

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2094

Introduced by

Human Services Committee

(At the request of the North Dakota Board of Medicine)

1 A BILL for an Act to create and enact sections 43-17-44 and 43-17-45 of the North Dakota
2 Century Code, relating to the practice of telemedicine; ~~and~~ to amend and reenact sections
3 43-17-01, 43-17-02, and 43-17-02.3 of the North Dakota Century Code, relating to the
4 definitions of the practice of medicine and telemedicine and the practice of medicine; to provide
5 for a hyperbaric oxygen therapy pilot program; to provide an appropriation; and to provide for a
6 report to legislative management.

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

8 **SECTION 1. AMENDMENT.** Section 43-17-01 of the North Dakota Century Code is amended
9 and reenacted as follows:

10 **43-17-01. Definitions.**

11 1. "Board" means the North Dakota board of medicine.

12 2. "Licensee" means a physician or physician assistant licensed to practice in North
13 Dakota.

14 3. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and
15 surgeon (D.O.).

16 ~~3.4.~~ "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The
17 following persons must be regarded as practicing medicine:

18 a. One who holds out to the public as being engaged within this state in the
19 diagnosis or treatment of diseases or injuries of human beings.

20 b. One who suggests, recommends, or prescribes any form of treatment for the
21 intended relief or cure of any physical or mental ailment of any person, with the
22 intention of receiving, directly or indirectly, any fee, gift, or compensation.

23 c. One who maintains an office for the examination or treatment of persons afflicted
24 with disease or injury of the body or mind.

1 d. One who attaches the title M.D., surgeon, doctor, D.O., osteopathic physician
2 and surgeon, or any other similar word or words or abbreviation to the person's
3 name, indicating that the person is engaged in the treatment or diagnosis of the
4 diseases or injuries of human beings ~~must~~shall be held to be engaged in the
5 practice of medicine.

6 5. "Telemedicine" means the practice of medicine using electronic communication,
7 information technologies, or other means between a licensee in one location and a
8 patient in another location, with or without an intervening health care provider.

9 "Telemedicine" includes direct interactive patient encounters, asynchronous store-and-
10 forward technologies, and remote monitoring.

11 **SECTION 2. AMENDMENT.** Section 43-17-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **43-17-02. Persons exempt from the provisions of chapter.**

14 The provisions of this chapter do not apply to the following:

- 15 1. Students of medicine or osteopathy who are continuing their training and performing
16 the duties of a resident in any hospital or institution maintained and operated by the
17 state, an agency of the federal government, or in any residency program accredited by
18 the accreditation council on graduate medical education, provided that the North
19 Dakota board of medicine may adopt rules relating to the licensure, fees,
20 qualifications, activities, scope of practice, and discipline of such persons.
- 21 2. The domestic administration of family remedies.
- 22 3. Dentists practicing their profession when properly licensed.
- 23 4. Optometrists practicing their profession when properly licensed.
- 24 5. The practice of christian science or other religious tenets or religious rules or
25 ceremonies as a form of religious worship, devotion, or healing, if the person
26 administering, making use of, assisting in, or prescribing, such religious worship,
27 devotion, or healing does not prescribe or administer drugs or medicines and does not
28 perform surgical or physical operations, and if the person does not hold out to be a
29 physician or surgeon.
- 30 6. Commissioned medical officers of the armed forces of the United States, the United
31 States public health service, and medical officers of the veterans administration of the

1 United States, in the discharge of their official duties, and licensed physicians from
2 other states or territories if called in consultation with a person licensed to practice
3 medicine in this state.

4 7. Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes
5 regulating such profession.

6 8. Podiatrists practicing their profession when properly licensed.

7 9. Any person rendering services as a physician assistant, if such service is rendered
8 under the supervision, control, and responsibility of a licensed physician. However,
9 sections 43-17-02.1 and 43-17-02.2 do apply to physician assistants. The North
10 Dakota board of medicine shall prescribe rules governing the conduct, licensure, fees,
11 qualifications, discipline, activities, and supervision of physician assistants. Physician
12 assistants may not be authorized to perform any services which must be performed by
13 persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services
14 otherwise regulated by licensing laws, notwithstanding the fact that medical doctors
15 need not be licensed specifically to perform the services contemplated under such
16 chapters or licensing laws.

17 10. A nurse practicing the nurse's profession when properly licensed by the North Dakota
18 board of nursing.

19 11. ~~A person rendering fluoroscopy services as a radiologic technologist if the service is~~
20 ~~rendered under the supervision, control, and responsibility of a licensed physician and~~
21 ~~provided that the North Dakota board of medicine prescribes rules governing the~~
22 ~~conduct, permits, fees, qualifications, activities, discipline, and supervision of~~
23 ~~radiologic technologists who provide those services.~~

24 ~~12.~~ A naturopath duly licensed to practice in this state pursuant to the statutes regulating
25 such profession.

26 ~~13.~~ 12. An individual duly licensed to practice medical imaging or radiation therapy in this
27 state under chapter 43-62.

28 ~~14.~~ 13. An acupuncturist duly licensed to practice in this state pursuant to the statutes
29 regulating such profession.

30 **SECTION 3. AMENDMENT.** Section 43-17-02.3 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **43-17-02.3. Practice of medicine or osteopathy by holder of permanent, unrestricted**
2 **license - Exceptions.**

3 The practice of medicine is deemed to occur in the state the patient is located. A practitioner
4 providing medical care to a patient located in this state is subject to the licensing and
5 disciplinary laws of this state and shall possess an active North Dakota license for the
6 practitioner's profession. Notwithstanding anything in this chapter to the contrary, any physician
7 who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any
8 state or territory of the United States, the District of Columbia, or a province of Canada may
9 practice medicine or osteopathy in this state without first obtaining a license from the North
10 Dakota board of medicine under one or more of the following circumstances:

- 11 1. As a member of an organ harvest team;
- 12 2. On board an air ambulance and as a part of its treatment team;
- 13 3. To provide one-time consultation on a diagnosis for a patient to a physician licensed in
14 the state, or teaching assistance for a period of not more than ~~twenty-four hours~~seven
15 days; or
- 16 4. To provide consultation or teaching assistance previously approved by the board for
17 charitable organizations.

18 **SECTION 4.** Section 43-17-44 of the North Dakota Century Code is created and enacted as
19 follows:

20 **43-17-44. Standard of care and professional ethics.**

21 A licensee is held to the same standard of care and same ethical standards, whether
22 practicing traditional in-person medicine or telemedicine. The following apply in the context of
23 telemedicine:

- 24 1. Professional ethical standards require a practitioner to practice only in areas in which
25 the practitioner has demonstrated competence, based on the practitioner's training,
26 ability, and experience. In assessing a licensee's compliance with this ethical
27 requirement, the board shall give consideration to board certifications and specialty
28 groups' telemedicine standards.
- 29 2. A licensee practicing telemedicine shall establish a ~~valid~~ bona fide relationship with the
30 patient before the diagnosis or treatment of a patient. A licensee practicing
31 telemedicine shall verify the identity of the patient seeking care and shall disclose, and

- 1 ensure the patient has the ability to verify, the identity and licensure status of any
2 licensee providing medical services to the patient.
- 3 3. Before initially diagnosing or treating a patient for a specific illness or condition, an
4 examination or evaluation must be performed. An examination or evaluation may be
5 performed entirely through telemedicine, if the examination or evaluation is equivalent
6 to an in-person examination.
- 7 a. An examination utilizing secure videoconferencing or store-and-forward
8 technology for appropriate diagnostic testing and use of peripherals that would be
9 deemed necessary in a like in-person examination or evaluation meets this
10 standard, as does an examination conducted with an appropriately licensed
11 intervening health care provider, practicing within the scope of the provider's
12 profession, providing necessary physical findings to the licensee. An examination
13 or evaluation consisting only of a static online questionnaire or an audio
14 conversation does not meet the standard of care.
- 15 b. Once a licensee conducts an acceptable examination or evaluation, whether
16 in-person or by telemedicine, and establishes a patient-licensee relationship,
17 subsequent followup care may be provided as deemed appropriate by the
18 licensee, or by a provider designated by the licensee to act temporarily in the
19 licensee's absence. In certain types of telemedicine utilizing asynchronous store-
20 and-forward technology or electronic monitoring, such as teleradiology or
21 intensive care unit monitoring, it is not medically necessary for an independent
22 examination of the patient to be performed.
- 23 4. A licensee practicing telemedicine is subject to all North Dakota laws governing the
24 adequacy of medical records and the provision of medical records to the patient and
25 other medical providers treating the patient.
- 26 5. A licensee must have the ability to make appropriate referrals of patients not amenable
27 to diagnosis or complete treatment through a telemedicine encounter, including a
28 patient in need of emergent care or complementary in-person care.

29 **SECTION 5.** Section 43-17-45 of the North Dakota Century Code is created and enacted as
30 follows:

1 **43-17-45. Prescribing - Controlled substances.**

2 1. A licensee who has performed a telemedicine examination or evaluation meeting the
3 requirements of this chapter may prescribe medications according to the licensee's
4 professional discretion and judgment. Opioids may only be prescribed through
5 telemedicine if prescribed as a federal food and drug administration approved
6 medication assisted treatment for opioid use disorder or to a patient in a hospital or
7 long-term care facility. Opioids may not be prescribed through a telemedicine
8 encounter for any other purpose.

9 2. A licensee who, pursuant to this chapter, prescribes a controlled substance, as defined
10 by North Dakota law, shall comply with all state and federal laws regarding the
11 prescribing of a controlled substance, and shall participate in the North Dakota
12 prescription drug monitoring program.

13 **SECTION 6. APPROPRIATION - HYPERBARIC OXYGEN THERAPY PILOT PROGRAM -**
14 **REPORT TO LEGISLATIVE MANAGEMENT.**

15 1. There is appropriated out of any moneys in the tobacco prevention and control trust
16 fund in the state treasury, not otherwise appropriated, the sum of \$335,000, or so
17 much of the sum as may be necessary, to the state department of health for the
18 purpose of contracting with a third party to implement a hyperbaric oxygen therapy
19 pilot program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

20 2. The department shall contract with an entity with experience implementing studies
21 using hyperbaric oxygen for traumatic brain injuries to conduct a pilot program for
22 treatment of moderate to severely brain-injured North Dakotans using an established
23 protocol of hyperbaric oxygen therapy provided by an entity with experience in treating
24 traumatic brain injury using medical-grade hyperbaric chambers pressurized with one
25 hundred percent oxygen. The goals of the study include demonstrating improvement
26 in brain-eye function using RightEye, significant improvement in quality of life of
27 injured patients, significant improvement in cognitive abilities of injured patients, and
28 financial savings and increased revenues for the state, including possible savings for
29 medical assistance and workers' compensation and a positive impact on income tax
30 revenues. The pilot program design must be established in consultation with a
31 third-party physician.

- 1 3. During the 2019-21 biennium, the department shall make periodic reports to the
- 2 legislative management on the status of the pilot program and whether the goals are
- 3 being realized.