

SECOND ENGROSSMENT
with House Amendments

Fifty-seventh
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2239

Introduced by

Senators Fischer, Flakoll, Lee

Representatives Delmore, Kliniske

1 A BILL for an Act to create and enact a new section to chapter 25-17 and a new subsection to
2 section 50-10-06 of the North Dakota Century Code, relating to definitions for the newborn
3 screening law and services for treatment of phenylketonuria and maple syrup urine disease;
4 and to amend and reenact sections 25-17-01, 25-17-02, 25-17-03, 25-17-04, 25-17-05, and
5 26.1-36-09.7 of the North Dakota Century Code, relating to services and insurance coverage
6 for treatment of metabolic diseases.

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

8 **SECTION 1.** A new section to chapter 25-17 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Definitions.** As used in this chapter, unless the context otherwise requires:

- 11 1. "Low-protein modified food product" means a food product that is specially
12 formulated to have less than one gram of protein per serving and is intended to be
13 used under the direction of a physician for the dietary treatment of a metabolic
14 disease. The term does not include a natural food that is naturally low in protein.
- 15 2. "Medical food" means a food that is intended for the dietary treatment of a disease
16 or condition for which nutritional requirements are established by medical
17 evaluation and is formulated to be consumed or administered under the direction
18 of a physician.
- 19 3. "Metabolic disease" means a disease as designated by rule of the state health
20 council for which early identification and timely intervention will lead to a significant
21 reduction in mortality, morbidity, and associated disabilities.

22 **SECTION 2. AMENDMENT.** Section 25-17-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **25-17-01. ~~Phenylketonuria and galactosemia~~ Newborn screening education**

2 **programs and tests.** The state department of health shall:

- 3 1. Develop and ~~carry out an intensive~~ implement a metabolic disease educational
4 program among physicians, hospital ~~staffs of hospitals~~, public health nurses, and
5 the citizens of this state ~~concerning the diseases phenylketonuria and~~
6 ~~galactosemia, and other metabolic diseases causing mental retardation for which~~
7 ~~appropriate methods of detection, prevention, or treatment are available.~~ This
8 educational program must include information about the nature of the diseases
9 and ~~examinations~~ about screening for the early detection of ~~such~~ these diseases
10 ~~in order so~~ that proper measures may be taken to ~~prevent mental retardation~~
11 reduce mortality, morbidity, and associated disabilities.
- 12 2. Provide, on a statewide basis, a newborn screening, diagnostic, system and
13 ~~treatment control tests~~ short-term followup services for which ~~approved laboratory~~
14 ~~procedures are available for phenylketonuria, galactosemia, and other metabolic~~
15 diseases causing mental retardation.
- 16 3. ~~Provide that, upon completion of the testing, the actual testing materials must be~~
17 ~~returned to the department. The department shall forward the actual testing~~
18 ~~materials to the university of North Dakota school of medicine for storage and~~
19 ~~research purposes. The materials in the possession of the university of North~~
20 ~~Dakota school of medicine may not be destroyed without the authorization of the~~
21 ~~department.~~ Coordinate with or refer individuals to public and private health care
22 service providers for long-term followup services for metabolic diseases.

23 **SECTION 3. AMENDMENT.** Section 25-17-02 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **25-17-02. ~~Establishment of testing regulations~~ Rulemaking requirement.** The
26 state department of health council and the department of human services shall ~~establish~~
27 ~~standards and methods of testing to be employed for the determination of the diseases referred~~
28 ~~to in section 25-17-01 for which statewide testing programs are established~~ adopt rules
29 necessary to implement this chapter.

30 **SECTION 4. AMENDMENT.** Section 25-17-03 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **25-17-03. Treatment for positive diagnosis - Registry of cases.**

2 1. The state department of health shall:

3 ~~4.~~ a. Follow up ~~all~~ with attending physicians cases with positive tests for
4 ~~phenylketonuria, galactosemia, and other~~ metabolic diseases ~~with the~~
5 ~~attending physician~~ in order to determine the exact diagnosis.

6 2. b. ~~Make arrangements~~ Refer every diagnosed case of a metabolic disease to a
7 qualified health care provider for ~~the~~ necessary treatment ~~for diagnosed~~
8 ~~eases where treatment is indicated and the family is unable to pay the cost of~~
9 ~~such treatment~~ of the metabolic disease.

10 c. Maintain a registry of cases of ~~phenylketonuria, galactosemia, and other~~
11 metabolic diseases ~~for the purpose of followup services to prevent mental~~
12 ~~retardation.~~

13 2. The department of human services, as a program provided under chapter 50-10,
14 shall:

15 a. Provide medical food at no cost to males under age twenty-two and females
16 under age forty-five who are diagnosed with phenylketonuria or maple syrup
17 urine disease, regardless of income. If treatment services under this
18 subsection are provided to an individual by the department, the department
19 may seek reimbursement from any government program that provides
20 coverage to that individual for the treatment services provided by the
21 department.

22 b. Offer for sale at cost medical food to females age forty-five and over and to
23 males age twenty-two and over who are diagnosed with phenylketonuria or
24 maple syrup urine disease, regardless of income. These individuals are
25 responsible for payment to the department for the cost of medical food.

26 c. Provide low-protein modified food products, if medically necessary as
27 determined by a qualified health care provider, to females under age forty-five
28 and males under age twenty-two who are receiving medical assistance and
29 are diagnosed with phenylketonuria or maple syrup urine disease.

30 **SECTION 5. AMENDMENT.** Section 25-17-04 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **25-17-04. ~~Physician to initiate test and report positive diagnosis~~ Testing and**
2 **reporting requirements.** The physician attending a newborn child, or the birth attendant in the
3 case of an out-of-hospital birth, shall cause that newborn child to be subjected to testing for
4 ~~phenylketonuria, galactosemia, and other~~ metabolic diseases, in the manner prescribed by the
5 state department of health. A physician attending a ~~case of phenylketonuria, galactosemia, or~~
6 ~~other~~ patient with a metabolic disease ~~which may cause mental retardation~~ shall report the
7 case to the state department of health. ~~This~~ The testing requirements of this section does do
8 not apply if the parents of a newborn child object ~~thereto~~ to the testing on the grounds that
9 testing for metabolic diseases conflicts with their religious tenets and practices.

10 **SECTION 6. AMENDMENT.** Section 25-17-05 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **25-17-05. Testing charges.** The state ~~department of health shall~~ council may adopt
13 rules that establish reasonable fees and may impose those fees to cover the costs of
14 administering tests under this chapter. All test fees collected by the state department of health
15 must be deposited in the state department of health operating account.

16 **SECTION 7. AMENDMENT.** Section 26.1-36-09.7 of the 1999 Supplement to the
17 North Dakota Century Code is amended and reenacted as follows:

18 **26.1-36-09.7. Foods and food products for inherited metabolic diseases.**

19 1. As used in this section:

- 20 a. "Inherited metabolic disease" means maple syrup urine disease or
21 phenylketonuria.
- 22 b. "Low-protein modified food product" means a food product that is specially
23 formulated to have less than one gram of protein per serving and is intended
24 to be used under the direction of a physician for the dietary treatment of an
25 inherited metabolic disease. The term does not include a natural food that is
26 naturally low in protein.
- 27 c. "Medical food" means a food that is intended for the dietary treatment of a
28 disease or condition for which nutritional requirements are established by
29 medical evaluation and is formulated to be consumed or administered under
30 the direction of a physician.

- 1 2. An insurance company, nonprofit health service corporation, or health
2 maintenance organization may not deliver, issue, execute, or renew any health
3 insurance policy, health service contract, or evidence of coverage that provides
4 prescription coverage on an individual, group, blanket, franchise, or association
5 basis, unless the policy or contract provides, for any person covered under the
6 policy or contract, coverage for medical foods and low-protein modified food
7 products determined by a physician to be medically necessary for the therapeutic
8 treatment of an inherited metabolic disease.
- 9 3. This section applies to any covered individual born after December 31, 1962. This
10 section does not require coverage ~~for low-protein modified food products~~ in excess
11 of three thousand dollars per year total for low-protein modified food products or
12 medical food for an individual with an inherited metabolic disease of amino acid or
13 organic acid.
- 14 4. This section does not require medical benefits coverage for low protein modified
15 food products or medical food for an individual to the extent those benefits are
16 available to that individual under a state department of health or department of
17 human services program.

18 **SECTION 8.** A new subsection to section 50-10-06 of the North Dakota Century Code
19 is created and enacted as follows:

20 Provide medical food and low-protein modified food products under chapter 25-17
21 to individuals with phenylketonuria or maple syrup urine disease.