

Fifty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2036

Introduced by

Legislative Council

(Budget Committee on Long-Term Care)

1 A BILL for an Act to amend and reenact section 18-01-03.2, subsections 2 and 8 of section
2 23-09-01, subsection 1 of section 23-18.2-02, section 37-15-02, subsection 4 of section
3 43-05-01, subsection 3 of section 50-01.2-00.1, sections 50-06-14.1, 50-06-14.4, subsection 1
4 of section 50-06-20, subsection 3 of section 50-10.1-01, subsection 3 of section 50-10.2-01,
5 sections 50-21-01, 50-21-02, 50-21-03, 50-21-04, 50-24.5-01, 50-24.5-02, subsection 7 of
6 section 50-24.5-03, sections 50-24.5-04, 50-24.5-09, and subsection 17 of section 57-39.2-04
7 of the North Dakota Century Code, relating to substituting adult residential care for basic care
8 and assisted living; to repeal chapter 23-09.3 and section 50-06-14.3 of the North Dakota
9 Century Code, relating to basic care; to require the preparation of a recommendation by the
10 department of human services and the department of health; and to provide an effective date.

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

12 **SECTION 1. AMENDMENT.** Section 18-01-03.2 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **18-01-03.2. Delegation of authority.** The state fire marshal may delegate to ~~the state~~
15 ~~department of health or~~ any political subdivision the authority to conduct investigations, surveys,
16 or inspections, and the authority to enforce compliance where violations are discovered, which
17 become the responsibility of the ~~state department of health or~~ political subdivision and
18 otherwise would be the responsibility of the fire marshal. ~~Any delegation to the state~~
19 ~~department of health is limited to authority over basic care facilities.~~ Any political subdivision
20 that meets the fire marshal's minimum standard requirements may be delegated authority under
21 this section. A political subdivision may refuse the delegation.

22 **SECTION 2. AMENDMENT.** Subsections 2 and 8 of section 23-09-01 of the 1997
23 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. "Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or held out to the public as a place where food is furnished to regular boarders for periods of one week or more. The term does not include a facility providing personal care directly or through contract ~~as defined in section 23-09.3-01 or 50-24.5-01~~ under chapter 50-24.5.

8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to four or more transient guests. The term does not include a facility providing personal care services directly or through contract services ~~as defined in section 23-09.3-01 or 50-24.5-01~~ under chapter 50-24.5.

SECTION 3. AMENDMENT. Subsection 1 of section 23-18.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Nursing home" means such institutions or facilities defined by subsection 3 of section 43-34-01, with the exception of those institutions or facilities administered by state government or any agency or political subdivision thereof, but including those institutions or facilities constructed, acquired, leased, or rehabilitated under the provisions of this chapter, ~~and also including any institution or facility defined by and included in section 23-09.3-01.~~

SECTION 4. AMENDMENT. Section 37-15-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-15-02. Object of veterans' home. The object of the veterans' home is to provide ~~basic~~ adult residential care as defined under chapter ~~23-09.3~~ 50-24.5 and long-term care as defined under chapter 23-16 for:

1. All veterans as defined in section 37-01-40 and all honorably discharged soldiers of the North Dakota national guard who heretofore or hereafter may become permanently disabled from any cause while in line and discharge of duty.
2. The spouses and surviving spouses of those mentioned in subsection 1 if they meet the requirements for admission under section 37-15-10.

1 **SECTION 5. AMENDMENT.** Subsection 4 of section 43-05-01 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 4. "Health care facility" means a medical hospital, ~~skilled nursing care facility,~~
4 ~~intermediate care facility, basic adult residential~~ care facility, boarding house, or
5 swing-bed hospital approved to furnish long-term care service, or any other facility
6 licensed to provide health care services.

7 **SECTION 6. AMENDMENT.** Subsection 3 of section 50-01.2-00.1 of the 1997
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 9 3. "Locally administered economic assistance programs" means those primary
10 economic assistance programs that need to be accessible to all citizens of the
11 state through a county social service office and include:
- 12 a. Temporary assistance for needy families;
 - 13 b. Child support enforcement programs;
 - 14 c. Programs established under section 50-06-01.8;
 - 15 d. Employment and training programs;
 - 16 e. Child care assistance programs;
 - 17 f. Medical assistance, including early periodic screening, diagnosis, and
18 treatment;
 - 19 g. Food stamp programs, including employment and training programs;
 - 20 h. Refugee assistance programs;
 - 21 i. ~~Basic~~ Adult residential care services;
 - 22 j. Energy assistance programs; and
 - 23 k. Information and referral.

24 **SECTION 7. AMENDMENT.** Section 50-06-14.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **50-06-14.1. Limitation on ~~state reimbursement for certain~~ rental expenses of**
27 **~~long-term care facilities in facility rates.~~** The department ~~of human services~~ shall limit the
28 ~~reimbursement for inclusion of~~ rental expense paid by a provider of services when a provider
29 sells its ~~skilled nursing facility, intermediate care facility, basic~~ adult residential care facility, or
30 other facility furnishing care to its residents, in setting a care rate, where a the care rate is
31 based, in part, upon property costs unique to that facility, to a third party who leases the facility

back to the provider. The department's ~~reimbursement for~~ allowance of rental expense may not exceed the lesser of the rental expense paid by the provider or the cost of ownership of the facility. The cost of ownership includes depreciation, interest, real estate taxes, and other expenses properly related to the facility. The department ~~of human services shall apply this limit to rates set for each facility's first fiscal year beginning on or after July 1, 1985, but shall~~ consider, in setting such rates, all sales occurring on or after July 18, 1984.

SECTION 8. AMENDMENT. Section 50-06-14.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-14.4. Alzheimer's and related dementia projects. The department ~~of human services~~ shall establish projects designed to meet the service needs of the alzheimer's and related dementia population. The projects established under this section must explore the financial and service viability of converting existing nursing facility or ~~basic~~ adult residential care capacity to a specific service environment that targets the alzheimer's and related dementia population. The state department of health shall cooperate with the department to ensure the success of the projects. The projects may be established notwithstanding subsections ~~2, 5, 4, 9, and 10, and 14~~ and subdivision c of subsection ~~9~~ 8 of section 50-24.5-01, ~~relating to definitions for aid to aged, blind, and disabled persons, and subsection 1 of section 23-09.3-01, relating to the definition of a basic care facility.~~

SECTION 9. AMENDMENT. Subsection 1 of section 50-06-20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state shall bear the cost, in excess of the amount provided by the federal government, of:
 - a. Except as provided in section 50-24.1-14, services provided under chapter 50-24.1;
 - b. Benefits provided under subsection 19 of section 50-06-05.1;
 - c. ~~Supplements provided~~ Payments made under chapter 50-24.5 as ~~basic~~ adult residential care services;
 - d. Services provided under section 50-06-06.8 and chapter 50-09 as child care assistance;
 - e. Services provided under chapter 50-09 as employment and training programs;
 - f. Welfare fraud detection programs;

g. Temporary assistance for needy families; and

h. Special projects approved by the department and agreed to by any affected county social service board.

SECTION 10. AMENDMENT. Subsection 3 of section 50-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Long-term care facility" means any ~~skilled~~ nursing facility, ~~intermediate-care facility, basic adult residential~~ care facility, nursing home as defined in subsection 3 of section 43-34-01, boardinghouse, or swing bed hospital approved to furnish long-term care services; provided, that a facility, as defined by subsection 2 of section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.

SECTION 11. AMENDMENT. Subsection 3 of section 50-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Facility" means a ~~skilled nursing care facility, intermediate-care facility, basic adult residential~~ care facility, boardinghouse, or swing bed hospital approved to furnish long-term care services.

SECTION 12. AMENDMENT. Section 50-21-01 of the North Dakota Century Code is amended and reenacted as follows:

50-21-01. Revolving loan fund - Appropriation. The revolving loan fund must be maintained for the purpose of making loans to nonprofit corporations for the construction or reconstruction of nursing homes, ~~basic adult residential~~ care facilities, or combination nursing homes and ~~basic adult residential~~ care facilities. All funds transferred into the fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund are hereby appropriated for the purpose of providing loans in accordance with ~~the provisions of~~ this chapter.

SECTION 13. AMENDMENT. Section 50-21-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-21-02. Administration of revolving fund. The revolving fund and loans made therefrom must be supervised and administered by the Bank of North Dakota. All applications for loans under ~~the provisions of~~ this chapter for the construction of nursing homes or combination nursing homes and ~~basic adult residential~~ care facilities must be made to the state

department of health, which department is authorized, subject to the approval of the North Dakota health council, to ~~promulgate such~~ adopt rules ~~and regulations~~ as may be necessary to carry out ~~the provisions of~~ this chapter. All applications for the construction of ~~basic~~ adult residential care facilities must be made to the state department of health, which department shall ~~promulgate such~~ adopt rules ~~and regulations~~ as may be necessary to carry out ~~the provisions of~~ this chapter. Applications approved by the state department of health and the North Dakota health council must be forwarded to the Bank of North Dakota. Upon approval of ~~such~~ the application by the president of the Bank of North Dakota, loans must be granted by the Bank of North Dakota from the revolving fund in accordance with ~~the provisions of~~ this chapter.

SECTION 14. AMENDMENT. Section 50-21-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-21-03. Amount of loan - Terms and conditions. Loans in an amount not exceeding one-half of the cost of construction or reconstruction including the cost or value of real estate upon which the facility is located and in no event exceeding one hundred fifty thousand dollars to any one applicant shall be made by the Bank of North Dakota to nonprofit corporations to be used in the construction or reconstruction in this state of nursing homes, ~~basic adult residential~~ care facilities, or combination nursing homes and ~~basic adult residential~~ care facilities. ~~Such~~ The loans must bear interest at the rate of seven percent per annum and must be repayable in the manner prescribed by the president of the Bank of North Dakota within a period of not more than twenty-five years. In addition, in consideration of the granting of the loans, each nonprofit corporation shall execute a contract with the state to operate ~~such~~ basic an adult residential care facility for a period of not less than twenty years and to operate and maintain the ~~basic adult residential~~ care facility in accordance with the standards prescribed ~~for the licensing of such basic care facility by the state department of health law.~~ ~~Such~~ The contract must ~~also~~ require the nonprofit corporation to maintain facilities for not less than five persons referred to ~~such basic the adult residential~~ care facility by any county social service board. ~~Such~~ The contract must ~~also~~ provide that if the use of ~~such basic the adult residential~~ care facility is discontinued or ~~if it is~~ diverted to other purposes, the full amount of the loan provided under this chapter immediately becomes due and payable. Conversion of a basic care facility licensed under chapter 23-09.3 before July 1, 2001, to an adult residential care facility may not be treated as a discontinuation or diversion of a basic care facility or as a

1 breach of a contract entered into under this section before July 1, 2001, to operate or maintain
2 a basic care facility. Loans may be made only to an applicant who is not receiving other loans
3 or grants of funds from this state for such construction or reconstruction. Payments of interest
4 and principal upon ~~such~~ the loans must be made to the Bank of North Dakota and credited to
5 the revolving fund.

6 **SECTION 15. AMENDMENT.** Section 50-21-04 of the 1997 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **50-21-04. Standards - Administration procedure.** The state department of health,
9 subject to the approval of the state health council, shall establish standards of construction
10 which must be followed by all applicants receiving loans of funds for the construction of nursing
11 homes or combination nursing homes and ~~basie~~ adult residential care facilities. The state
12 department of health shall establish standards of construction which must be followed by all
13 applicants for loans for the construction of ~~basie~~ adult residential care facilities. The health
14 council, in the case of the construction of nursing homes or ~~basie~~ adult residential care facilities
15 or combination nursing homes and ~~basie~~ adult residential care facilities, shall approve all
16 building plans and specifications for any facilities to be constructed in whole or in part with loans
17 of funds provided under ~~the provisions of this chapter prior to~~ before the disbursement of any
18 ~~such~~ funds. Administrative procedures established by the state department of health with the
19 approval of the health council must, except to construction standards, be in general in
20 accordance with the procedures established for the administration of the federal grant-in-aid
21 program for similar purposes under the Hill-Burton Act, or federal acts supplemental thereto.

22 **SECTION 16. AMENDMENT.** Section 50-24.5-01 of the 1997 Supplement to the North
23 Dakota Century Code is amended and reenacted as follows:

24 **50-24.5-01. Definitions.** In this chapter, unless the context otherwise requires:

- 25 1. "Adult residential care facility" means a facility that:
26 a. Makes staff available onsite at all times to respond to residents' scheduled
27 and unpredicted needs;
28 b. Provides room and board;
29 c. Assures provision of:
30 (1) Personal care, therapeutic care, and social and recreational
31 programming;

- 1 (2) Supervision, safety, and security;
- 2 (3) Medication services; and
- 3 (4) Transportation services;
- 4 d. Fosters dignity, respect, and independence by allowing, to the maximum
- 5 extent feasible, each resident to determine the resident's qualified service
- 6 providers, routines of care provision, and service delivery; and
- 7 e. Serves five or more adult residents, unrelated to the proprietor, on a specified
- 8 premises not licensed under chapter 23-20 or 25-16, which:
- 9 (1) If an initial occupancy, meets the requirements of chapter 22 of the
- 10 national fire protection association 101 Life Safety Code; or
- 11 (2) If an occupancy of an existing premises previously occupied for other
- 12 purposes, meets the requirements of chapter 23 of the national fire
- 13 protection association 101 Life Safety Code.
- 14 2. "Aged" means at least sixty-five years of age.
- 15 2- ~~"Assisted living" means an environment where a person lives in an apartment-like~~
- 16 ~~unit and receives services on a twenty-four hour basis to accommodate that~~
- 17 ~~person's needs and abilities to maintain as much independence as possible.~~
- 18 3. ~~"Basic care facility" means a facility defined in section 23-09.3-01 which is not~~
- 19 ~~owned or operated by the state.~~
- 20 4- "Blind" has the same meaning as the term has when used by the social security
- 21 administration in the supplemental security income program under title XVI of the
- 22 Social Security Act [42 U.S.C. 1381 et seq.].
- 23 5- 4. "Congregate housing" means housing shared by two or more persons not related
- 24 to each other which is not provided in an institution.
- 25 6- 5. "County agency" means the county social service board.
- 26 7- 6. "Department" means the department of human services.
- 27 8- 7. "Disabled" has the same meaning as the term has when used by the social
- 28 security administration in the supplemental security income program under title XVI
- 29 of the Social Security Act [42 U.S.C. 1381 et seq.].
- 30 9- 8. "Eligible beneficiary" means a resident of this state who:
- 31 a. (1) Is aged; or

- 1 (2) Is at least eighteen years of age and is disabled or blind;
- 2 b. Has applied for and is eligible to receive benefits under title XIX of the Social
- 3 Security Act [42 U.S.C. 1396 et seq.], provided that a person who was eligible
- 4 to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381
- 5 et seq.] and who was receiving benefits under title XVI before January 1,
- 6 1995, is not ineligible because that person is not eligible to receive benefits
- 7 under title XIX;
- 8 c. Based on a functional assessment, is not severely impaired in any of the
- 9 activities of daily living of toileting, transferring to or from a bed or chair, or
- 10 eating and:
- 11 (1) Has health, welfare, or safety needs, including a need for supervision or
- 12 a structured environment, which require care in a licensed adult family
- 13 foster care home or a ~~licensed basic~~ qualified adult residential care
- 14 facility; or
- 15 (2) Is impaired in three of the following four instrumental activities of daily
- 16 living: preparing meals, doing housework, taking medicine, and doing
- 17 laundry; and
- 18 d. Is determined to be eligible pursuant to rules adopted by the department.
- 19 ~~40.~~ 9. "Institution" means an establishment that makes available some treatment or
- 20 services beyond food or shelter to ~~four~~ five or more persons who are not related to
- 21 the proprietor.
- 22 ~~44.~~ 10. "Living independently" includes living in congregate housing. The term does not
- 23 include living in an institution.
- 24 11. "Proprietor" means a person responsible for day-to-day administration and
- 25 management of a facility.
- 26 12. "Qualified service provider" means a county agency or independent contractor who
- 27 agrees to meet standards for services and operations established by the
- 28 department.
- 29 13. "Related to the proprietor" means a person who is a proprietor's spouse or former
- 30 spouse, or a parent, stepparent, grandparent, stepgrandparent, child, stepchild,

grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of a proprietor or proprietor's spouse or former spouse.

14. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.

~~44.~~ 15. "Would be eligible to receive the cash benefits except for income" refers to a person whose countable income, less the cost of necessary remedial care that may be provided under this chapter, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] which the person would receive if the person had no income, plus forty-five dollars.

SECTION 17. AMENDMENT. Section 50-24.5-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.5-02. Powers and duties of the department. The department shall:

1. Administer aid to vulnerable aged, blind, and disabled persons and supervise and direct county agencies in the administration of aid to vulnerable aged, blind, and disabled persons.
2. ~~Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving~~ Pay a licensed provider of necessary adult family foster care services to the extent that the, provided to an eligible beneficiary who lacks income sufficient to meet the cost of that care provided, at rates determined by the department.
3. ~~Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary basic care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care, provided at rates determined by the department.~~ Pay an approved adult residential care facility, providing necessary care to an eligible beneficiary who lacks income sufficient to meet the costs of that care, at rates determined by the department.
4. Pay qualified service providers at rates determined by the department, ~~within the limits of legislative appropriation,~~ for the provision of the following services provided to an eligible beneficiary to the extent that the eligible beneficiary lacks income sufficient to meet the cost of these services:

- 1 a. Homemaker services;
- 2 b. Chore services;
- 3 c. Respite care;
- 4 d. Home health aide services;
- 5 e. Case management;
- 6 f. Family home care;
- 7 g. Personal attendant care;
- 8 h. Adult family foster care;
- 9 i. Adaptive assessment; and
- 10 j. Other services the department determines to be essential and appropriate to
- 11 sustain an individual in the individual's home and community and to delay or
- 12 prevent institutional care.
- 13 5. Establish, maintain, and ensure the enforcement of standards for congregate
- 14 housing as may be appropriate to the needs of the residents of congregate housing
- 15 who are receiving services under this chapter. The standards must govern matters
- 16 such as admission policy, safety, sanitation, and protection of civil rights.
- 17 6. Establish, maintain, and ensure the enforcement of standards for adult residential
- 18 care facilities as may be appropriate to the needs of the residents of those facilities
- 19 who are receiving services under this chapter. The standards must govern matters
- 20 such as admission policy safety, sanitation, and protection of civil rights.
- 21 7. Establish an individualized care rate for each eligible beneficiary receiving adult
- 22 family foster care services or assisted living services.
- 23 ~~7.~~ 8. Issue payment to ~~basic~~ adult residential care facilities and adult family foster care
- 24 facilities for services provided to an eligible beneficiary.
- 25 ~~8.~~ 9. Take action and give directions necessary to implement this chapter.

26 **SECTION 18. AMENDMENT.** Subsection 7 of section 50-24.5-03 of the 1997
27 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 28 7. Conduct initial and ongoing functional assessments of applicants in cooperation
- 29 with ~~basic~~ adult residential care facilities.

30 **SECTION 19. AMENDMENT.** Section 50-24.5-04 of the 1997 Supplement to the North
31 Dakota Century Code is amended and reenacted as follows:

1 **50-24.5-04. Services provided - Limit on cost.** Services provided under this chapter
2 must be treated as necessary remedial care to the extent those services are not covered under
3 the medical assistance program. The cost of the services provided under this chapter to a
4 ~~person residing in a basic~~ an eligible beneficiary receiving services in an adult residential care
5 or adult family foster care facility for which the rate charged includes room and board is limited
6 to the individualized care rate set for services provided to that eligible beneficiary in that facility,
7 plus forty-five dollars, less that ~~person's~~ eligible beneficiary's total income.

8 **SECTION 20. AMENDMENT.** Section 50-24.5-09 of the 1997 Supplement to the North
9 Dakota Century Code is amended and reenacted as follows:

10 **50-24.5-09. Responsibility for expenditures.** Except as otherwise specifically
11 provided in ~~section~~ sections 50-03-08 and 50-06.2-05.1, expenditures required under this
12 chapter are the responsibility of the state of North Dakota. The department may pay for any
13 service provided to an eligible beneficiary under this chapter out of any source of funds
14 available to the department unless expressly precluded from doing so by law.

15 **SECTION 21. AMENDMENT.** Subsection 17 of section 57-39.2-04 of the 1997
16 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17 17. Gross receipts from the sale of all services furnished by any hospital, infirmary,
18 sanatorium, nursing home, ~~basic~~ adult residential care facility, or similar institution
19 to any patient or occupant.

20 **SECTION 22. REPEAL.** Chapter 23-09.3 of the North Dakota Century Code and
21 section 50-06-14.3 of the 1997 Supplement to the North Dakota Century Code are repealed.

22 **SECTION 23. DEPARTMENT OF HUMAN SERVICES AND DEPARTMENT OF**
23 **HEALTH - RECOMMENDATION.** The department of human services and the department of
24 health, after consultation with individuals and entities determined appropriate by those
25 departments, shall prepare a recommendation for consideration by the fifty-seventh legislative
26 assembly describing appropriate methods and means for the inspection and regulation of adult
27 residential care facilities that respect residents' choices of care providers. That
28 recommendation must include a proposed budget and any necessary implementing legislation
29 and appropriation.

30 **SECTION 24. EFFECTIVE DATE.** Sections 1 through 22 are effective July 1, 2001.