia supported medications.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.
3. a. ~~For individuals eighteen years of age and older, except~~Except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic

equivalent drug for which the cost to the state postrebate is less than the brand name drugs, generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, or medications that are considered line extension drugs, the department may not prior authorize substantially all drugs in the following medication classes:

(1) Antipsychotics;

(2) Antidepressants;

(3) Anticonvulsants;

(4) Antiretrovirals, for the treatment of human immunodeficiency virus;

(5) Antineoplastic agents; and

(6) Immunosuppressants, for prophylaxis of organ transplant rejection.

b. ~~For individuals under eighteen years of age, except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, or medications that are considered line extension drugs, the department may not prior authorize substantially all drugs in the following medication classes:~~

~~(1) Antipsychotics;~~

~~(2) Antidepressants;~~

~~(3) Anticonvulsants;~~

~~(4) Antiretrovirals, for the treatment of human immunodeficiency virus;~~

~~(5) Antineoplastic agents; and~~

~~(6) Immunosuppressants, for prophylaxis of organ transplant rejection.~~

~~c. The restrictions of subdivision b do not apply for individuals under eighteen years of age, who have five or more concurrent prescriptions for psychotropic medications.~~

~~d. Prior authorization for individuals under eighteen years of age is required for five or more concurrent prescriptions for antipsychotics, antidepressants, anticonvulsants, benzodiazepines, mood stabilizers, sedative, hypnotics, or medications used for the treatment of attention deficit hyperactivity disorder. The department shall grant authorization to exceed the limits after a prescriber requesting authorization consults with a board certified child and adolescent psychiatrist approved by the department.~~

~~e.~~ The restrictions of this subsection do not apply if prior authorization is required by the centers for Medicare and Medicaid services.

~~f.~~c. The restrictions of this subsection do not apply to a medication class in subdivision a if a manufacturer of a drug in that class excludes the department from supplemental rebate offers or value-based purchasing agreement offers due to the existence of the prior authorization exclusion in subdivision a.

d. As used in this subsection, "line extension drug" means a new formulation of a drug. The term does not include an abuse-deterrent formulation of a drug.

~~g.~~e. As used in this subsection, "substantially all" means ~~that~~ all drugs and unique dosage forms in the medication classes outlined in paragraphs 1 through 6 of ~~subdivisions~~subdivision a ~~and b~~ are expected to be covered without prior authorization, ~~with the following exceptions~~except:

(1) Multisource brands of the identical molecular structure;

(2) Extended release products when the immediate-release product is included;

(3) Products that have the same active ingredient or moiety; and

(4) Dosage forms that do not provide a unique route of administration.

4. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.

5. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:

   a. Establish policies and procedures necessary to implement the prior authorization program.

   b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.

   c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

6. The department may negotiate additional rebates from drug manufacturers to supplement the rebates required by federal law governing the medical assistance program. Additionally, the department may join a multistate supplemental drug rebate pool, and if the department negotiates additional rebates outside this pool, any other manufacturer must be allowed to match those rebates.

7. The department shall develop a certification program to verify the medical necessity of medication regimens that contain five or more concurrent prescriptions for antipsychotics, antidepressants, anticonvulsants, benzodiazepines, mood stabilizers, sedative hypnotics, or medications used for the treatment of attention deficit hyperactivity disorder.

   a. The certification program will require that each prescriber of a medication within an impacted regimen certify yearly that the medication they prescribed is medically necessary for that patient.

b. If a prescriber does not certify that a medication is a medically necessary part of their patient's regimen, the department may deny payment of the medication until it is certified by the prescriber.

c. The certification program will apply to:

(1) Individuals under the age of twenty-two.

(2) Other individuals at the discretion of the department.