

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1163
(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to create and enact section 25-03.1-03.1 of the North Dakota Century Code, relating to disclosure of health information for treatment of mental illness; to amend and reenact section 25-03.1-10, subsection 1 of section 25-03.1-13, section 25-03.1-43, and subsection 20 of section 43-17-31 of the North Dakota Century Code, relating to civil commitment for treatment of mental illness and substance abuse and a physician's duty to transfer medical records; to repeal section 25-03.1-44 of the North Dakota Century Code, relating to accounting for the disclosure of health information of an individual committed for the treatment of mental illness; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 25-03.1-03.1 of the North Dakota Century Code is created and enacted as follows:

25-03.1-03.1. Disclosure of health information. A treating facility or mental health professional may disclose individually identifiable health information to a court, regional human service center, state's attorney, retained counsel, or other mental health professional, including an expert examiner, and the disclosure is not a disclosure for treatment, including the provision, coordination, and management of health care and to carry out the purposes of chapter 25-03.1.

SECTION 2. AMENDMENT. Section 25-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-10. Involuntary treatment - Court-ordered examination. If the petition is not accompanied by a written supportive statement of a psychiatrist, physician, or psychologist who has examined the respondent within the last forty-five days, the court shall order the respondent to be examined by an expert examiner of the respondent's own choice or one appointed by the court. The order must state the date and time within which the respondent must appear; the address to which the respondent is to report, and; a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, the respondent may be involuntarily taken into custody and transported to the appointed place; and a statement that the expert examiner may consult with or request participation in the examination by a qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. Accompanying the order must be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at a treatment facility, at the respondent's home, or at any other suitable place in the community. A request for examination at the state hospital must be screened and approved by a regional human service center. The respondent may be accompanied by one or more relatives or friends at the place of the examination. The costs of the court-ordered examination must be borne by the county that is the respondent's place of residence.

SECTION 3. AMENDMENT. Subsection 1 of section 25-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

1. Every respondent under this chapter is entitled to legal counsel. The counsel has access to the respondent's medical records upon proof of representation.

SECTION 4. AMENDMENT. Section 25-03.1-43 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-43. Confidential records. All information and records obtained in the course of an investigation, an evaluation, an examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility ~~must be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure.~~ All information and records are available to the court and, under rules established by the department, may be disclosed only to:

1. ~~Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient to whom the patient has given written consent to have information disclosed.~~
2. ~~Individuals to whom the patient has given written consent to have information disclosed.~~
3. ~~Persons legally representing the patient, including attorneys representing the patient in commitment proceedings, upon proper proof of representation.~~
4. ~~Persons authorized by a court order.~~
5. ~~Persons doing research or maintaining health statistics, if the anonymity of the patient is assured and the facility recognizes the project as a bona fide research or statistical undertaking.~~
6. ~~The department of corrections and rehabilitation in cases in which prisoners sentenced to the state prison are patients in the state hospital on authorized transfers either by voluntary admissions or by court order.~~
7. ~~Governmental or law enforcement agencies when necessary to secure the return of a patient who is absent without authorization from the facility where the patient was undergoing evaluation or treatment, or when necessary to report a crime committed on facility premises or against facility staff or patients, or threats to commit such a crime. The disclosures must be directly related to a patient's commission of a crime or threats to commit such a crime and are limited to the circumstances of the incident, the name and address of the patient involved, and the patient's last known whereabouts.~~
8. ~~Qualified service organizations and third party payers to the extent necessary to perform their functions.~~
9. ~~Victims and witnesses of a crime to the extent necessary to comply with the notification requirements of subsection 16 of section 12.1-34-02.~~
10. ~~Law enforcement agencies to confirm and investigate the address of a person required to register under section 12.1-32-15.~~

are confidential, but the information and records may be disclosed to and be used by a court as required to carry out the purposes of this chapter, and as authorized under title 45, Code of Federal Regulations, part 164. Any information disclosed to a court remains confidential information.

SECTION 5. AMENDMENT. Subsection 20 of section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

20. The failure to transfer medical records, ~~except those relating to psychiatric treatment which must be governed by board rule,~~ to another physician or to supply copies thereof of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, ~~except if the disclosure is otherwise limited or prohibited by law.~~ A reasonable charge for record copies may be assessed.

SECTION 6. REPEAL. Section 25-03.1-44 of the North Dakota Century Code is repealed.

SECTION 7. EFFECTIVE DATE. This Act becomes effective on April 14, 2003.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1163 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 88 Nays 0 Absent 6

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 42 Nays 4 Absent 1

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State