

Introduced by

Senator Powers

1 A BILL for an Act to create and enact a new chapter to title 43 of the North Dakota Century
2 Code, relating to the creation of the state board of hyperbaric oxygen therapy and the regulation
3 of hyperbaric oxygen therapists and hyperbaric oxygen chambers; to provide a penalty; to
4 provide an appropriation; and to provide an effective date.

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

6 **SECTION 1.** A new chapter to title 43 of the North Dakota Century Code is created and
7 enacted as follows:

8 **Definitions.**

9 As used in this chapter:

- 10 1. "Board" means the state board of hyperbaric oxygen therapy.
- 11 2. "Facility" means a business, not including a hospital, with a space providing hyperbaric
12 oxygen therapy.
- 13 3. "Hyperbaric oxygen medicine" means the examination, evaluation, and care of a
14 patient by means of a hyperbaric oxygen chamber providing pure oxygen to an
15 individual in an enclosed pressurized space, delivered in a medical setting as a
16 medical service in a hard chamber pressurized up to 3.0 atmospheres.
- 17 4. "Hyperbaric oxygen therapy" means the examination, evaluation, and care of a patient
18 by means of a hyperbaric oxygen chamber providing pure oxygen to an individual in
19 an enclosed pressurized space, delivered by a licensed provider in a soft chamber
20 pressurized below 1.5 atmospheres.
- 21 5. "Provider" means a state-licensed medical professional who is a physician, resident
22 physician, physician assistant, or nurse, with additional training to administer
23 hyperbaric oxygen therapy or hyperbaric oxygen medicine, and is licensed by the
24 board.

6. "Technician" means a certified hyperbaric specialist, certified hyperbaric technologist, or emergency medical technician, with training in hyperbaric oxygen therapy or hyperbaric oxygen medicine, and working under the supervision of a provider in a manner provided by the board.

Exemptions.

This chapter does not apply to:

1. A hypobaric oxygen therapy chamber, a hypobaric oxygen medicine chamber, or an altitude chamber; or
2. A hyperbaric oxygen therapy chamber or a hyperbaric oxygen medicine chamber used in a residence for personal use.

State board of hyperbaric oxygen therapy - Members - Appointment - Qualifications.

1. The board consists of five members appointed by the governor which must include:
 - a. Two physicians;
 - b. Two technicians; and
 - c. One consumer member who is not and has never been a provider or technician.
2. The term of office for each board member is five years. The terms must be staggered so the term of one member expires each year.
3. Each physician appointed to the board must:
 - a. Have a license to practice medicine in this state and be in good standing;
 - b. Be a resident of this state and have practiced in this state for at least three consecutive years immediately before appointment to the board;
 - c. Remain a resident of this state and continue in active practice in this state during the term of office; and
 - d. Complete a forty-hour training program on hyperbaric oxygen therapy or hyperbaric oxygen medicine approved by the American college of hyperbaric medicine, the undersea and hyperbaric medical society, the national board of diving and hyperbaric medical technology, or the United States department of defense.

Powers and duties of the board.

1. The board shall adopt rules to:
 - a. Administer and enforce this chapter;

- 1 b. Specify the scope of practice conducted by a provider or technician of hyperbaric
- 2 oxygen therapy; and
- 3 c. Establish standards for facility licensure.
- 4 2. The board shall set fees for facility, provider, and technician licensure, including:
- 5 a. An application fee;
- 6 b. A license fee;
- 7 c. A renewal fee;
- 8 d. A late fee; and
- 9 e. A continuing education fee.
- 10 3. The board may adopt a code of ethics for a provider or technician subject to this
- 11 chapter.

12 **Application for licensure - Facility.**

- 13 1. A facility may not provide hyperbaric oxygen therapy without annually obtaining a
- 14 license from the board.
- 15 2. A facility shall apply for licensure in the form and manner prescribed by the board. An
- 16 applicant facility shall provide to the board any required fees and documents.
- 17 affidavits, and certificates to establish the applicant is qualified to operate as a facility.
- 18 3. The board shall adopt rules requiring a licensed facility seeking to substantially alter or
- 19 expand a facility's designated area for hyperbaric therapy to submit plans and
- 20 specifications to the board for inspection, recommendation, and approval before
- 21 altering or expanding the facility.

22 **Facility - Staff requirements.**

- 23 1. Each facility shall employ or contract with an onsite safety director, a certified
- 24 hyperbaric therapist, a provider, and a clinical director.
- 25 2. While a patient is in a chamber undergoing hyperbaric oxygen therapy treatment, a
- 26 provider must be physically present in the facility, and a provider or technician shall
- 27 maintain visual or audible contact with the patient.

28 **Facility - Onsite safety director.**

- 29 1. An onsite safety director:
- 30 a. Must be a licensed technician under this chapter;

- b. Shall oversee equipment and operational safety, develop emergency procedures, and ensure compliance with board regulations;
- c. Must be onsite at the facility, unless the facility has multiple locations;
- d. Shall restrict or remove a potential hazard, and stop all hyperbaric oxygen therapy treatments until the hazard is resolved;
- e. Shall ensure electrical, monitoring, life support, protection, and ventilating arrangements are inspected and tested at least monthly;
- f. Shall provide or arrange for staff training regarding the purpose, operation, application, and limitations of emergency equipment at the facility; and
- g. Shall collaborate with a clinical director to develop policies for the maximum number of chambers used at one time, based on staff qualifications.

2. A clinical director may supersede a determination by an onsite safety director to restrict or remove a potential hazard. The clinical director shall document in writing the determination of the onsite safety director and the rationale for superseding the determination.

Facility - Installation requirements.

A hyperbaric oxygen therapy chamber must be installed in accordance with the national fire protection association code. The facility must have a fire suppression system and equipment for electrical grounding.

Facility license - Expiration.

A facility license expires one year after date of issuance or upon a uniform date annually determined by the board.

Facility inspections.

1. The board, or a contracted agent on behalf of the board, shall make an annual in-person inspection of the space for hyperbaric therapy in a facility for compliance with the national fire protection association code and fire and safety rules adopted by the board.
2. The board may conduct an inspection without notice to the facility.

Authority to issue, deny, suspend, or revoke a facility license.

1. If a facility complies with this chapter and rules adopted by the board, the board shall issue a license for the operation of hyperbaric oxygen therapy at the facility.

2. The board may suspend or revoke a facility license for:

a. A violation of this chapter or the rules of the board;

b. Permitting, aiding, or abetting the commission of any unlawful act; or

c. Conduct or practices detrimental to the health or safety of a patient or an
employee of a facility.

Suspension of a facility license.

A facility that is suspended for an initial violation must be suspended for a minimum of thirty
days, during which the facility may not conduct treatment of a patient using hyperbaric oxygen
therapy.

Appeals regarding a facility license.

An appeal denying an application for a license to operate a facility, suspending or revoking
a facility license, or denying an application to substantially alter or expand a facility, must be
filed with the office of administrative hearings in the manner provided in chapter 28-32.

Application for licensure - Provider and technician.

1. A provider must hold professional licensure as a physician, resident physician,
physician assistant, or nurse, in addition to meeting standards adopted by the board.

2. A provider or technician seeking a license under this chapter shall apply to the board
in the form and manner prescribed by the board.

3. An applicant to be licensed as a provider or technician shall provide the board with the
license fee, application fee, and the documents, affidavits, and certificates necessary
to establish the applicant possesses the necessary qualifications including:

a. Successful completion of a board-approved educational program that includes a
forty-hour training program approved by either the American college of hyperbaric
medicine, the undersea and hyperbaric medical society, the national board of
diving and hyperbaric medical technology, or the United States department of
defense; and

b. Physical, mental, and professional capability for licensure.

Practice of hyperbaric oxygen therapy.

1. A provider, who is a licensed physician, shall prescribe hyperbaric oxygen therapy
before hyperbaric oxygen therapy is provided to a patient.

2. A licensed technician may provide hyperbaric oxygen therapy only under the indirect supervision of a provider.

3. A provider or technician shall maintain electronic medical records and record any known adverse effects from receiving hyperbaric oxygen therapy.

Maintenance of licensure.

A provider or technician shall complete twenty-four credit-hours of continuing education about hyperbaric oxygen therapy or hyperbaric oxygen medicine every two years to maintain licensure by the board.

Disciplinary action.

1. The board may impose disciplinary action by:

- a. Revoking a provider or technician license;
- b. Suspending a provider or technician license;
- c. Imposing probation on a provider or technician;
- d. Imposing a stipulation, limitation, or condition related to a license of a provider or technician; or
- e. Imposing a fine on a provider or technician, not exceeding one thousand dollars for a single disciplinary action.

2. A provider or technician may be subject to disciplinary action for:

- a. The use of false, fraudulent, or forged statements or documents in connection with licensing requirements;
- b. A misdemeanor conviction determined by the board to have a direct bearing upon the provider or technician's ability to serve a patient;
- c. A felony conviction;
- d. Habitual use of alcohol or drugs;
- e. Physical or mental disability materially affecting the ability to perform the duties of the profession in a competent manner;
- f. Displaying dishonorable, unethical, or unprofessional conduct likely to defraud or harm the public;
- g. Aiding and abetting the practice of the profession by an unlicensed, incompetent, or impaired person;

- h. Violating a rule established by the board or any stipulation, condition, or agreement imposed by the board;
- i. Willfully or negligently violating confidentiality between a provider or technician and a patient;
- j. Gross negligence in the practice of the profession;
- k. Sexual abuse, misconduct, or exploitation related to the provider or technician's practice of the profession;
- l. A continued pattern of inappropriate, unsafe, or harmful care of a patient;
- m. A disciplinary action imposed by another state, jurisdiction, or board against the provider or technician; or
- n. Failure to create, maintain, and document required medical records for diagnosis, testing, and treating of a patient.

Investigations and appeals.

- 1. The board may investigate a written complaint, filed with the board, alleging a provider or technician engaged in conduct identified as grounds for disciplinary action.
- 2. If an investigation supports the allegations outlined in the complaint, the board shall initiate a disciplinary action by serving the provider or technician a notice of disciplinary action. The notice must sufficiently outline the allegations in the complaint.
- 3. If a provider's or technician's written response contesting the allegations is not received by the board within thirty days of the date of the notice of disciplinary action, the board may deem the allegations as admitted to and the board shall impose appropriate disciplinary action against the provider or technician.
- 4. After receiving a written complaint under this section, the board may enter an informal resolution with the provider or technician to resolve the complaint or disciplinary action.
- 5. An appeal from the board's final decision is subject to chapter 28-32.

Penalty.

- 1. A person establishing, conducting, managing, or operating a facility subject to this chapter or practicing hyperbaric oxygen therapy as a provider or technician, without first obtaining a license as required by this chapter, may be assessed a civil penalty not to exceed one thousand dollars.

1 2. This penalty may be imposed by a court in a civil proceeding or by the board through
2 an administrative hearing under chapter 28-32.

3 **SECTION 2. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET - STATE**

4 **BOARD OF HYPERBARIC OXYGEN THERAPY GRANT - ONE-TIME FUNDING.** There is
5 appropriated out of any moneys in the general fund in the state treasury, not otherwise
6 appropriated, the sum of \$12,000, or so much of the sum as may be necessary, to the office of
7 management and budget for the purpose of providing a grant to the state board of hyperbaric
8 oxygen therapy to establish the board, for the period beginning with the effective date of this Act
9 and ending June 30, 2027. The funding provided in this section is considered a one-time
10 funding item.

11 **SECTION 3. APPLICATION.** The terms of the initial state board of hyperbaric oxygen
12 therapy may be for less than five years in order to establish staggered terms.

13 **SECTION 4. EFFECTIVE DATE.** This Act becomes effective immediately upon its filing with
14 the secretary of state.