

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 224

SENATE BILL NO. 2296

(Senators Mathern, Lyson, Nelson, Grindberg)
(Representatives DeKrey, Ruby)

MENTAL ILLNESS COMMITMENT PROCEDURES

AN ACT to amend and reenact section 25-03.1-02 and subsection 1 of section 25-03.1-18.1 of the North Dakota Century Code, relating to mental illness commitment procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁵ **SECTION 1. AMENDMENT.** Section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-02. Definitions. In this chapter, unless the context requires otherwise:

1. "Alternative treatment order" means an involuntary outpatient order for a treatment program, other than hospitalization, which may include treatment with a prescribed medication.
2. "Chemically dependent person" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
- ~~2.~~ 3. "Consent" means voluntary permission that is based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.
- ~~3.~~ 4. "Court" means, except when otherwise indicated, the district court serving the county in which the respondent resides.
4. 5. "Department" means the department of human services.
- ~~5.~~ 6. "Director" means the director of a treatment facility or the director's designee.

¹¹⁵ Section 25-03.1-02 was also amended by section 1 of House Bill No. 1165, chapter 432.

- ~~6.~~ 7. "Expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist, an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist trained in a clinical program, and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician or licensed addiction counselor.
- ~~7.~~ 8. "Independent expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist; and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician or licensed addiction counselor.
- ~~8.~~ 9. "Magistrate" means the judge of the appropriate district or juvenile court or a judge assigned by the presiding judge of the judicial district.
- ~~9.~~ 10. "Mental health professional" means:
- a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
 - b. A social worker with a master's degree in social work from an accredited program.
 - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
 - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c or of an expert examiner.
 - e. A licensed addiction counselor.
 - f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.
- ~~10.~~ 11. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded person of significantly subaverage general intellectual

functioning which originates during the developmental period and is associated with impairment in adaptive behavior, although a person who is mentally retarded may also suffer from a mental illness. Chemical dependency does not per se constitute mental illness, although persons suffering from that condition may also be suffering from mental illness.

- ~~44.~~ 12. "Person requiring treatment" means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated there exists a serious risk of harm to that person, others, or property. "Serious risk of harm" means a substantial likelihood of:
- a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
 - b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;
 - c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or
 - d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.
- ~~42.~~ 13. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or 23-17.1.
- ~~43.~~ 14. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.
- ~~44.~~ 15. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
- ~~45.~~ 16. "Qualified service organization" means a person or entity that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, it is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.
- ~~46.~~ 17. "Respondent" means a person subject to petition for involuntary treatment.
- ~~47.~~ 18. "Superintendent" means the state hospital superintendent or the superintendent's designee.
- ~~48.~~ 19. "Third-party payer" means a person or entity who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a

contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person or entity providing audit or evaluation activities for the third-party payer.

49. 20. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder or chemical dependency.

SECTION 2. AMENDMENT. Subsection 1 of section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Upon notice and hearing, a treating psychiatrist may request authorization from the court to treat a person under a mental health treatment order with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, the treating psychiatrist and another licensed physician or psychiatrist not involved in the current diagnosis or treatment of the patient shall certify:
 - (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and ~~there is a reasonable expectation that if the person is not treated as proposed there exists a serious risk of harm to that person, other persons, or property~~ that the patient is a person requiring treatment;
 - (2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
 - (3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
 - (4) That the benefits of the treatment outweigh the known risks to the patient.
- b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.

Approved April 9, 2003
 Filed April 9, 2003

CHAPTER 225

HOUSE BILL NO. 1163

(Human Services Committee)

(At the request of the Department of Human Services)

MENTAL ILLNESS TREATMENT DISCLOSURE

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.~~

40. ~~Law enforcement agencies to confirm and investigate the address of a person required to register under section 42.1-32-15.~~

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.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 226**SENATE BILL NO. 2345**
(Senator Trenbeath)**SCREENING FOR PUBLIC TREATMENT FACILITY
ADMISSIONS**

AN ACT to amend and reenact section 25-03.1-04 of the North Dakota Century Code, relating to the preparation of health care directives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-04. Screening and admission to a public treatment facility. Under rules adopted by the department, screening and admission of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or chemical dependency must be performed by a regional human service center. This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a qualified mental health professional, the individual's legal guardian, a minor's parent or legal custodian, or the individual requesting services, the regional human service center shall conduct a screening. If a request for screening is made by a qualified mental health professional and the individual that is the subject of the screening does not authorize the disclosure of the individual's protected health information, upon the request of the regional human service center, any mental health professional who has treated the individual within the previous six months shall disclose, subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human service center any relevant protected health information regarding that treatment. Upon receipt of the request, the regional human service center shall arrange for a screening of the individual and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or director shall immediately designate a physician, psychiatrist, psychologist, or mental health professional to examine the individual.

Approved April 24, 2003
Filed April 24, 2003

CHAPTER 227

SENATE BILL NO. 2045

(Legislative Council)
(Judiciary A Committee)

INVOLUNTARY TREATMENT AND COMMITMENT PROCEDURES

AN ACT to amend and reenact sections 25-03.1-11 and 25-03.1-19 and subsection 2 of section 25-03.1-26 of the North Dakota Century Code, relating to involuntary treatment and commitment procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-11. Involuntary treatment - Examination - Report.

1. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:
 - ~~1.~~ a. Evaluations of the respondent's physical condition and mental status.
 - ~~2.~~ b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
 - ~~3.~~ c. If the report concludes that the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
 - ~~4.~~ d. The signature of the examiner who prepared the report.
2. If the expert examiner concludes that the respondent is not a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent is a person requiring treatment, or makes no conclusion thereon, the court shall set a date for hearing and shall give notice of hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be suffering from mental illness or a combination of mental illness and chemical

dependency, the preliminary hearing date must be within ~~seven~~ four days, exclusive of weekends and holidays, of the date respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If a preliminary hearing is not required, the treatment hearing must be held within ~~seven~~ four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served.

SECTION 2. AMENDMENT. Section 25-03.1-19 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-19. Involuntary treatment hearing. The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing must be held within ~~seven~~ four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

The hearing must be held in the county of the respondent's residence or location or the county where the state hospital or treatment facility treating the respondent is located. At the hearing, evidence in support of the petition must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All persons not necessary for the conduct of the proceeding must be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the respondent. The court shall receive all relevant and material evidence which may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner.

If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, it shall deny the petition, terminate the proceeding, and order that the respondent be discharged if the respondent has been hospitalized before the hearing.

SECTION 3. AMENDMENT. Subsection 2 of section 25-03.1-26 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing, if the respondent is alleged to be suffering from mental illness or from a combination of mental illness and chemical dependency, or a treatment hearing, if the respondent is alleged to be suffering from chemical dependency, to be held no later than ~~seven~~ four days, exclusive of weekends and holidays, after detention unless the person has been released as a person not requiring treatment, has been voluntarily admitted for treatment, has requested or agreed to a continuance, or unless the hearing has been extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

Approved April 18, 2003

Filed April 18, 2003

CHAPTER 228

SENATE BILL NO. 2070

(Judiciary Committee)

(At the request of the Department of Human Services)

INTERSTATE TREATMENT CONTRACTS

AN ACT to create and enact a new section to chapter 25-03.1 of the North Dakota Century Code, relating to interstate contracts for the treatment of individuals with mental illness or chemical dependency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

Interstate contracts for treatment of mental illness or chemical dependency.

1. For purposes of this section, "bordering state" means Minnesota, Montana, or South Dakota.
2. Unless prohibited by another law and subject to the exceptions in subsection 3, the department may contract with any appropriate treatment facility in a bordering state for the treatment of mental illness or chemical dependency for residents of North Dakota. The department may also contract with any public or private agency or facility to provide treatment of mental illness or chemical dependency in North Dakota to residents of a bordering state. An individual who receives treatment for mental illness or chemical dependency in another state under this section is subject to the laws of the state in which treatment is provided. An individual who receives treatment in another state under this section must be informed of the consequences of receiving treatment in another state, including the implications of the differences in state laws.
3. A contract may not be entered under this section for treatment to individuals who:
 - a. Are serving a sentence after conviction of a criminal offense;
 - b. Are on probation or parole;
 - c. Are the subject of a presentence investigation; or
 - d. Have been committed involuntarily in North Dakota under chapter 25-03.1 for treatment of mental illness or chemical dependency, except as provided under subsection 5.
4. Contracts entered under this section must, at a minimum:
 - a. Describe the services to be provided;
 - b. Establish responsibility for the costs of services;

- c. Establish responsibility for the costs of transporting individuals receiving services under this section;
 - d. Specify the duration of the contract;
 - e. Specify the means of terminating the contract;
 - f. Specify the terms and conditions for refusal to admit or retain an individual; and
 - g. Identify the goals to be accomplished by the placement of an individual under this section.
5. The department may enter negotiations with appropriate personnel of a bordering state to develop an agreement that conforms to the requirements of this section. An agreement with a bordering state must enable the placement in North Dakota of individuals who are on emergency holds or who have been involuntarily committed as mentally ill or chemically dependent in a bordering state and enable the temporary placement in a bordering state of patients who are on emergency holds in North Dakota under chapter 25-03.1. An agreement with a bordering state must also provide that the North Dakota courts retain jurisdiction over North Dakota residents, and that the bordering state affords to North Dakota residents the rights afforded to them under North Dakota law. Individuals committed by a court of a bordering state and placed in North Dakota facilities continue to be in the legal custody of the bordering state. The bordering state's laws governing length of commitment, reexaminations, and extension of commitment must continue to apply to these residents. In all other respects, residents of a bordering state placed in North Dakota facilities are subject to North Dakota laws. An agreement with a bordering state must specify that responsibility for payment for the cost of care of a resident of a bordering state remains with the bordering state of which that individual is a resident and the cost of care of a North Dakota resident remains with the state of North Dakota.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 229**HOUSE BILL NO. 1228**

(Representatives Maragos, Keiser)

(Senators Espegard, Seymour)

**RESIDENTIAL TREATMENT CENTER AND CHILD
CARE FACILITY MORATORIUM**

AN ACT to amend and reenact sections 25-03.2-03.1 and 50-11-02.3 of the North Dakota Century Code, relating to continuing a moratorium on the expansion of residential treatment center for children and residential child care facility or group home bed capacity; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

25-03.2-03.1. (Effective through June 30, ~~2003~~ 2005) Moratorium on expansion of residential treatment center for children bed capacity. Notwithstanding sections 25-03.2-03 and 25-03.2-08, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential treatment center for children above the state's gross number of beds licensed as of June 30, ~~4999~~ 2003.

SECTION 2. AMENDMENT. Section 50-11-02.3 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.3. (Effective through June 30, ~~2003~~ 2005) Moratorium on expansion of residential child care facility or group home bed capacity. Notwithstanding sections 50-11-02 and 50-11-09, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential child care facility or a group home above the state's gross number of beds licensed as of June 30, ~~4999~~ 2003.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2005, and after that date is ineffective.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 230

HOUSE BILL NO. 1425 (Representatives Galvin, Grande) (Senator Tollefson)

DEVELOPMENTALLY DISABLED RECORD CONFIDENTIALITY

AN ACT to amend and reenact section 25-16-07 of the North Dakota Century Code, relating to the disclosure of individual records of a treatment or care center for developmentally disabled individuals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁶ **SECTION 1. AMENDMENT.** Section 25-16-07 of the North Dakota Century Code is amended and reenacted as follows:

25-16-07. Records of treatment or care center confidential. ~~No~~ An agent of the department of human services or the superintendent of the developmental center at westwood park, Grafton or the licensee or their agents or employees may not disclose the contents of the individual records of a treatment or care center for developmentally disabled ~~persons~~ individuals, nor of the reports received ~~therefrom~~ from those records, except:

1. In a judicial proceeding when ordered by the presiding judge;
2. To officers of the law or any other legally constituted boards or agencies serving the interests of the residents; ~~or~~
3. To the parents or legal guardians of the resident-;
4. To a physician to aid in the treatment of an individual within the fourth degree of consanguinity of a deceased resident, if the disclosure is limited to genetic health information that has a direct bearing on the health of the relative, the relative's child, or the relative's decision to have a child; or
5. To an individual who is within the fourth degree of consanguinity of a deceased resident, if the disclosure is limited to information about a resident needed to establish a family's genealogy.

Approved April 21, 2003
Filed April 21, 2003

¹¹⁶ Section 25-16-07 was also amended by section 16 of House Bill No. 1438, chapter 211.

CHAPTER 231

SENATE BILL NO. 2086

(Human Services Committee)

(At the request of the Department of Human Services)

DEVELOPMENTAL DISABILITY CARE FEES

AN ACT to create and enact a new chapter to title 25 of the North Dakota Century Code, relating to implementation of a fee for service ratesetting system for payment to treatment or care centers for individuals with developmental disabilities; to repeal sections 25-16-10, 25-16-10.1, 25-16-15, 25-16-16, and 50-06-18 of the North Dakota Century Code, relating to the purchase of services provided to individuals with developmental disabilities and allowing providers of services to individuals with developmental disabilities to transfer funds between budget categories and line items; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 25 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of human services.
2. "Fee for service" means a prospective rate based on allowable historical costs established by the department for payment of services provided to individuals with developmental disabilities by a treatment or care center.
3. "Historical operating costs" means the allowable costs of operating a treatment or care center during the reporting year in compliance with licensing standards prescribed by the department but does not include an annual return on investment in fixed assets related to client care.
4. "Treatment or care center" means an entity providing services to individuals with developmental disabilities and licensed by the department as an intermediate care facility for the mentally retarded as defined in the section 1905(d) of the Social Security Act [42 U.S.C. § 1396d(d)]; group home; or a provider of day supports, supported living arrangement, extended services, or infant development services.

Workgroup - Membership - Facilitator. A workgroup composed of one voting member appointed by the governor, three voting members from the department who are selected by the department, and three voting members from the North Dakota association of community facilities who are selected by the association is created. All meetings of the workgroup are open to the public. Subject to legislative appropriations, the workgroup shall hire a facilitator to lead the discussions relative to a new fee-for-service payment system for treatment or care centers and a consultant to perform the financial modeling and evaluation of the current and future payment system. If the workgroup does not receive funding from the legislative assembly for a facilitator, the workgroup shall select one member from

the department and one member from the association to serve as cochairmen of the workgroup.

Purchase of services. The department may purchase, from funds appropriated to it for that purpose, residential care, custody, treatment, training, and education for individuals with developmental disabilities from any treatment or care center licensed in this state.

Fee-for-service system - Fee determination. By July 1, 2005, the department shall implement a fee-for-service system of payment for services provided to individuals with developmental disabilities by treatment or care centers. The workgroup shall establish procedures for determining interim fees for new providers or new services. In order to receive payment from the department, a treatment or care center shall file with the department a claim for service rendered to an individual with a developmental disability. The fee-for-service system implemented by the department must require that a treatment or care center be responsible for its own operating costs and that the fee paid for service represents payment in full to the treatment or care center for services rendered.

Limitation on owner compensation for services provided. In establishing the fee to be paid for a service, the amount of total annual compensation allowed for an owner acting in an executive or administrative capacity must be limited as follows:

Number of clients served:	Compensation limit:
1 - 15	\$25,000
16 - 30	\$35,000
31 - 45	\$45,000
46+	\$50,000

The limits in this section are intended to be the total compensation allowed by this state in any one year regardless of the number of owners performing work for the treatment or care center. A proration of the total compensation for owners who perform services in this state and who perform services in other states must be made on the basis of individual time distribution records. For family members working in direct care, housekeeping, maintenance, dietary, or clerical positions, wages are limited to the wage paid to any nonrelated employee, with the same qualifications and experience, working in a similar job function for that organization. The allowable compensation limit is inclusive of all salaries and related fringe benefits and may not be construed to be an addition or enhancement to the fee payable to a treatment or care center.

Extraordinary client needs - Effect on fee. The workgroup shall develop criteria identifying extraordinary needs of individuals with developmental disabilities so severe as to make it difficult for the affected individuals to secure necessary services from a treatment or care center at the ordinary fee. Notwithstanding any other provision of this chapter, the department may determine specific fees for services provided by a treatment or care center to an individual with extraordinary needs.

Trust fund. Effective July 1, 2005, there is in the state treasury a special fund known as the developmental disabilities fee enhancement fund. The fund shall be established with not more than two-tenths of one percent of the total general fund moneys appropriated to the department for the biennium beginning July 1, 2005, for payment of the fees established under this chapter. Trust funds may be expended for reasonably unforeseeable costs experienced by treatment or care centers, one-time improvements made by a treatment or care center in order to comply with

life safety code requirements, or the additional costs associated with providing services to individuals with extraordinary needs.

Transition to establishment of fees. For payment of services furnished by treatment or care centers prior to July 1, 2005, the department shall operate the ratesetting process as it presently exists. The workgroup shall establish new protocols and methodologies for transitioning to a new payment system to permit an orderly transition to the establishment of fees under this chapter.

Federal requirements - Supremacy. If any provision of this chapter is determined by the United States government to be in conflict with existing or future requirements of the United States government so as to limit or preclude federal financial participation in medical assistance, the department shall comply with the federal requirements to the extent necessary to obtain federal financial participation and shall not comply with the provisions of this chapter if necessary to avoid a loss of federal financial participation.

Exclusion of state-owned or state-operated treatment or care centers. This chapter does not apply to state-owned or state-operated treatment or care centers.

Rulemaking authority of the department. The department shall establish, by rule, the procedures, as determined by the workgroup, for determining the fees to be paid for services provided by a treatment or care center and for implementing the other provisions of this chapter. Rules adopted under this chapter may be adopted through the emergency rulemaking process, if necessary.

Reporting to legislative council. During the 2003-04 interim, the department shall report to the legislative council regarding its progress in developing a fee-for-service payment system for treatment or care centers.

SECTION 2. REPEAL. Sections 25-16-10 and 25-16-15 of the North Dakota Century Code are repealed.

SECTION 3. REPEAL. Sections 25-16-10.1, 25-16-16, and 50-06-18 of the North Dakota Century Code are repealed.

SECTION 4. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 2005.

SECTION 5. EFFECTIVE DATE. By October 1, 2004, the department shall certify to the legislative council whether the department and the service providers reached an agreement on a new fee-for-service system.

Approved April 18, 2003

Filed April 18, 2003