

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

SENATE BILL NO. 2153
(Human Services Committee)
(At the request of the Office of Management and Budget)

AN ACT to create and enact a new chapter to title 57 of the North Dakota Century Code, relating to a provider assessment for intermediate care facilities for the mentally retarded; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 57 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter:

1. "Business" has the meaning provided in section 31-08.1-01.
2. "Commissioner" means the state tax commissioner.
3. "Facility" includes the operating entity of each intermediate care facility for the mentally retarded located in this state.
4. "Intermediate care facility for the mentally retarded" means a treatment or care center licensed under chapter 25-16 that provides services eligible for coverage as medical assistance under 42 U.S.C. 1396a(a)(31), and also means the developmental center at westwood park, Grafton.
5. "Licensed bed" means a bed licensed under chapter 25-16 or approved by the secretary of health and human services pursuant to 42 U.S.C. 1396i.
6. "Quarter" means one of four calendar quarters beginning January first, April first, July first, or October first.

Imposition of assessment. An assessment must be imposed on each intermediate care facility for the mentally retarded licensed in this state. No waiver otherwise available under this code is applicable to this assessment.

Basis of assessment. Every year beginning July first, each intermediate care facility for the mentally retarded must be assessed a quarterly rate per licensed bed as of the first day of each quarter. The quarterly rate may not exceed a rate calculated by the department of human services as an annual aggregate of gross revenues as of December thirty-first of the preceding year for all intermediate care facilities for the mentally retarded, multiplied by one and one-half percent, and divided by licensed beds as of December thirty-first of the preceding year.

Reports - Extension.

1. On or before the last day of a quarter, each facility required to pay an assessment under this chapter must make out a return for the quarter in the form and manner prescribed by the commissioner. The facility shall report the number of licensed beds as of the first day of the quarter, the amount of the assessment for the quarter covered by the return, and include such further information the commissioner may require to enable the commissioner to correctly compute and remit the assessment levied by this chapter.

2. Upon request by a facility and a proper showing of the necessity, the commissioner may grant to the facility an extension of time not exceeding thirty days for making a return. If an extension is granted to a facility, the time the facility is required to make payment of the assessment liability must be extended for the same period. Interest must be charged upon the amount of the deferred payment at the rate of twelve percent per annum from the date the assessment would have been due if the extension had not been granted to the date the assessment is paid.
3. A return must be signed by a duly authorized agent of the facility and must contain a written declaration that the return is made and subscribed under the penalties of this chapter.

Payment of assessment. An assessment levied under this chapter must be paid on a quarterly basis and is due and payable on the last day of the quarter.

Penalties - Offenses.

1. If a facility's return or corrected return is not filed or the assessment is not paid within the time required by this chapter or, if upon audit, the facility is found to owe an additional assessment, the facility is subject to a penalty of five percent of the amount of assessment due, plus interest of one percent of the assessment for each month of delay or fraction thereof, excepting the first month after the assessment becomes due. If satisfied that the delay was excusable, the commissioner may waive and, if paid, refund all or any part of the penalty and interest. The penalty and interest must be paid to the commissioner and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the assessment imposed under this chapter.
2. A person failing to comply with this chapter or failing to remit the assessment provided by this chapter to the commissioner on a timely basis is guilty of a class B misdemeanor.

Records required. A facility required to pay an assessment under this chapter shall preserve and maintain the records as the commissioner may require for a period of three years and one month. All records must be open to examination at any time by the commissioner or any of the commissioner's duly authorized agents.

Officer and manager liability.

1. If a business that owns or operates a facility fails for any reason to file a required return or to pay an assessment due, any of its officers or managers having control or supervision of, or charged with the responsibility for making a return or payment is personally liable for the failure. The dissolution of a business does not discharge an officer's or manager's liability for a prior failure of the business to make a return or remit the assessment due.
2. If any of the officers or managers elect not to be personally liable for the failure to file the required return or to pay the assessment due, the facility shall make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual assessment liability of the facility.

Commissioner to administer chapter.

1. The commissioner is charged with the administration of this chapter and shall enforce the assessment, levy, and collection of assessments imposed under this chapter.
2. For the purpose of ascertaining the correctness of a return or for the purpose of ascertaining the number of licensed beds of a facility, the commissioner shall examine or cause to be examined by an agent or representative designated by the commissioner any

books, papers, records, or memoranda; require by subpoena the attendance and testimony of witnesses; issue and sign subpoenas; administer oaths; examine witnesses and receive evidence; and compel witnesses to produce for examination books, papers, records, and documents relating to any matter which the commissioner has the authority to investigate or determine.

3. If the commissioner finds an officer or manager of a facility has made a fraudulent return, the costs of a hearing must be assessed to the facility. In all other cases, the costs must be paid by the state.
4. The fees and mileage to be paid witnesses and assessed as costs must be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs must be assessed in the manner provided by law in proceedings in civil cases. When the costs are assessed to the facility, the costs must be added to the assessment charged against the facility and must be collected in the same manner. Costs assessed to the state must be certified by the commissioner to the state treasurer, who shall issue warrants for the amount of the costs.
5. In cases of disobedience to a subpoena, the commissioner may invoke the aid of a court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents. The court may issue an order requiring the person to appear before the commissioner and give evidence or produce records, books, papers, and documents. A failure to obey an order of the court may be punished by the court as contempt.
6. Testimony on hearings before the commissioner may be taken by a deposition as in civil cases and an individual may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as provided by this section.

Lien of assessment - Collection - Action authorized.

1. Whenever a facility liable to pay an assessment or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to the assessment, together with the costs that may accrue, is a lien in favor of this state upon all property and rights to property, whether real or personal, belonging to the facility. In the case of property in which a deceased owner, officer, or manager of a facility held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivor or survivors to the extent of the deceased owner's, officer's, or manager's interest, which interest must be determined by dividing the value of the entire property at the time of the officer's or manager's death by the number of joint tenants or persons interested therein.
2. The lien attaches at the time the assessment becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this subsection, the words "due" and "due and payable" mean the first instant the assessment becomes due.
3. A mortgagee, purchaser, judgment creditor, or lien claimant acquiring an interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the facility.
 - b. The tax identification number of the facility or social security number of the owner, officer, or manager of the facility.

- c. The name "State of North Dakota" as claimant.
- d. The date and time the notice of lien was indexed.
- e. The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. A notice of lien filed by the commissioner with the recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

- 5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the indexing of the notice of lien, or for its satisfaction.
- 6. Upon payment of the assessment as to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
- 7. Upon the request of the commissioner, the attorney general shall bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any assessments and any penalties, or to foreclose the lien in the manner provided for mortgages on real or personal property. The state's attorney of the county in which the action is pending shall assist the attorney general.
- 8. The remedies of this section are cumulative. Action taken by the commissioner or attorney general may not be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.
- 9. The technical, legal requirements in this section relating to assessment liens on all real and personal property of the officer or manager of the facility to ensure payment of the assessment, including penalties, interest, and other costs, are self-explanatory.

Commissioner may require bond. When in the commissioner's judgment it is necessary and advisable to do so in order to secure the collection of the assessment levied under this chapter, the commissioner may require a person subject to the assessment to file with the commissioner a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility in an amount the commissioner may fix, to secure the payment of any assessment and penalties due or which may become due from the person. In lieu of the bond, securities approved by the commissioner in the amounts as the commissioner prescribes may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold by the commissioner at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any assessment and penalties due. All moneys deposited as security with the commissioner under this section must be paid by the commissioner to the state treasurer and must be credited by the state treasurer into a special fund to be known as the provider assessment trust fund. If any assessment, penalty, or costs imposed by this chapter are not paid when due, by the person depositing moneys with the commissioner as security for the payment of the assessment, penalty, or costs imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget who shall transmit the money to the commissioner who shall apply the money deposited by the person or so much thereof as is necessary to satisfy the assessment and penalties due. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, the commissioner shall certify that information to the director of the office of management and budget who shall pay the unused money to the entitled person.

Correction of errors. If it appears that, as a result of a mistake, an amount of assessment, penalty, or interest has been paid which was not due under this chapter, the amount must be credited against any assessment due, or to become due, under this chapter from the person who made the erroneous payment, or the amount must be refunded to the person. The person who made the

erroneous payment shall present a claim for refund or credit to the commissioner not later than three years after the due date of the return for the period for which the erroneous payment was made or one year after the erroneous payment was made, whichever is later.

Provider assessment fund. There is a special fund in the state treasury known as the provider assessment fund. The fund includes all revenue received from intermediate care facilities for the mentally retarded for remittance to the fund under this chapter. All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the provider assessment fund.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2153.

Senate Vote: Yeas 35 Nays 8 Absent 4

House Vote: Yeas 73 Nays 0 Absent 21

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