

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

HOUSE BILL NO. 1414
(Representatives Porter, Price, Warner)
(Senator Grindberg)

AN ACT to create and enact a new section to chapter 23-07 of the North Dakota Century Code, relating to reporting disease outbreaks to the state department of health in an emergency; to amend and reenact sections 23-07-02, 23-07.6-01, 23-07.6-02, 23-07.6-03, 23-07.6-04, 23-07.6-05, 23-07.6-06, 23-07.6-07, 23-07.6-08, 23-07.6-09, 23-07.6-10, 23-07.6-11, 23-07.6-12, subsection 8 of section 23-35-08, subdivision h of subsection 2 of section 23-35-12, and subsection 2 of section 40-06-01, relating to disease reporting and quarantine or isolation of persons infected or potentially infected with contagious diseases; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07-02. Who to report reportable diseases. Except as otherwise provided by section 23-07-02.1, the following persons or their designees shall report to the ~~nearest~~ state department of health ~~officer having jurisdiction~~ any reportable disease coming to their knowledge:

1. All health care providers, including physicians, physician assistants, nurse practitioners, nurses, dentists, medical examiners or coroners, pharmacists, emergency medical service providers, and local health officers.
2. ~~All persons who treat or administer to the sick by whatever method~~ The director, principal manager, or chief executive officer of:
 - a. Health care institutions, including hospitals, medical centers, clinics, long-term care facilities, assisted living facilities, or other institutional facilities;
 - b. Medical or diagnostic laboratories;
 - c. Blood bank collection or storage centers;
 - d. Public and private elementary and secondary schools;
 - e. Public and private universities and colleges;
 - f. Health or correctional institutions operated or regulated by municipal, county or multi-county, state, or federal governments;
 - g. Funeral establishments and mortuaries; and
 - h. Child care facilities or camps.
3. ~~Householders~~ The state veterinarian, if the disease may be transmitted directly or indirectly to or between humans and animals.
4. ~~Keepers of hotels, boardinghouses, or lodginghouses.~~
5. ~~Nurses.~~
6. ~~Schoolteachers.~~

- ~~7. All other persons treating, nursing, lodging, caring for, or~~ A person having knowledge of the existence of any that a person or persons are suspected of having a reportable disease may notify the department and provide all information known to the person reporting concerning the reportable disease or condition of the person or persons.

If the person reporting is the attending physician or the physician's designee, the physician or the physician's designee shall report not less than twice a week, in the form and manner directed by the state department of health, the condition of the person afflicted and the state of the disease. A person making a report in good faith is immune from liability for any damages which may be caused by that act.

SECTION 2. A new section to chapter 23-07 of the North Dakota Century Code is created and enacted as follows:

Emergency reporting.

1. The state health officer may issue a temporary order for emergency reporting of disease conditions or information if the state health officer finds probable cause to believe there is a threat caused by an imminent or emerging condition affecting the public health, including actual or threatened terrorism.
2. The state health officer may designate who must report, what conditions or information must be reported, what information must be contained in the report, the methods and frequency of reporting, and may make any other pertinent requirement.
3. The temporary order may be issued and is effective without regard to chapter 28-32 for a period of ninety days, unless earlier revoked by the state health officer. Emergency rulemaking must be initiated under chapter 28-32 within ninety days of the order or the order expires. The temporary order and any emergency rulemaking under this section are effective without the necessity of approval from the health council.

SECTION 3. AMENDMENT. Section 23-07.6-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.
2. "Confinement" means quarantine or isolation.
3. "Isolation" means the physical separation and restrictions on movement or travel of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from nonisolated individuals, to prevent or limit the transmission of the disease to nonisolated individuals.
4. "Local board" means a board of health as defined under section 23-35-01.
5. "Local health officer" means the health officer of a local board.
6. "Quarantine" means the physical separation and restrictions on movement or travel of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from nonquarantined individuals to prevent or limit the transmission of the disease to nonquarantined individuals.
- ~~3.~~ 7. "Respondent" means the person or group of persons ordered to be confined or restricted under this chapter.

SECTION 4. AMENDMENT. Section 23-07.6-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-02. Confinement order.

1. The state health officer or any local ~~board~~ health officer may order any person or group into confinement by a written directive if there are reasonable grounds to believe that the person or group is infected with any communicable disease ~~and is unable or unwilling to behave in a manner as not to expose other persons to danger of infection~~, the state health officer or local ~~board~~ health officer determines that the person or group poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health.
2. Conditions and principles. The state or local health officer shall adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:
 - a. Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others and may include confinement to private homes or other private and public premises.
 - b. Isolated individuals must be confined separately from quarantined individuals.
 - c. The health status of isolated and quarantined individuals must be monitored regularly to determine if they require isolation or quarantine.
 - d. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease the individual must promptly be removed to isolation.
 - e. Isolated and quarantined individuals must be immediately released when they pose no substantial risk of transmitting a contagious or possibly contagious disease to others.
 - f. The needs of persons isolated and quarantined must be addressed in a systematic and competent fashion, including providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care.
 - g. Premises used for isolation and quarantine must be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harm to persons isolated and quarantined.
 - h. To the extent possible, cultural and religious beliefs must be considered in addressing the needs of individuals and establishing and maintaining isolation and quarantine premises.
3. Cooperation. Persons subject to isolation or quarantine shall obey the health officer's rules and orders and must not go beyond the isolation or quarantine premises. Failure to obey these provisions is a class B misdemeanor.
4. Entry into isolation or quarantine premises.
 - a. Authorized entry. The state or local health officer may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.

- b. Unauthorized entry. A person, other than a person authorized by the state or local health officer, must not enter isolation or quarantine premises. Failure to obey this provision is a class B misdemeanor.
 - c. Potential isolation or quarantine. A person entering an isolation or quarantine premises with or without authorization of the state or local health officer may be isolated or quarantined pursuant to subsection 1.
5. This section does not authorize the state health officer or a local public health officer to commandeer, in whole or in part, any hospital or other medical facility.

SECTION 5. AMENDMENT. Section 23-07.6-03 of the North Dakota Century Code is amended and reenacted as follows:

~~**23-07.6-03. Contents of the order Procedures for isolation and quarantine.** The confinement order must be in writing and set forth the name of the person to be confined; the grounds for the belief that the person has a communicable disease and is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection; that the person poses a substantial threat to the public health and that confinement is necessary and is the least restrictive alternative to protect or preserve the public health; the place of designated confinement, and any conditions or restrictions necessary to protect or preserve the public health. The order must also list the respondent's rights under this chapter. A copy of the order must be given to the respondent. If the order is issued by a local board, the local board, within twenty four hours of the issuance of the order, shall notify the state health officer that the order has been issued. The order is effective for not more than thirty days. Orders of confinement under this chapter may be issued for successive periods of not more than thirty days each if issued before the last business day of the preceding period of confinement. The isolation and quarantine of an individual or groups of individuals shall be undertaken in accordance with the following procedures.~~

- 1. Temporary isolation and quarantine without notice.
 - a. Authorization. The state or a local health officer, within that officer's jurisdiction, may temporarily isolate or quarantine an individual or groups of individuals through a written directive if delay in imposing the isolation or quarantine would significantly jeopardize the health officer's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.
 - b. Content of directive. The written directive must specify the identity of the individual or groups of individuals subject to isolation or quarantine, including identification by characteristics if actual identification is impossible or impracticable; the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; the suspected contagious disease if known; and decontamination, treatment, or prevention measures that must be followed. The directive must be accompanied by a copy of this chapter and relevant definitions.
 - c. Copies. A copy of the written directive must be given to the individual to be isolated or quarantined or, if the order applies to a group of individuals and it is impractical to provide individual copies, it may be posted in a conspicuous place in the isolation or quarantine premises. The state or local health officer may also use any available mass media, including broadcasting, to provide notice and information about the written directive.
 - d. Petition for continued isolation or quarantine. Within ten days after issuing the written directive, the state or local health officer shall file a petition under subsection 2 for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals.
- 2. Isolation or quarantine with notice.

- a. Authorization. The state or a local health officer may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.
- b. Content of petition. A petition under subdivision a of subsection (2) must specify the identity of the individual or groups of individuals subject to isolation or quarantine, including identification by characteristics if actual identification is impossible or impractical; the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; the suspected contagious disease if known; recommended decontamination, treatment or preventative measures for the suspected contagious disease; a statement of compliance with the conditions and principles authorizing isolation and quarantine under this chapter; and a statement of the basis upon which isolation or quarantine is justified in compliance with this chapter. The petition must be accompanied by the sworn affidavit of the state or local health officer attesting to the facts asserted in the petition, with any further information that may be relevant and material to the court's consideration.
- c. Notice. Notice to the individuals or groups of individuals identified in the petition must be accomplished within twenty-four hours in accordance with the rules of civil procedure. The notice must include a statement that the respondent has the right to counsel, including appointed counsel if indigent and must include a copy of this chapter.

SECTION 6. AMENDMENT. Section 23-07.6-04 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-04. Place of confinement. A respondent must be confined in a place designated in the ~~order~~ written directive until the ~~entity that~~ health officer who issued the ~~order~~ written directive determines that the respondent no longer poses a substantial threat to the public health or until a court of competent jurisdiction orders the release of the respondent. The state department of health or the local board may establish and maintain places of confinement.

SECTION 7. AMENDMENT. Section 23-07.6-05 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-05. Court hearing. A hearing must be held on a petition filed under subsection 2 of section 23-07.6-03 within five days of filing the petition. For a good cause shown, the court may continue the hearing for up to ten days. A respondent has the right to a court hearing in the district court serving the county in which the respondent resides. ~~The respondent or the respondent's representative has a right to be present at the hearing.~~ A record of the proceedings pursuant to this section must be made and retained. If parties cannot personally appear before the court due to risks of contamination or the spread of disease, proceedings may be conducted by their authorized representatives and be held via any means that allows all parties to fully participate. The respondent has a right to counsel and if the respondent is indigent or otherwise unable to pay for or obtain counsel, the respondent has the right to have counsel appointed. The respondent, respondent's representative, or respondent's counsel has the right to cross-examine witnesses testifying at the hearing. ~~If the respondent, respondent's representative, or respondent's counsel requests, in writing, a hearing, the hearing must be held within seventy-two hours of receipt of the request, excluding Saturdays and holidays.~~ A request petition for a hearing does not stay the order of a written directive ordering confinement. The court shall determine by a preponderance of the evidence if the respondent is infected with a communicable disease, is unable or unwilling to behave in a manner as not to expose other persons to danger of infection, if the respondent poses a substantial threat to the public health, and if confinement is necessary and is the least restrictive alternative to protect or preserve the public health. The court shall also determine whether to order the respondent to follow the state or local health officers directive for decontamination, treatment, or preventative measures if the petition is granted. ~~If the order is written directive was issued by a local board health officer,~~ the state health officer has the right to be made a party to the proceedings.

SECTION 8. AMENDMENT. Section 23-07.6-06 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-06. Notice of hearing. Notice of the hearing must be given to the respondent and must inform the respondent of the respondent's ~~rights~~ right to counsel or appointed counsel under this chapter and must include a copy of this chapter.

SECTION 9. AMENDMENT. Section 23-07.6-07 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-07. Access to records. Before a hearing conducted under this chapter, the respondent, respondent's representative, or respondent's counsel, ~~and the attorney for the state or local health officer~~ must be afforded access to all records including hospital records if the respondent is hospitalized. If the respondent is hospitalized at the time of the hearing, the hospital shall make available at the hearing for use by the respondent, respondent's representative, ~~or~~ respondent's counsel, and the attorney for the state or local health officer all records in its possession relating to the conditions of the respondent.

SECTION 10. AMENDMENT. Section 23-07.6-08 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-08. Burden of proof. At a hearing conducted under this chapter, the ~~entity that~~ health officer who ordered confinement has the burden of showing by ~~clear and convincing a preponderance of the~~ evidence that the respondent is infected with a communicable disease, ~~is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection,~~ and poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health.

SECTION 11. AMENDMENT. Section 23-07.6-09 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-09. Court findings and orders. If the court finds by ~~clear and convincing a~~ preponderance of the evidence that the respondent is infected with a communicable disease, ~~is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection,~~ and poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health, the court may order the continued confinement of the respondent under any conditions and restrictions the court determines appropriate for decontamination, treatment, or prevention, including remand to the health officer that petitioned the court or issued the original directive, until the ~~entity~~ health officer that issued the original written directive for confinement ~~order~~ determines that the respondent's release would not constitute a substantial threat to the public health, or may order the release of the respondent under any conditions and restrictions the court determines appropriate to protect the public health. If the court fails to find that the conditions required for an order for confinement have been proven, the court shall order the immediate release of the respondent.

SECTION 12. AMENDMENT. Section 23-07.6-10 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-10. Request to terminate or modify an order - Review of confinement orders. A respondent may, at any time, request the court to terminate or modify an order of the court, in which case a hearing must be held in accordance with this chapter. Upon its own motion, the court ~~periodically shall~~ may conduct a hearing to determine if the conditions requiring the confinement or restriction of the respondent continue to exist. Notice of at least five days, but no more than ten business days, must be provided to all parties to the hearing under this section. If the court, at a hearing held upon motion of the respondent or its own motion, finds that the conditions requiring confinement or restriction no longer exist, the court shall order the immediate release of the respondent. If the court finds that the conditions continue to exist but that a different remedy is appropriate under this chapter, the court may modify its order accordingly.

SECTION 13. AMENDMENT. Section 23-07.6-11 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-11. Closed hearing - Confidentiality of information. At the request of the respondent, a hearing conducted under this chapter must be closed and any report, transcript, record, or other information relating to actions taken under this chapter must be kept confidential. Deidentified information may be released to the public under chapter 23-01.3.

SECTION 14. AMENDMENT. Section 23-07.6-12 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-12. Right of appeal. Any party aggrieved by an order of the district court under this section may appeal to the supreme court. An order of confinement continues in effect while the matter is on appeal.

SECTION 15. AMENDMENT. Subsection 8 of section 23-35-08 of the North Dakota Century Code is amended and reenacted as follows:

8. May adopt ~~quarantine~~ confinement, decontamination, and sanitary measures in compliance with chapter 23-07.6 which are necessary when an infectious or contagious disease exists.

SECTION 16. AMENDMENT. Subdivision h of subsection 2 of section 23-35-12 of the North Dakota Century Code is amended and reenacted as follows:

- h. May determine when ~~quarantine~~ confinement and ~~disinfection~~ decontamination is necessary for the safety of the public. The local health officer may establish ~~quarantines~~ confinements consistent with procedures provided under chapter 23-07.6 and perform any acts required for ~~disinfection~~ decontamination when necessary.

SECTION 17. AMENDMENT. Subsection 2 of section 40-06-01 of the North Dakota Century Code is amended and reenacted as follows:

2. In and over all places within one-half mile [804.67 meters] of the municipal limits for the purpose of enforcing health ~~and quarantine~~ ordinances and regulations, ~~subject to chapter 23-07.6,~~ and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the municipality.

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. 1414.

House Vote: Yeas 84 Nays 8 Absent 2

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

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