

HOUSE BILL NO. 1151

Introduced by

Representatives Devlin, Rohr, M. Ruby, Weisz

Senators Lee, K. Roers

1 A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota
2 Century Code, relating to telehealth and the practice of dentistry; and to amend and reenact
3 section 43-28-01 of the North Dakota Century Code, relating to the definition of telehealth.

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

5 **SECTION 1. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-28-01. Definitions.**

8 As used in this chapter and chapter 43-20, unless the context otherwise requires:

- 9 1. "Accredited dental school" means a dental school, college, or university accredited by
10 the commission on dental accreditation of the American dental association or its
11 successor.
- 12 2. "Advertising" means to invite the attention of or give notice to the public, by any
13 means, medium, or manner whatsoever of any fact, information, or data pertaining to
14 or being conducive of the practice of dentistry in this state.
- 15 3. "Board" means the state board of dental examiners.
- 16 4. "Certificate of registration" means a written statement of the board declaring that a
17 licensed dentist has paid the biennial registration fee required by this chapter.
- 18 5. "Dentist" means an individual who has a license to practice in this state and who holds
19 a valid biennial certificate of registration.
- 20 6. "License" means the right, authority, or permission granted by the board to practice
21 dentistry in this state.
- 22 7. "Practice of dentistry" means examination, diagnosis, treatment, repair, administration
23 of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder,
24 deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral

1 cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive
2 treatment of the diseases, injuries, and defects of the upper and lower human jaw and
3 associated structures.

4 8. "Telehealth" has the same meaning as in section 26.1-36-09.15.

5 **SECTION 2.** A new section to chapter 43-28 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Standard of care and professional ethics - Telehealth.**

8 A dentist is held to the same standard of care and ethical standards, whether practicing
9 traditional in-person dentistry or telehealth. The following apply in the context of telehealth:

- 10 1. Professional ethical standards require a dentist to practice only in areas in which the
11 dentist has demonstrated competence, based on the dentist's training, ability, and
12 experience.
- 13 2. A dentist practicing telehealth shall establish a bona fide relationship with a patient
14 before the diagnosis or treatment of the patient. A dentist practicing telehealth shall
15 verify the identity of the patient seeking care and shall disclose and ensure the patient
16 has the ability to verify, the identity and licensure status of a dentist providing dental
17 services to the patient.
- 18 3. Before a dentist initially diagnoses or treats a patient for a specific illness, disease, or
19 condition, the dentist shall perform an examination or evaluation. A dentist may
20 perform an examination or evaluation entirely through telehealth if the examination or
21 evaluation is equivalent to an in-person examination.
 - 22 a. An examination utilizing secure videoconferencing or store-and-forward
23 technology for appropriate diagnostic testing and use of peripherals that would be
24 deemed necessary in a like in-person examination or evaluation meets this
25 standard, as does an examination conducted with an appropriately licensed
26 intervening health care provider, practicing within the scope of the provider's
27 profession, providing necessary physical findings to the dentist. An examination
28 or evaluation consisting only of a static online questionnaire or an audio
29 conversation does not meet the standard of care.
 - 30 b. Once a dentist conducts an acceptable examination or evaluation, whether
31 in-person or by telehealth, and establishes a patient-dentist relationship,

1 subsequent followup care may be provided as deemed appropriate by the
2 dentist, or by a provider designated by the dentist to act temporarily in the
3 dentist's absence. In certain types of telehealth utilizing asynchronous
4 store-and-forward technology or electronic monitoring, it is not medically
5 necessary for an independent examination of the patient to be performed.

6 4. A dentist practicing telehealth is subject to all North Dakota laws governing the
7 adequacy of dental records and the provision of dental records to the patient and other
8 dental providers treating the patient.

9 5. A dentist may make appropriate referrals of patients not amenable to diagnosis or
10 complete treatment through a telehealth encounter, including a patient in need of
11 emergent care or complementary in-person care.

12 **SECTION 3.** A new section to chapter 43-28 of the North Dakota Century Code is created
13 and enacted as follows:

14 **Prescribing - Controlled substances.**

15 1. A dentist who has performed a telehealth examination or evaluation meeting the
16 requirements of this chapter may prescribe medications according to the dentist's
17 professional discretion and judgment. Opioids may be prescribed through telehealth
18 only if prescribed to a patient in a hospital or long-term care facility. Opioids may not
19 be prescribed through a telehealth encounter for any other purpose.

20 2. Pursuant to this chapter, a dentist who prescribes a controlled substance, as defined
21 by state law, shall comply with all state and federal laws regarding the prescribing of a
22 controlled substance, and shall participate in the North Dakota prescription drug
23 monitoring program.