

Fifty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1179

Introduced by

Human Services Committee

(At the request of the Office of Management and Budget)

1 A BILL for an Act to amend and reenact sections 6-09.16-01, 6-09.16-02, 6-09.16-03,
2 6-09.16-04, 6-09.16-05, 6-09.16-06, 50-24.4-30, 50-30-01, 50-30-02, and 50-30-04 of the North
3 Dakota Century Code, relating to the nursing facility alternative loan fund, nursing facility
4 alternative loan fund applications, terms and conditions of nursing facility alternative loans, the
5 government nursing facility funding pool, definitions, uses of the North Dakota health care trust
6 fund, and long-term care loans; to provide for a transfer from the nursing facility alternative
7 grant fund; to provide a continuing appropriation; to provide an effective date; and to declare an
8 emergency.

9 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

10 **SECTION 1. AMENDMENT.** Section 6-09.16-01 of the 1999 Supplement to the North
11 Dakota Century Code is amended and reenacted as follows:

12 **6-09.16-01. ~~(Effective through June 30, 2001)~~ Definitions.** Terms defined in chapter
13 50-30 have the same meaning when used in this chapter.

14 **SECTION 2. AMENDMENT.** Section 6-09.16-02 of the 1999 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **6-09.16-02. ~~(Effective through June 30, 2001)~~ Revolving Long-term care loan fund**
17 **- ~~Appropriation~~ Continuing appropriation.**

18 1. A revolving loan fund must be maintained in the Bank of North Dakota for the
19 purpose of making loans to nursing facilities, basic care facilities, assisted living
20 facilities, or other entities providing alternatives to nursing facility care, to
21 encourage and support conversion of nursing facilities;
22 a. Nursing facilities or basic care facilities for construction projects or for projects
23 providing an alternative to nursing facility care; and

b. Assisted living facilities or other entities for projects providing an alternative to nursing facility care.

2. All moneys 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 disbursement pursuant to the requirements of this chapter.

SECTION 3. AMENDMENT. Section 6-09.16-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.16-03. ~~(Effective through June 30, 2001)~~ Nursing facility alternative

Long-term care loan fund.

1. There is hereby created a ~~nursing facility alternative~~ long-term care loan fund. The fund ~~shall include~~ consists of revenue transferred from the North Dakota health care trust fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund.
2. The Bank of North Dakota shall administer the loan fund. Funds in the loan fund may be used for:
 - a. Loans as provided in this chapter and as approved by the department under chapter 50-30; and
 - b. The costs of administration of the fund; ~~and~~
 - e. ~~Repayment of federal funds if the United States department of health and human services determines that funds were inappropriately claimed under section 50-24.4-30.~~
3. Any money in the fund not required for use under subsection 2 must be transferred to the North Dakota health care trust fund.

SECTION 4. AMENDMENT. Section 6-09.16-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.16-04. ~~(Effective through June 30, 2001)~~ Loan application - How made. All applications for loans under this chapter must be made to the department. The department may approve the applications of qualified applicants ~~who~~ that propose projects ~~that~~ which conform to requirements established under chapter 50-30. ~~Applications approved by the department must be forwarded to the Bank of North Dakota. Upon approval of the application by the Bank of North Dakota, loans may be made from the revolving loan fund in accordance~~

1 ~~with the provisions of this chapter.~~ The Bank of North Dakota shall review and approve or
2 reject all loan applications forwarded to the Bank of North Dakota by the department. For
3 applications approved by the Bank of North Dakota and upon final approval of the application
4 by the department, loans may be made from the long-term care loan fund in accordance with
5 this chapter.

6 **SECTION 5. AMENDMENT.** Section 6-09.16-05 of the 1999 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **6-09.16-05. (~~Effective through June 30, 2001~~) Amount of loans - Terms and**
9 **conditions.** Loans in an amount not exceeding eighty percent of project costs may be made
10 by the Bank of North Dakota from the fund maintained pursuant to this chapter. Such loans
11 must bear interest at a rate ~~determined by the Bank of North Dakota to be two percentage~~
12 ~~points less than the market rate for similar commercial loans, provided that no loan may bear~~
13 ~~interest at a rate less than one-half of one two percent, or more than seven percent, of the~~
14 outstanding principal balance of the loan. In consideration of the making of a loan under this
15 chapter, each borrower shall execute a contract with the department to operate the project in
16 accordance with standards established under chapter 50-30. The contract must also provide
17 that if the use of the project is discontinued or diverted to purposes other than those provided in
18 the loan application without written consent of the department, the full amount of the loan
19 provided under this chapter immediately becomes due and payable. The Bank of North Dakota
20 may annually deduct, as a service fee for administering the ~~revolving~~ loan fund maintained
21 under this chapter, one-half of one percent of the principal balance of the outstanding loans
22 from the ~~revolving~~ fund.

23 **SECTION 6. AMENDMENT.** Section 6-09.16-06 of the 1999 Supplement to the North
24 Dakota Century Code is amended and reenacted as follows:

25 **6-09.16-06. (~~Effective through June 30, 2001~~) Powers of Bank of North Dakota.**
26 The Bank of North Dakota may do all acts or things necessary to negotiate loans and preserve
27 security under this chapter, including the power to take such security as deemed necessary, to
28 exercise any right of redemption, and to bring suit in order to collect interest and principal due
29 the ~~revolving~~ fund under mortgages, contracts, and notes executed to obtain loans under the
30 provisions of this chapter. If the applicant's plan for financing provides for a loan of funds from
31 sources other than the state of North Dakota, the Bank of North Dakota may take a subordinate

1 security interest. The bank may recover from the revolving loan fund amounts actually
2 expended by it for legal fees and to effect a redemption.

3 **SECTION 7. AMENDMENT.** Section 50-24.4-30 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **50-24.4-30. (~~Effective through June 30, 2001~~) Government nursing facility funding**
6 **pool —Appropriations.**

7 1. For purposes of this section:

8 a. "Fiscal period" means a twelve-month period determined by the department;
9 and

10 b. "~~Governmental~~ Government nursing facility" means ~~any a~~ a nursing home
11 ~~administered owned by any political subdivision of this state either the city of~~
12 Dunseith or the city of McVille for which a rate is set under this chapter.

13 2. The department shall establish a pool consisting of an amount annually calculated
14 by multiplying the total of all resident days of all nursing homes during the fiscal
15 period during which a resident was eligible for and received benefits under chapter
16 50-24.1 times an amount that does not exceed the amount that can reasonably be
17 estimated to be paid under payment principles established under title XVIII of the
18 Social Security Act [42 U.S.C. 1395; et seq.], reduced by the payment rates set for
19 each such resident, for each such day, during the fiscal period.

20 3. In addition to any payment made pursuant to a rate set under this chapter, and
21 notwithstanding any other provision of this chapter, the department shall pay to
22 each ~~governmental~~ government nursing facility an amount determined by:

23 a. Dividing that facility's total inpatient days for the fiscal period by the total
24 inpatient days of ~~all governmental~~ both government nursing facilities for the
25 fiscal period; and

26 b. Multiplying a decimal fraction determined under subdivision a times the pool
27 amount determined under subsection 2.

28 4. Each ~~governmental~~ government nursing facility, immediately upon receiving a
29 payment under subsection 3, shall remit the amount of that payment, less a ~~ten~~
30 one hundred thousand dollar transaction fee, to the state treasurer for credit to:

- 1 a. ~~The North Dakota health care trust fund in an amount equal to the federal~~
2 ~~medical assistance percentage for the fiscal period times the total remittance~~
3 ~~to the state treasurer, less ten thousand dollars; and~~
4 b. ~~The general fund for all remaining amounts~~ the North Dakota health care trust
5 fund.

6 5. A government nursing facility may not receive transaction fees totaling more than
7 one hundred thousand dollars during any calendar year. Each government nursing
8 facility shall use its transaction fee revenues for long-term care-related services.

9 6. Notwithstanding any other provision of this code, or of any ordinance or code
10 governing the operation of a ~~governmental~~ government nursing facility, a
11 ~~governmental~~ government nursing facility ~~is authorized to~~ shall receive and, upon
12 receipt, is required to remit payments provided under this section.

13 ~~6.~~ 7. No payment by the department is required under this section for any period in
14 which the funds otherwise appropriated under subdivision b of subsection ~~7~~ 8 are
15 unavailable due to action by the secretary of the United States department of
16 health and human services.

17 ~~7.~~ 8. The department of human services, subject to legislative appropriation, may make
18 the payments described in subsection 3 for the pool amount annually determined
19 under subsection 2, as follows:

- 20 a. From special funds derived from federal funds and other income, the pool
21 amount determined under subsection 2 reduced by the amount determined
22 under subdivision b; and
23 b. From the ~~general fund~~ North Dakota health care trust fund, the "state
24 percentage" as that term is used in defining the term "federal medical
25 assistance percentage" for purposes of title XIX of the Social Security Act [42
26 U.S.C. 1396; et seq.], multiplied times the pool amount determined under
27 subsection 2.

28 **SECTION 8. AMENDMENT.** Section 50-30-01 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **50-30-01. (~~Effective through June 30, 2001—See notes~~) Definitions.** For purposes
31 of this chapter:

1. "Alternative to nursing facility care" means services described in the home and community-based services waiver for aged persons under medical assistance.
2. "Assisted living facility" has the meaning provided in section 50-24.5-01, ~~but if the term is not defined in that section, the term means a facility that:~~
 - ~~a. Makes response staff available at all times;~~
 - ~~b. Provides housing and:~~
 - ~~(1) Congregate meals;~~
 - ~~(2) Kitchen facilities in each resident's living quarters; or~~
 - ~~(3) Any combination of congregate meals and kitchen facilities in each resident's living quarters sufficient to assure each resident adequate access to meals;~~
 - ~~c. Assures provision of:~~
 - ~~(1) Personal care, therapeutic care, and social and recreational programming;~~
 - ~~(2) Supervision, safety, and security;~~
 - ~~(3) Medication services; and~~
 - ~~(4) Transportation services;~~
 - ~~d. Fosters dignity, respect, and independence by allowing, to the maximum extent feasible, each resident to determine the resident's service providers, routines of care provision, and service delivery; and~~
 - ~~e. Services five or more adult residents, unrelated to the proprietor, on a specified premises not licensed under chapter 23-20 or 25-16, which meets the requirements of the national fire protection association 101 Life Safety Code, as applicable.~~
3. "Basic care facility" has the meaning provided in section 23-09.3-01.
4. "Conversion" means:
 - ~~a. The remodeling of existing space and, if necessary, the construction of additional space required to accommodate basic care facility services, assisted living facility services, or other alternatives to nursing facility care; or~~
 - ~~b. New construction of a basic care facility, assisted living facility, or other alternative to nursing facility care if existing nursing facility beds are no longer~~

1 ~~licensed and the department determines that new construction is more cost~~
2 ~~effective than the conversion of existing space.~~

3 5- "Department" means the department of human services.

4 5. "Long-term care" means the provision of care in a nursing facility, basic care
5 facility, assisted living facility, or other entity providing an alternative to nursing
6 facility care.

7 6. "Medical assistance" means a program established under title XIX of the Social
8 Security Act [42 U.S.C. 1396; et seq.] and chapter 50-24.1.

9 7. "Nursing facility" has the same meaning as provided in section 50-24.4-01 for the
10 term "nursing home".

11 **SECTION 9. AMENDMENT.** Section 50-30-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **50-30-02. ~~(Effective through June 30, 2001—See notes)~~ North Dakota health care**
14 **trust fund created - Appropriation Uses - Continuing appropriation.** There is hereby
15 created in the state treasury a special fund known as the North Dakota health care trust fund.
16 The fund ~~shall include~~ consists of revenue received from ~~governmental~~ government nursing
17 facilities for remittance to the fund under section 50-24.4-30. The department shall administer
18 the fund and shall adopt procedures for participation by ~~governmental~~ government nursing
19 facilities. ~~All moneys designated for the fund from whatever source derived must be deposited~~
20 ~~with the state treasurer in the North Dakota health care trust fund.~~ The state treasurer shall
21 invest such funds in interest-bearing accounts, as designated by the department, and the
22 interest earned must be deposited in the North Dakota health care trust fund. All moneys
23 deposited in the North Dakota health care trust fund are available to the department, ~~subject to~~
24 ~~legislative appropriation, for disbursement pursuant to the requirements of this chapter.;~~

25 1. Transfer to the long-term care loan fund, as authorized by legislative appropriation,
26 for making loans pursuant to the requirements of this chapter;

27 2. Payment, as authorized by legislative appropriation, of costs of other programs
28 authorized by the legislative assembly; and

29 3. Repayment of federal funds, which are appropriated and may be spent if the
30 United States department of health and human services determines that funds
31 were inappropriately claimed under section 50-24.4-30.

SECTION 10. AMENDMENT. Section 50-30-04 of the North Dakota Century Code is amended and reenacted as follows:

~~50-30-04. (Effective through June 30, 2001— See notes) Department to award grants or make loan guarantees~~ Long-term care loans.

1. ~~The department may award grants from the nursing facility alternative grant fund or approve loans from the nursing facility alternative long-term care loan fund established under chapter 6-09.16 for capital or one-time expenditures, including startup and training expenses and operating losses for the first year: projects that have received final or pending final approval from the department as of November 30, 2000.~~
 - a. ~~To any nursing facility which has been approved for at least three years as a provider under the medical assistance program to convert all or a portion of the facility licensed to provide such care to a basic care facility, assisted living facility, or other alternative to nursing facility care; or~~
 - b. ~~To any other entity meeting conditions established by the department to develop a basic care facility, assisted living facility, or other alternative to nursing facility care.~~
2. ~~A nursing facility or other entity may be eligible for a grant or loan only if the basic care facility, assisted living facility, or other alternative to nursing facility care is located in an underserved area as determined by the department.~~
- ~~3.~~ 2. To be eligible for a grant or loan under this section, the nursing facility, basic care facility, assisted living facility, or other entity approved by the department shall provide at least twenty percent of the total cost of any ~~conversion~~ project. The department shall establish policies and procedures for certification of the required matching funds. The department's share of the total cost of any ~~conversion~~ project is limited to one million dollars or eighty percent of the project cost, whichever is less.
4. ~~The department shall annually establish a calendar for receiving and evaluating proposals and awarding grants or approving loans.~~

- 1 5- 3. ~~No grant or loan application may be approved by the~~ The department may not
2 approve a loan application for a project providing an alternative to nursing facility
3 care unless the applicant can demonstrate that:
- 4 a. ~~Conversion of the nursing facility or portion of the facility to a basic care~~
5 ~~facility, assisted living facility, or other alternative to nursing facility care may~~
6 ~~offer efficient and economical care to individuals requiring long-term care~~
7 ~~services in the area;~~
- 8 b. ~~Basic care, assisted living services, or other alternatives to nursing facility~~
9 ~~care are unlikely to be available in the area for individuals eligible for services~~
10 ~~under the medical assistance program; and~~
- 11 e. ~~The resulting reduction in the availability of nursing facility service is not~~
12 ~~expected to cause undue hardship on those individuals requiring nursing~~
13 ~~facility services~~ a specified number of beds as determined by the department
14 relating to the project are committed for occupancy.
- 15 6- 4. ~~No grant may be awarded or loan~~ may be approved unless the applicant agrees:
- 16 a. ~~To maintain a minimum occupancy rate by~~ make available services at a level
17 as determined by the department for individuals eligible for supplemental
18 security income benefits provided under title XVI of the Social Security Act [42
19 U.S.C. 1382; et seq.]; and
- 20 b. ~~To refund~~ repay to the nursing facility alternative grant fund or the nursing
21 ~~facility alternative~~ long-term care loan fund, on an amortized basis, the
22 ~~amount~~ outstanding balance of the grant or loan and any accrued interest if
23 the applicant or its successor in interest ceases to operate ~~a basic care~~
24 ~~facility, assisted living facility, or other alternative to nursing facility care during~~
25 ~~the ten-year period after the date the applicant began operation of its facility~~
26 ~~as a basic care facility, assisted living facility, or other alternative to nursing~~
27 ~~facility care~~ the project or facility financed by the loan proceeds, ceases to
28 maintain the agreed minimum ~~occupancy rate~~ level of services, or fails to
29 commence operations within a reasonable time.
- 30 7- 5. In addition to other remedies provided by law or contract, the department may
31 deduct the amount of any refund due from a recipient of ~~grant or a~~ loan guarantee

1 ~~funds~~ from any money owed by the department to such recipient or the recipient's
2 successor in interest.

3 **SECTION 11. NURSING FACILITY ALTERNATIVE GRANT FUND - TRANSFER -**

4 **GRANTS ADMINISTRATION.** The state treasurer shall transfer any remaining balance in the
5 nursing facility alternative grant fund on June 30, 2001, to the health care trust fund. The
6 department of human services may continue making grant payments from the health care trust
7 fund relating to grants approved during the 1999-2001 biennium under the nursing facility
8 alternative grant fund. The department may spend moneys in the health care trust fund
9 pursuant to legislative appropriations for the purpose of making these grant payments for the
10 biennium beginning July 1, 2001, and ending June 30, 2003.

11 **SECTION 12. NURSING FACILITY ALTERNATIVE LOANS - 1999-2001 BIENNIUM -**

12 **INTEREST RATE ADJUSTMENT.** The Bank of North Dakota and the department of human
13 services shall adjust the rate of interest charged on nursing facility alternative loans approved
14 during the biennium beginning July 1, 1999, and ending June 30, 2001, to a rate equivalent to
15 two percent effective July 1, 2001, taking into consideration any grants approved in conjunction
16 with the loan.

17 **SECTION 13. ADDITIONAL GOVERNMENT NURSING FACILITY FUNDING POOL**

18 **PAYMENTS - CONTINUING APPROPRIATION - NORTH DAKOTA HEALTH CARE TRUST**

19 **FUND REPAYMENT.** Any estimated income in excess of the amount appropriated which
20 becomes available based on the calculation provided for in section 50-34.4-30 is appropriated
21 and may be spent by the department of human services for the purpose of making the
22 additional government nursing facility fund pool payments for the biennium beginning July 1,
23 2001, and ending June 30, 2003. Any additional state matching funds required are
24 appropriated and may be spent from the North Dakota health care trust fund by the department
25 of human services for the purpose of making the additional payments for the biennium
26 beginning July 1, 2001, and ending June 30, 2003. Any North Dakota health care trust fund
27 amounts spent pursuant to this section must be returned to the North Dakota health care trust
28 fund within two days.

29 **SECTION 14. HEALTH CARE TRUST FUND - MINIMUM BALANCE REQUIRED.**

30 Except for making payments under subsection 3 of section 50-30-02, the state treasurer may
31 not allow expenditures or transfers from the health care trust fund that would reduce the

1 unobligated balance in the fund below \$13,000,000 until the director of the department of
2 human services certifies to the state treasurer that the federal health care financing
3 administration's claim for the return of \$13,000,000 of the state's first-year payment has been
4 resolved for the biennium beginning with the effective date of this Act and ending June 30,
5 2003.

6 **SECTION 15. DEPARTMENT OF HUMAN SERVICES - EMERGENCY RULEMAKING**

7 **AUTHORITY.** Notwithstanding subsection 6 of section 28-32-02, the department of human
8 services may adopt interim final rules to implement this Act for the period beginning with the
9 effective date of this Act and ending June 30, 2003. The department shall take appropriate
10 measures to make the interim final rules known to every person who may be affected by them.
11 The interim final rules are ineffective one hundred eight days after their declared effective date
12 unless first adopted as final rules.

13 **SECTION 16. EFFECTIVE DATE.** This Act becomes effective on July 1, 2001.

14 **SECTION 17. EMERGENCY.** This Act is declared to be an emergency measure.