

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact sections 25-01.2-01, 25-01.2-03, 25-01.2-04,  
2 25-01.2-05, 25-01.2-06, 25-01.2-08, 25-01.2-09, 25-01.2-10, 25-01.2-11, 25-01.2-12,  
3 25-01.2-14, 25-01.2-15, 25-01.2-16, and 25-04-02.1, subsection 4 of section 25-04-05,  
4 subsection 2 of section 25-16-01, section 25-16-04, subsection 2 of section 25-16.1-01, section  
5 25-16.1-03, and subsection 2 of section 25-18-01 of the North Dakota Century Code, relating to  
6 updating definitions and code sections to reflect person first language, updating language to  
7 reflect rights of the developmentally disabled, and to clarify inspection of facilities.

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

9 **SECTION 1. AMENDMENT.** Section 25-01.2-01 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **25-01.2-01. Definitions.**

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

- 13 1. "Applicant" means an entity that has requested licensure from the department.  
14 2. "Department" means the department of human services.  
15 3. "Developmental disability" means a severe, chronic disability of an individual which:  
16 a. Is attributable to a mental or physical impairment or combination of mental and  
17 physical impairments;  
18 b. Is manifested before the individual attains age twenty-two;  
19 c. Is likely to continue indefinitely;  
20 d. Results in substantial functional limitations in three or more of the following areas  
21 of major life activity:  
22 (1) Self-care;  
23 (2) Receptive and expressive language;  
24 (3) Learning;

- 1 (4) Mobility;
- 2 (5) Self-direction;
- 3 (6) Capacity for independent living; and
- 4 (7) Economic sufficiency; and
- 5 e. Reflects the individual's needs for a combination and sequence of special,
- 6 interdisciplinary, or generic care, treatment, or other services which are of lifelong
- 7 or extended duration and are individually planned and coordinated.
- 8 4. "Individualized setting" means a setting where an individual owns or rents the
- 9 individual's residence and a public or private agency or organization provides services
- 10 to an individual with a developmental disability.
- 11 ~~2-5.~~ "Institution or facility" means any school, hospital, residence center, group home, or
- 12 any other ~~facility~~setting operated by any public or private agency, or organization, ~~or~~
- 13 ~~institution, which~~that provides services to an individual with a developmental disability.
- 14 ~~3-6.~~ "Least restrictive appropriate setting" means that setting ~~which~~that allows ~~the~~an
- 15 individual with a developmental disability to develop and realize the individual's fullest
- 16 potential and enhances the individual's ability to cope with the individual's environment
- 17 without unnecessarily curtailing fundamental personal liberties.
- 18 7. "License" means authorization by the department to provide services to individuals
- 19 with developmental disabilities, pursuant to chapter 25-16.
- 20 ~~4-8.~~ "Service or services ~~for~~to an individual with a developmental disability" means services
- 21 provided by any public or private agency, or organization, ~~or institution~~, directed
- 22 toward the alleviation of a developmental disability or toward the social, personal,
- 23 physical, or economic habilitation or rehabilitation of an individual with a
- 24 developmental disability.

25 **SECTION 2. AMENDMENT.** Section 25-01.2-03 of the North Dakota Century Code is

26 amended and reenacted as follows:

27 **25-01.2-03. Presumption of incompetence prohibited - Discrimination prohibited -**

28 **Deprivation of constitutional, civil, or legal rights prohibited.**

29 An individual with a developmental disability may not be presumed to be incompetent and

30 may not be deprived of any constitutional, civil, or legal right solely because of admission to or

31 residence at an institution ~~or~~, facility, or individualized setting or solely because of receipt of

1 services ~~for~~to individuals with a developmental ~~disability~~disabilities. However, nothing in this  
2 section may be construed to limit or modify section 16.1-01-04. The constitutional, civil, or legal  
3 rights which may not be varied or modified under the provisions of this section include:

- 4 1. The right to vote at elections;
- 5 2. The free exercise of religion;
- 6 3. The right of reasonable opportunities to interact with members of the opposite sex;
- 7 and
- 8 4. The right to confidential handling of personal and medical records.

9 **SECTION 3. AMENDMENT.** Section 25-01.2-04 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **25-01.2-04. Mail, telephone, and visitationCommunication rights –Application to-**  
12 **residential institution or facility.**

- 13 1. Except as provided in this section, every subsection, a public or private agency or  
14 organization licensed by the department to provide services to an individual with a  
15 developmental disability who resides in a mental health or developmental-  
16 disabilitiesan institution or, facility, or individualized setting, shall ensure the individual  
17 has the right of private, unimpeded, and uncensored communication, including  
18 visitation, with persons of the resident'sindividual's choice by mail, telephone, and  
19 visitation. Any restriction of these rights must be documented in the individual's  
20 person-centered service plan.
- 21 a.2. The facility directorExcept as provided in this subsection, a public or private agency or  
22 organization not licensed by the department to provide services to an individual with a  
23 developmental disability who resides in an institution, facility, or individualized setting  
24 shall ensure that correspondence can be conveniently received and mailed, that  
25 telephones are reasonably accessible, and that space for private visitation is available.
- 26 b. The facility directorpublic or private agency or organization may establish in writing  
27 reasonable times and places for use of telephones and for visits, provided that a-  
28 resident'san individual's ability to contact an attorney, guardian, or custodian, may not  
29 be restricted and provided that any rules or restrictions must be posted in each  
30 residentialinstitution, facility, or individualized setting. A copy of any rules or restrictions  
31 must be given to all residentsindividuals over eighteen years of age and, to the

1 parents or custodians of all individuals under eighteen years of age, or guardian of all-  
2 residents under eighteen years of age, upon admission.

3 ~~2.~~ This section applies only with respect to an institution or facility that provides  
4 residential care.

5 **SECTION 4. AMENDMENT.** Section 25-01.2-05 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **25-01.2-05. Personal property ~~Application to residential institution or facility.~~**

8 ~~1.~~ Except in the circumstances and under the conditions as provided in this  
9 section subsection, every resident of an institution or facility a public or private agency  
10 or organization licensed by the department to provide services to an individual with a  
11 developmental disability who resides in an institution, facility, or individualized setting  
12 must be permitted to receive, possess, and use lawful personal property and must be  
13 provided with a secure, convenient, and reasonable amount of storage space for that  
14 property. Any restriction of these rights must be documented in the individual's  
15 person-centered service plan.

16 ~~1.2.~~ The facility director A public or private agency or organization not licensed by the  
17 department to provide services to an individual with a developmental disability who  
18 resides in an institution, facility, or individualized setting may restrict the possession  
19 and use of certain classes of property which may be dangerous or may harm a  
20 resident an individual.

21 ~~2.3.~~ Notice of any restrictions must be immediately given in writing to all  
22 residents individuals over eighteen years of age and, to the parents or custodian of all  
23 individuals under eighteen years of age, or guardian of all residents under eighteen-  
24 years of age, upon admission.

25 ~~3.4.~~ When a resident an individual is discharged from the institution or facility services  
26 provided from a public or private agency or organization, all of the  
27 resident's individual's lawful personal property which that is in the custody of the  
28 facility public or private agency or organization must be returned to the  
29 resident individual.

30 This section applies only with respect to an institution or facility that provides residential care.

1       **SECTION 5. AMENDMENT.** Section 25-01.2-06 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **25-01.2-06. Labor - Wages - Money --~~Application to residential institution or facility.~~**

4       ~~A resident or service recipient may consent to perform labor for a service provider if the~~  
5 ~~professional responsible for overseeing the implementation of that resident's individual~~  
6 ~~habilitation plan determines that the labor would be consistent with that plan.~~

7       1. ~~A resident or service recipient~~An individual with a developmental disability must be  
8 permitted to seek employment and work in integrated settings if the individual's  
9 person-centered service plan identifies this as a desire of the individual.

10       2. An individual with a developmental disability who performs labor ~~which~~that is of any  
11 consequential economic benefit to a ~~service provider~~public or private agency or  
12 organization shall receive wages ~~which~~that are commensurate with the value of the  
13 work performed, in accordance with applicable federal and state laws and regulations.  
14 ~~A resident~~An individual of an institution, facility, or individualized setting may be  
15 required to perform tasks of a personal housekeeping nature in the individual's living  
16 quarters without compensation.

17       ~~2.3.~~ ~~A resident~~An individual with a developmental disability may use the  
18 ~~resident's~~individual's money as the ~~resident~~individual chooses, unless the  
19 ~~resident~~individual is a minor, is prohibited from doing so under a court guardianship or  
20 conservatorship order, or the use would be inconsistent with the ~~resident's individual~~  
21 ~~habilitation~~individual's person-centered service plan. ~~A minor or a person under~~  
22 ~~guardianship or conservatorship may be required to deposit the person's money with~~  
23 ~~the service provider, or in a financial institution in the name of a parent, guardian, or~~  
24 ~~conservator, and may be permitted to use the money in accordance with written~~  
25 ~~instructions of the parent, guardian, or conservator.~~

26       ~~3.4.~~ ~~A resident~~An individual with a developmental disability may deposit money, or cause  
27 money to be deposited, in the ~~resident's~~individual's name with a financial institution of  
28 the ~~resident's~~individual's choice, or the ~~resident~~individual may deposit the money with  
29 a ~~service provider~~public or private agency or organization. The ~~service provider~~public  
30 or private agency or organization may not retain any money deposited with the ~~service~~  
31 ~~provider~~public or private agency or organization under this subsection, but shall hold

1 all such funds in an account in the resident's ~~individual's~~ name. All earnings attributable  
2 to a resident's ~~an individual's~~ money shall ~~must~~ accrue to the resident ~~individual~~.

3 ~~4.5.~~ No service provider ~~public or private agency or organization~~, nor any of the service-  
4 provider's ~~public or private agency or organization's~~ employees shall ~~may~~ be made  
5 representative payee for a resident's social security, pension, annuity, trust fund, or  
6 any other form of direct payment or assistance ~~an individual~~ without the  
7 resident's ~~individual's~~ informed consent.

8 ~~5.6.~~ When a resident ~~an individual~~ is discharged, all of the resident's ~~individual's~~ money,  
9 including earnings, shall ~~must~~ be returned to the resident ~~individual~~.

10 ~~7.~~ This section applies only with respect to an institution or facility that provides  
11 residential care ~~public or private agency or organization licensed by the department~~  
12 ~~to provide services to an individual with a developmental disability~~.

13 **SECTION 6. AMENDMENT.** Section 25-01.2-08 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **25-01.2-08. Medication - Chemical restraints.**

16 ~~No~~ An individual with a developmental disability receiving services at ~~any institution or~~  
17 ~~facility for individuals~~ from a public or private agency or organization licensed by the department  
18 to provide services to an individual with ~~a developmental disabilities~~ disability may ~~at any time~~ not  
19 be administered at any time any drug or medication, or be chemically restrained or tranquilized  
20 in any manner, except upon the written authorization of a licensed physician when necessary  
21 and appropriate as an element of the service being received or as a treatment of any medical or  
22 physical condition in conformity with accepted standards for that treatment. The nature, amount  
23 of, and reasons for the administration of any drug or medication must be promptly recorded in  
24 the ~~person's~~ individual's medical record. This intervention must be approved by the individual  
25 over eighteen years of age, parents or custodian of the individual under eighteen years of age,  
26 or guardian and must be documented in the individual's person-centered service plan.

27 **SECTION 7. AMENDMENT.** Section 25-01.2-09 of the North Dakota Century Code is  
28 amended and reenacted as follows:

1           **25-01.2-09. Punishment - Isolation - Physical restraints - Psychosurgery - Sterilization**  
2   **- Shock treatment.**

3           ~~No~~An individual with a developmental disability receiving services at any institution or  
4 facility for individuals from a public or private agency or organization licensed by the department  
5 to provide services to an individual with a developmental disabilities ~~disability~~ may not at any  
6 time:

- 7           1. Be subjected to any corporal punishment.
- 8           2. Be isolated or secluded, except in emergency situations when necessary for the  
9 control of violent, disturbed, or depressed behavior which may immediately result, or  
10 has resulted, in harm to that individual or other individuals.
- 11          3. Be physically restrained in any manner, except in emergency situations when  
12 necessary for the control of violent, disturbed, or depressed behavior which may  
13 immediately result, or has resulted, in harm to that individual or to other individuals.
- 14          4. Be subjected to psychosurgery, sterilization, medical behavioral research, or  
15 pharmacological research, except in conformity with an order of a court of competent  
16 jurisdiction. Under no circumstances may an individual receiving treatment be  
17 subjected to hazardous or intrusive experimental research which is not directly related  
18 to the specific goals of that individual's treatment program.
- 19          5. Be subjected to electroconvulsive therapy or shock treatment without that individual's  
20 or guardian's written and informed consent. If the recipient of services is a minor, the  
21 recipient's parent, custodian, or guardian may provide informed consent for that  
22 treatment, which the parent, custodian, or guardian believes to be in the recipient's  
23 best interests.

24           **SECTION 8. AMENDMENT.** Section 25-01.2-10 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26           **25-01.2-10. Seclusion or physical restraint - ~~Facility administrator~~Administrator to be**  
27 **notified.**

- 28           1. Whenever a ~~person~~an individual with a developmental disability receiving services  
29 from a public or private agency or organization not licensed by the department, is  
30 placed in seclusion or is physically restrained, the ~~facility~~public or private agency or  
31 organization administrator or the administrator's representative must be notified and

1 shall determine if the isolation or restraint is necessary. The isolation or restraint may  
2 be continued only upon written order of the administrator or the administrator's  
3 representative and for a period of not more than twenty-four hours. Any  
4 ~~person~~individual who is in seclusion or who is physically restrained must be checked  
5 by an attendant at least once every thirty minutes.

6 2. A public or private agency or organization licensed by the department to provide  
7 services to an individual with a developmental disability may not place an individual in  
8 seclusion. If an individual with a developmental disability receiving services from a  
9 public or private agency or organization licensed by the department is physically  
10 restrained, the public or private agency or organization administrator or the  
11 administrator's representative must be notified and shall determine if the restraint is  
12 necessary. The restraint may be continued only upon written order of the administrator  
13 or the administrator's representative and for a period of not more than twenty-four  
14 hours. An individual who is physically restrained must be checked by an attendant at  
15 least once every thirty minutes.

16 **SECTION 9. AMENDMENT.** Section 25-01.2-11 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **25-01.2-11. Psychosurgery, sterilization, or research - Court order required - Hearing -**  
19 **Right to attorney at public expense - ~~Application to residential institution or facility.~~**

20 A court of competent jurisdiction may issue the orders required for the procedures or  
21 treatments in subsection 4 of section 25-01.2-09 upon application of the party alleging the  
22 necessity of the procedure, the individual who is receiving or is entitled to receive the treatment,  
23 or the individual's parents or custodian of the individual under eighteen years of age, or  
24 guardian, following a hearing on the application.

- 25 1. The individual receiving or entitled to treatment shall:
- 26 a. Receive prior notice of the hearing;
  - 27 b. Have the right and the opportunity to present evidence; and
  - 28 c. Have the right to be confronted with and to cross-examine witnesses.
- 29 2. If the individual with a developmental disability is indigent, counsel shall be provided at  
30 public expense not less than ten days before the hearing.

1           3.    The burden of proof is on the party alleging the necessity of the procedure or  
2           treatment.

3           4.    An order allowing the procedure or treatment may not be granted unless the party  
4           alleging the necessity of the procedure or treatment proves by clear and convincing  
5           evidence that the procedure is in the best interest of the recipient and that no less  
6           drastic measures are feasible.

7   ~~This section applies only with respect to an institution or facility that provides residential care.~~

8           **SECTION 10. AMENDMENT.** Section 25-01.2-12 of the North Dakota Century Code is  
9   amended and reenacted as follows:

10          **25-01.2-12. Diet ~~Application to residential institution or facility.~~**

11          ~~Every resident of any institution or facility must be provided with a nutritionally adequate~~  
12          ~~and sufficient diet planned by a qualified dietician. This section applies only with respect to an~~  
13          ~~institution or facility that provides residential care~~individual with a developmental disability  
14          receiving services from a public or private agency or organization licensed by the department to  
15          provide services to an individual with a developmental disability must be allowed access to food  
16          at any time and meal choices must be provided. Any restrictions on access to or choice of food  
17          because of health and safety concerns must be documented and justified in the individual's  
18          person-centered service plan.

19          **SECTION 11. AMENDMENT.** Section 25-01.2-14 of the North Dakota Century Code is  
20   amended and reenacted as follows:

21          **25-01.2-14. ~~Individualized habilitation~~Person-centered service or education plan -**  
22          **Contents.**

23          ~~Any institution, facility, public or private agency, or organization that provides~~licensed by the  
24          department to provide services for individualsto an individual with a developmental disability  
25          ~~shall~~must have a written, ~~individualized habilitation~~ person-centered service plan developed and  
26          put into effect for each individual for whom that ~~institution, facility, public or private agency,~~ or  
27          organization is primarily responsible for the delivery, or coordinating the delivery, of services. A  
28          school must have an individual educational plan for each of its students with a developmental  
29          disability. A plan required under this section must:

30           1.    Be developed and put into effect within thirty days following admission of the  
31           individual.

- 1        2.    Be reviewed and updated from time to time, but no less than annually.
- 2        3.    Include a statement of the long-term habilitation or education goals for the individual
- 3                    and the intermediate objectives relating to the attainment of those goals. The
- 4                    objectives must be stated specifically, in sequence, and in behavioral or other terms
- 5                    that provide measurable indices of progress.
- 6        4.    State an objective criteria and an evaluation procedure and schedule for determining
- 7                    whether the objectives and goals are being achieved.
- 8        5.    Describe the personnel necessary for the provision of the services described in the
- 9                    plan.
- 10       6.    Specify the date of initiation and the anticipated duration of each service to be
- 11                    provided.
- 12       7.    State whether the individual with a developmental disability appears to need a
- 13                    guardian and determine the type of protection needed by the individual based on the
- 14                    individual's actual mental and adaptive limitations and other conditions which may
- 15                    warrant the appointment of a guardian. Any member of the ~~individual~~
- 16                    ~~habilitation~~person-centered service plan team may petition, or notify any interested
- 17                    person of the need to petition, for a finding of incapacity and appointment of a
- 18                    guardian.

19        **SECTION 12. AMENDMENT.** Section 25-01.2-15 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21        **25-01.2-15. Right to refuse services.**

22        An adult recipient of services, ~~or, parents or custodian~~ if the recipient is a minor ~~or under~~  
23 ~~guardianship,~~ or the recipient's guardian ~~or parent,~~ must be given the opportunity to refuse  
24 generally accepted ~~mental~~behavioral health or developmental disability services, including  
25 medication, unless those services are necessary to prevent the recipient from causing serious  
26 harm to the recipient or to others. ~~The facility director shall inform a~~ if services are refused, the  
27 recipient or, guardian, or parent or custodian of a minor ~~who refuses generally accepted~~  
28 servicesmust be informed of alternate services available, the risks of those alternate services,  
29 and the possible consequences to the recipient of the refusal of generally accepted services.

30        **SECTION 13. AMENDMENT.** Section 25-01.2-16 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1       **25-01.2-16. Notice of rights.**

2       ~~Every~~Any public or private agency or organization that provides services to an individual  
3 with a developmental disability in an institution or facility shall post conspicuously in public  
4 areas a summary of the rights ~~which~~that are set out in this chapter. In addition, upon  
5 commencement of services or as soon after commencement as the recipient's condition  
6 permits, every recipient who is eighteen years of age or older, the parents or custodian of all  
7 recipients under eighteen years of age, and the guardian ~~of a minor recipient or other recipient~~  
8 ~~under guardianship~~ must be given written notice of the rights guaranteed by this chapter.

9       **SECTION 14. AMENDMENT.** Section 25-04-02.1 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11       **25-04-02.1. Accreditation of life skills and transition center.**

12       The department of human services shall request appropriations and resources sufficient to  
13 ensure maintenance of the life skills and transition center's accreditation by the accreditation  
14 council on services for people with developmental disabilities and certification by the health care  
15 financing administration or by similar accrediting and certifying organizations and agencies  
16 possessing standards applicable to ~~handicapped individuals~~an individual with a developmental  
17 disability and disciplines needed to provide quality services to individuals served.

18       **SECTION 15. AMENDMENT.** Subsection 4 of section 25-04-05 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20       4. Parents of a ~~handicapped patient~~an individual with a developmental disability, who is  
21 twenty-one years of age or under, are not required to file, assist in filing, agree to filing,  
22 or assign an insurance claim when filing the claim would pose a realistic threat that the  
23 parents would suffer a financial loss not incurred by similarly situated parents of  
24 ~~nonhandicapped~~nondisabled children. Financial losses do not include incidental costs  
25 such as the time needed to file or assist in filing an insurance claim or the postage  
26 needed to mail the claim. Financial losses include:
- 27       a. A decrease in available lifetime coverage or any other benefit under an insurance  
28       policy.
  - 29       b. An increase in premiums or the discontinuation of a policy.

- 1           c. An out-of-pocket expense such as the payment of a deductible amount incurred  
2           in filing a claim unless the life skills and transition center pays or waives the  
3           out-of-pocket expense.

4           **SECTION 16. AMENDMENT.** Subsection 2 of section 25-16-01 of the North Dakota  
5 Century Code is amended and reenacted as follows:

- 6           2. "Treatment or care center" means ~~any hospital, home, or other premises operated to~~  
7           ~~provide relief, care, custody, treatment, day activity, work activity, or extended~~  
8           ~~employment~~ an entity providing services to individuals with a developmental  
9           ~~disability~~ disabilities and licensed by the department to provide services.

10          **SECTION 17. AMENDMENT.** Section 25-16-04 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12          **25-16-04. Inspection and report by department.**

13          The department shall ~~may~~ inspect the facilities and premises of the applicant to determine  
14 the premises are fit, safe, and sanitary conditions and the adequacy of medical and nursing-  
15 services to provide quality care and treatment.

16          **SECTION 18. AMENDMENT.** Subsection 2 of section 25-16.1-01 of the North Dakota  
17 Century Code is amended and reenacted as follows:

- 18          2. "Treatment or care center" means ~~any hospital, home, or other premises, operated to~~  
19          ~~provide relief, care, custody, treatment, day activity, work activity, or extended~~  
20          ~~employment~~ an entity providing services to individuals with developmental disabilities  
21          and licensed by the department to provide services.

22          **SECTION 19. AMENDMENT.** Section 25-16.1-03 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24          **25-16.1-03. Appointment of receiver.**

25          The court shall appoint, as receiver, the executive director of the department who shall  
26 designate a qualified individual not employed by this state or its political subdivisions, or a  
27 nonprofit organization to execute the receivership. The receiver appointed by the court shall use  
28 the income and assets of the treatment or care center to maintain and operate the center and to  
29 attempt to correct the conditions which constitute a threat to the clients. The receiver may not  
30 liquidate the assets of the treatment or care center.

1           **SECTION 20. AMENDMENT.** Subsection 2 of section 25-18-01 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3           2. "Treatment or care center" means an entity providing services to individuals with  
4 developmental disabilities and licensed by the department ~~as an intermediate care-~~  
5 ~~facility for individuals with intellectual disabilities as defined in section 1905(d) of the~~  
6 ~~Social Security Act [42 U.S.C. 1396d(d)]; group home; or a provider of day supports,~~  
7 ~~supported living arrangement, extended services, or infant development~~to provide  
8 services.