

Fifty-seventh  
Legislative Assembly  
of North Dakota

## REENGROSSED HOUSE BILL NO. 1109

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new section to chapter 50-24.5 and a new subsection to  
2 section 50-24.5-02 of the North Dakota Century Code, relating to registration fees,  
3 requirements, and complaints to the department of human services regarding assisted living  
4 facilities; to amend and reenact subsection 2 of section 23-09-01, subsection 1 of section  
5 23-09.3-01, and sections 50-24.5-01 and 50-24.5-04 of the North Dakota Century Code,  
6 relating to requiring assisted living facilities to be licensed as boardinghouses, definitions, and  
7 limits on cost of services provided; to repeal section 23-09.3-03 of the North Dakota Century  
8 Code, relating to choice of pharmacy services; and to provide an effective date.

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

10 **SECTION 1. AMENDMENT.** Subsection 2 of section 23-09-01 of the 1999  
11 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12 2. "Boardinghouse" includes every building or structure, or any part thereof, with  
13 accommodations for four or more boarders, which is kept, used, maintained,  
14 advertised, or held out to the public as a place where food is furnished to regular  
15 boarders for periods of one week or more. The term does not include a facility  
16 providing personal care directly or through contract as defined in section  
17 23-09.3-01 ~~or 50-24.5-04~~.

18 **SECTION 2. AMENDMENT.** Subsection 1 of section 23-09.3-01 of the 1999  
19 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20 1. "Basic care facility" means a residence, not licensed under chapter 23-16 by the  
21 department, that provides room and board to five or more individuals who are not  
22 related by blood or marriage to the owner or manager of the residence and who,  
23 because of impaired capacity for independent living, require health, social, or

personal care services, but do not require regular twenty-four-hour medical or nursing services and:

a. Makes response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual; or

b. Is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility.

**SECTION 3. AMENDMENT.** Section 50-24.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-01. (Effective through June 30, 2001) Definitions.** In this chapter, unless the context otherwise requires:

1. "Aged" means at least sixty-five years of age.
2. "Assisted living" means an environment where a person lives in an apartment-like unit and receives services on a twenty-four-hour basis to accommodate that person's needs and abilities to maintain as much independence as possible.
3. "Basic care facility" means a facility defined in section 23-09.3-01 which is not owned or operated by the state.
4. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
5. "Congregate housing" means housing shared by two or more persons not related to each other which is not provided in an institution.
6. "County agency" means the county social service board.
7. "Department" means the department of human services.
8. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
9. "Eligible beneficiary" means a resident of this state who:
  - a. (1) Is aged; or
  - (2) Is at least eighteen years of age and is disabled or blind;
  - b. Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that a person who was eligible

1 to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381  
2 et seq.] and who was receiving benefits under title XVI before January 1,  
3 1995, is not ineligible because that person is not eligible to receive benefits  
4 under title XIX;

5 c. Based on a functional assessment, is not severely impaired in any of the  
6 activities of daily living of toileting, transferring to or from a bed or chair, or  
7 eating and:

8 (1) Has health, welfare, or safety needs, including a need for supervision  
9 or a structured environment, which require care in a licensed adult  
10 family foster care home or a licensed basic care facility, or

11 (2) Is impaired in three of the following four instrumental activities of daily  
12 living: preparing meals, doing housework, taking medicine, and doing  
13 laundry; and

14 d. Is determined to be eligible pursuant to rules adopted by the department.

15 10. "Institution" means an establishment that makes available some treatment or  
16 services beyond food or shelter to four or more persons who are not related to the  
17 proprietor.

18 11. "Living independently" includes living in congregate housing. The term does not  
19 include living in an institution.

20 12. "Qualified service provider" means a county agency or independent contractor who  
21 agrees to meet standards for services and operations established by the  
22 department.

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

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

1           **(Effective July 1, 2001) Definitions.** In this chapter, unless the context otherwise  
2 requires:

3           1. "Activities of daily living" means bathing, dressing, toileting, transferring, eating,  
4 bed mobility, and personal hygiene.

5           2. "Aged" means at least sixty-five years of age.

6       2- 3. "Assisted living facility" means any building or structure containing a facility that:

7           a- ~~Makes response staff available at all times;~~

8           b- ~~Provides housing and:~~

9               (1) ~~Congregate meals;~~

10              (2) ~~Kitchen facilities in each resident's living quarters; or~~

11              (3) ~~Any combination of congregate meals and kitchen facilities in each~~  
12 ~~resident's living quarters sufficient to assure each resident adequate~~  
13 ~~access to meals;~~

14           e- ~~Assures provision of:~~

15               (1) ~~Personal care, therapeutic care, and social and recreational~~  
16 ~~programming;~~

17               (2) ~~Supervision, safety, and security;~~

18               (3) ~~Medication services; and~~

19               (4) ~~Transportation services;~~

20           d- ~~Fosters dignity, respect, and independence by allowing, to the maximum~~  
21 ~~extent feasible, each resident to determine the resident's service providers,~~  
22 ~~routines of care provision, and service delivery; and~~

23           e- ~~Serves five or more adult residents, unrelated to the proprietor, on a specified~~  
24 ~~premises not licensed under chapter 23-20 or 25-16, which meets the~~  
25 ~~requirements of the national fire protection association 101 Life Safety Code,~~  
26 ~~as applicable.~~

27 series of living units operated as one business entity to provide services for five or  
28 more individuals who are aged or disabled adults and who are not related by blood  
29 or marriage to the owner or manager of the entity and which is kept, used,  
30 maintained, advertised, or held out to the public as a place that makes available  
31 individualized support services to accommodate an individual's needs and abilities

to maintain as much independence as possible. It does not include a facility that is licensed as a basic care facility, a congregate housing facility, or an independent living facility.

3. 4. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

4. 5. "Congregate housing" means housing shared by two or more ~~persons~~ individuals not related to each other which is not provided in an institution.

5. 6. "County agency" means the county social service board.

6. 7. "Department" means the department of human services.

7. 8. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

8. 9. "Eligible beneficiary" means a resident of this state who:

a. (1) Is aged; or

(2) Is at least eighteen years of age and is disabled or blind;

b. Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that ~~a person~~ an individual who was eligible to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before January 1, 1995, is not ineligible because that ~~person~~ individual is not eligible to receive benefits under title XIX;

c. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:

(1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or an assisted living facility; or

(2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and

d. Is determined to be eligible pursuant to rules adopted by the department.

10. "Independent living facility" means a living arrangement, regardless of the age of the residents or the location of the facility, in which residents reside by choice and not due to medical or care needs.

11. "Individualized support services" means services designed to provide assistance to adults who may have physical or cognitive impairments and who require at least a moderate level of assistance with one or more activities of daily living.

9- 12. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to five or more ~~persons~~ individuals who are not related to the proprietor.

13. "Instrumental activities of daily living" means activities to support independent living including housekeeping, shopping, laundry, transportation, and meal preparation.

40- 14. "Living independently" includes living in congregate housing. The term does not include living in an institution.

15. "Living unit" means a portion of an assisted living facility occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.

44- 16. "Proprietor" means ~~a person~~ an individual responsible for day-to-day administration and management of a facility.

42- 17. "Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.

18. "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager or the owner or manager's spouse or former spouse.

43- 19. "Related to the proprietor" means ~~a person~~ an individual who is a proprietor's spouse or former 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.

44. 20. "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.

21. "Tenant" means an adult individual who has entered into a lease agreement with an assisted living facility.

45. 22. "Would be eligible to receive the cash benefits except for income" refers to a ~~person~~ an individual 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~~ individual would receive if the ~~person~~ individual had no income, plus ~~forty-five~~ sixty dollars.

**SECTION 4.** A new subsection to section 50-24.5-02 of the North Dakota Century Code is created and enacted as follows:

Establish a method to receive complaints related to assisted living facilities and to forward the complaints to the appropriate agency for investigation.

**SECTION 5.** A new section to chapter 50-24.5 of the North Dakota Century Code is created and enacted as follows:

**Registration of assisted living facilities.**

1. An individual, institution, organization, limited liability company, or public or private corporation keeping, operating, conducting, managing, maintaining, advertising, or holding itself out to the public as an assisted living facility located in this state shall register annually with the department by providing such information as the department prescribes and shall obtain a license issued by the state department of health under chapter 23-09.

2. An assisted living facility shall pay to the department an annual registration fee of ten dollars for each facility. Registration fees collected under this section must be deposited in the department of human services operating fund in the state treasury. Any expenditure from the fund is subject to appropriation by the legislative assembly.

- 1           3.   The department shall establish rules governing the annual registration of an  
2                   assisted living facility to regulate the application for, approval, denial, revocation,  
3                   and requirements of registration.
- 4           4.   An individual, institution, organization, limited liability company, or public or private  
5                   corporation may not operate or market its facility or services as an assisted living  
6                   facility unless it has registered with the department as an assisted living facility and  
7                   that registration has been approved by the department.
- 8           5.   After the fifty-ninth day following the notification of noncompliance with annual  
9                   registration, the department may assess a fine of up to fifty dollars per day against  
10                  any individual, institution, organization, limited liability company, or public or private  
11                  corporation that provides assisted living services, markets its services as an  
12                  assisted living facility, or uses the term assisted living in its marketing without a  
13                  registration approved by the department. Fines collected under this section must  
14                  be deposited in the department of human services operating fund in the state  
15                  treasury. Any expenditure from the fund is subject to appropriation by the  
16                  legislative assembly.
- 17          6.   Religious orders providing assistance with activities of daily living or instrumental  
18                  activities of daily living to vowed members residing in the order's retirement  
19                  housing are not subject to this chapter.

20           **SECTION 6. AMENDMENT.** Section 50-24.5-04 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22           **50-24.5-04. Services provided - Limit on cost.** Services provided under this chapter  
23 must be treated as necessary remedial care to the extent those services are not covered under  
24 the medical assistance program. The cost of the services provided under this chapter to a  
25 person residing in a basic care or adult family foster care facility for which the rate charged  
26 includes room and board is limited to the rate set for services in that facility, plus ~~forty-five~~ sixty  
27 dollars, less that person's total income.

28           **SECTION 7. REPEAL.** Section 23-09.3-03 of the North Dakota Century Code is  
29 repealed.

30           **SECTION 8. EFFECTIVE DATE.** This Act becomes effective on July 1, 2001.