

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1470  
(Representatives Devlin, Nelson, Sandvig, Weisz)  
(Senators Fischer, Mathern)

AN ACT to amend and reenact subsection 2 of section 50-24.6-02 and section 50-24.6-04 of the North Dakota Century Code, relating to the membership of the drug use review board and the prior authorization program; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 50-24.6-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The board consists of ~~fifteen~~ sixteen members. The pharmacy administrator of the department and the medical consultant to the department are ex officio nonvoting board members who shall provide administrative services to the board. ~~The executive director of the department shall appoint the remaining thirteen board members.~~ A majority of the appointed members must be physicians and pharmacists participating in the medical assistance program. Four or more of the appointed members must have experience with a drug use review process or have participated in programs in which prior authorization is used. The appointed members of the board must be:
  - a. ~~Six~~ Four physicians licensed in this state and actively engaged in the practice of medicine, one of whom is a psychiatrist, ~~and four of whom are chosen from a list of nominees provided~~ appointed by the North Dakota medical association;
  - b. ~~Six~~ Two physicians licensed in this state and actively engaged in the practice of medicine, appointed by the executive director of the department;
  - c. Four pharmacists licensed in this state and actively engaged in the practice of pharmacy, ~~four of whom are chosen from a list of nominees provided~~ appointed by the North Dakota pharmaceutical association; ~~and~~
  - d. Two pharmacists licensed in this state and actively engaged in the practice of pharmacy, appointed by the executive director of the department;
  - e. One individual who represents consumer interests, appointed by the governor; and
  - e. f. One pharmacist or physician representing the pharmaceutical industry ~~who is chosen from a list of nominees provided~~ appointed by the pharmaceutical research manufacturers of America.

**SECTION 2. 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.**

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.
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. Except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert or AB-rated generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, the department may not prior authorize or otherwise restrict single-source or brand name antipsychotic, antidepressant, or other medications used to treat mental illnesses, such as schizophrenia, depression, or bipolar disorder, and drugs prescribed for the treatment of:
- a. Acquired immune deficiency syndrome or human immunodeficiency virus; and
  - b. Cancer.
4. 5. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
4. 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.

**SECTION 3. EXPIRATION DATE.** Section 2 of this Act is effective through July 31, 2007, and after that date is ineffective.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1470.

House Vote:      Yeas    92      Nays    0      Absent    2

Senate Vote:    Yeas    25      Nays    20      Absent    2

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State