

Sixty-ninth  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1109  
with Senate Amendments**

**HOUSE BILL NO. 1109**

Introduced by

Human Services Committee

(At the request of the Department of Health and Human Services)

1 A BILL for an Act to create and enact three new sections to chapter 25-16 of the North Dakota  
2 Century Code, relating to residential care and services for the developmentally disabled; to  
3 amend and reenact sections 25-16-01, 25-16-02, 25-16-03, 25-16-03.1, 25-16-04, 25-16-05,  
4 25-16-06, 25-16-07, 25-16-08, 25-16-09, 25-16-12, 25-16-13, 25-16-14, 25-16.1-01, 25-16.1-02,  
5 25-16.1-03, and 25-16.1-04 of the North Dakota Century Code, relating to developmental  
6 disability, residential care and services for the developmentally disabled, and receivers for  
7 developmentally disabled facilities; to repeal chapter 25-18 of the North Dakota Century Code,  
8 relating to fee for service ratesetting for developmentally disabled facilities; and to declare an  
9 emergency.

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

11 **SECTION 1. AMENDMENT.** Section 25-16-01 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **25-16-01. Definitions.**

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

- 15 1. "Department" means the department of health and human services.  
16 2. ~~"Treatment or care center"~~"Developmental disability" has the same meaning as in  
17 section 25-01.2-01.  
18 3. "Group home" means any community residential facility housing more than three  
19 individuals with a developmental disability.  
20 4. "Host home" means a community-based family home environment providing services  
21 to no more than two individuals with a developmental disability who require  
22 out-of-home placement to facilitate delivery of intensive care and support.

1       5.    "Provider agency" means an entity providing services to individuals with  
2            developmental disabilities and licensed by the department to provide services.

3       **SECTION 2. AMENDMENT.** Section 25-16-02 of the North Dakota Century Code is  
4   amended and reenacted as follows:

5       **25-16-02. License required.**

6       The operator of a ~~treatment or care center~~provider agency for individuals with a  
7   developmental disability shall secure annually from the department a license as required by  
8   rules adopted under this chapter.

9       **SECTION 3. AMENDMENT.** Section 25-16-03 of the North Dakota Century Code is  
10   amended and reenacted as follows:

11       **25-16-03. Requirements for license.**

12       The department shall issue a license for the operation of a ~~treatment or care center for an~~  
13   agency providing services to individuals with a developmental disability upon a showing that:

- 14       1.    The premises to be used are ~~in fit~~, safe, sanitary ~~condition~~, and properly equipped to  
15            provide good care ~~and treatment~~;
- 16       2.    The persons in ~~active~~ charge of the ~~center and~~provider agency, including their  
17            assistants, are qualified by training and experience to carry on efficiently the duties  
18            required of them;
- 19       3.    The health, safety, and well-being of ~~the residents cared for and treated therein will be~~  
20            ~~properly safeguarded~~individuals receiving services are protected;
- 21       4.    ~~There is sufficient entertainment~~A variety of meaningful activities, treatment,  
22            educational opportunities, and physical facilities ~~and services available to the residents~~  
23            ~~therein~~are available;
- 24       5.    Appropriate arrangements are made for a medical and psychological examination of  
25            each resident~~individual~~; and
- 26       6.    The provider is in compliance with rules adopted by the department under this chapter.

27       **SECTION 4. AMENDMENT.** Section 25-16-03.1 of the North Dakota Century Code is  
28   amended and reenacted as follows:

29       **25-16-03.1. Conviction not bar to licensure - Exceptions.**

30       Conviction of an offense does not disqualify a person from licensure under this chapter  
31   unless the ~~division~~department determines that the offense has a direct bearing upon a person's

1 ability to serve the public as an owner or operator of a ~~treatment or care center for individuals-~~  
2 ~~with a developmental disability~~provider agency, or that, following conviction of any offense, the  
3 person is not sufficiently rehabilitated under section 12.1-33-02.1.

4 **SECTION 5. AMENDMENT.** Section 25-16-04 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **25-16-04. Inspection and report by department.**

7 The department may inspect the facilities ~~and~~, premises, and records of the applicant or the  
8 provider agency to determine ~~the premises are fit, safe, and sanitary to provide quality care and~~  
9 ~~treatment~~whether the provider agency is in compliance with the rules of the department, to  
10 facilitate verification of the information submitted with an application for licensure, to investigate  
11 complaints, and to evaluate the implementation of a plan of correction.

12 **SECTION 6. AMENDMENT.** Section 25-16-05 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **25-16-05. Content of license.**

15 The license ~~to operate a treatment or care center for individuals with a developmental-~~  
16 ~~disability~~ issued under the provisions of this chapter must specify:

- 17 1. The name of the licensee~~provider agency~~.
- 18 2. The premises to which the license is applicable.
- 19 3. ~~The number of residents who may be received in such premises at any one-~~  
20 ~~time~~occupancy or service limitations.
- 21 4. The date of expiration of the license.

22 **SECTION 7. AMENDMENT.** Section 25-16-06 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **25-16-06. Department to prescribe forms - Rules.**

25 The department may prescribe forms for the registration and record of ~~the persons residing-~~  
26 ~~in treatment or care centers for individuals with a developmental disability~~an eligible individual  
27 and may adopt reasonable rules ~~for the conduct of such centers as are necessary to carry out~~  
28 the purposes of this chapter.

29 **SECTION 8. AMENDMENT.** Section 25-16-07 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1        **~~25-16-07. Records of treatment or care center confidential~~Confidential records.**

2        Except as otherwise authorized by law, an agent of the department or the superintendent of  
3 the life skills and transition center or the ~~licensee or~~provider agency, their agents, or employees  
4 may not disclose the contents of ~~the individual~~an eligible individual's records of a ~~treatment or~~  
5 ~~care center for individuals with a developmental disability~~, nor of the reports received from those  
6 records, except:

- 7        1. In a judicial proceeding when ordered by the presiding judge;
- 8        2. To a law enforcement official for a law enforcement purpose or any other legally  
9        constituted boards or agencies serving the interests of the ~~residents~~eligible individuals  
10       for treatment, payment, or health care operations, to arrange, facilitate, or coordinate  
11       service to any such person;
- 12       3. To the parents or legal guardians of the ~~resident~~eligible individual;
- 13       4. To a physician to aid in the treatment of an individual within the fourth degree of  
14       consanguinity of a deceased ~~resident~~eligible individual, if the disclosure is limited to  
15       genetic health information that has a direct bearing on the health of the relative, the  
16       relative's child, or the relative's decision to have a child; or
- 17       5. To an individual who is within the fourth degree of consanguinity of a deceased  
18       ~~resident~~eligible individual, if the disclosure is limited to information about a ~~resident~~an  
19       eligible individual needed to establish a family's genealogy.

20        **SECTION 9. AMENDMENT.** Section 25-16-08 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22        **25-16-08. Revocation of license.**

23        The department may revoke a license of a ~~treatment or care center for individuals with a~~  
24 ~~developmental disability~~provider agency upon a proper showing that:

- 25        1. Any of the conditions set forth in section 25-16-03 as requirements for the issuance of  
26        the license no longer exists;
- 27        2. The license was issued upon fraudulent or untrue representations;
- 28        3. The owner or operator has violated any of the rules of the department; or
- 29        4. The owner or operator of the ~~center~~provider agency has been guilty of an offense  
30        determined by the department to have a direct bearing upon a person's ability to serve  
31        the public as an owner or operator, or the department determines, following conviction

1 of an offense, that the person is not sufficiently rehabilitated under section  
2 12.1-33-02.1.

3 **SECTION 10. AMENDMENT.** Section 25-16-09 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **25-16-09. Hearing on denial or revocation of license.**

6 Before any application for a license to ~~conduct a treatment or care center for individuals~~  
7 ~~with a developmental disability~~ is denied or before the revocation of such license by the  
8 department, written charges as to the reasons for the revocation or denial must be served upon  
9 the applicant or ~~licensee~~provider agency, who has a right to a hearing before the department, if  
10 a hearing is requested within ten days after service of written charges.

11 **SECTION 11. AMENDMENT.** Section 25-16-12 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **25-16-12. Efforts to obtain private and governmental grants.**

14 The department and the ~~duly licensed treatment or care centers for individuals with a~~  
15 ~~developmental disability~~provider agency may exert all possible efforts to obtain grants, both  
16 private and governmental, for the care, custody, treatment, training, and education of individuals  
17 with a developmental disability.

18 **SECTION 12. AMENDMENT.** Section 25-16-13 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **25-16-13. Expenses chargeable against patient eligible individual, patient's eligible**  
21 **individual's estate, or responsible relatives.**

22 This chapter does not relieve the responsibility of the ~~patient eligible individual~~, the  
23 ~~patient's eligible individual's~~ estate, or responsible relatives of the expenses for care and  
24 treatment as provided in chapter 25-04 or 50-06.3. The provisions of chapter 25-04 or 50-06.3  
25 applicable to the expenses of care and treatment of patients apply to this chapter.

26 **SECTION 13. AMENDMENT.** Section 25-16-14 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 **25-16-14. ~~Definitions~~ - Group homes for individuals with developmental disabilities -**  
29 **Zoning.**

30 1. ~~For the purposes of this section:~~

- 1 a. ~~"Group home" means any community residential facility, foster home, family care-~~  
2 ~~facility, or other similar home for individuals with a developmental disability.~~
- 3 b. ~~"Individual with a developmental disability" means an individual with a severe,-~~  
4 ~~chronic disability which:~~
- 5 ~~(1) Is attributable to a mental or physical impairment or combination of mental-~~  
6 ~~and physical impairments;~~
- 7 ~~(2) Is manifested before the individual attains age twenty-two;~~
- 8 ~~(3) Is likely to continue indefinitely;~~
- 9 ~~(4) Results in substantial functional limitations in three or more of the following-~~  
10 ~~areas of major life activity:~~
- 11 ~~(a) Self-care;~~
- 12 ~~(b) Receptive and expressive language;~~
- 13 ~~(c) Learning;~~
- 14 ~~(d) Mobility;~~
- 15 ~~(e) Self-direction;~~
- 16 ~~(f) Capacity for independent living; and~~
- 17 ~~(g) Economic sufficiency; and~~
- 18 ~~(5) Reflects the individual's needs for a combination and sequence of special,-~~  
19 ~~interdisciplinary, or generic care, treatment, or other services which are-~~  
20 ~~lifelong or extended duration and are individually planned and coordinated.~~
- 21 2. Notwithstanding the provisions in chapter 11-33, 40-47, or 58-03, or any other  
22 provisions authorizing any political subdivision to establish or enforce zoning  
23 regulations, a licensed group home serving six or fewer individuals with a  
24 developmental disability must be considered a permitted use in a single-family or  
25 equivalent least-density residential zone, and a licensed group home serving eight or  
26 fewer individuals with a developmental disability must be considered a permitted use  
27 in any area zoned for residential use of greater density than single-family use.

28 **SECTION 14.** Three new sections to chapter 25-16 of the North Dakota Century Code are  
29 created and enacted as follows:

1        **Corrective actions.**

- 2        1. If the department finds the provider agency is not in compliance with this chapter or  
3        the rules adopted by the department, the department may notify the provider agency  
4        of required corrective actions.
- 5        2. The provider agency shall submit a corrective action plan addressing the corrective  
6        actions.
- 7        3. If the provider agency fails to comply with the corrective action plan by the date certain  
8        for correction, the department may:
- 9        a. Issue a restricted license; or  
10       b. Revoke the license.

11       **Purchase of services - Host home program.**

- 12       1. The department may purchase residential care, custody, treatment, training, and  
13       education services for individuals with developmental disabilities from a provider  
14       agency or a Medicaid-enrolled provider, from funds appropriated for that purpose.
- 15       2. The department may establish a host home program to provide out-of-home  
16       placement habilitation and support services for Medicaid-eligible individuals with  
17       developmental disabilities.

18       **Federal requirements - Supremacy.**

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

25       **SECTION 15. AMENDMENT.** Section 25-16.1-01 of the North Dakota Century Code is  
26       amended and reenacted as follows:

27       **25-16.1-01. Definitions.**

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

- 29       1. "Department" means the department of health and human services.

1           2.   "~~Treatment or care center~~Provider agency" means an entity providing services to  
2           individuals with developmental disabilities and licensed by the department to provide  
3           services.

4           **SECTION 16. AMENDMENT.** Section 25-16.1-02 of the North Dakota Century Code is  
5           amended and reenacted as follows:

6           **25-16.1-02. Conditions for appointment of receiver.**

7           When the department has revoked the license of a ~~treatment or care center~~provider agency,  
8           or when the operator of a ~~center~~provider agency has requested, the department may file a  
9           petition with the district court to place the ~~center~~provider agency under the control of a receiver  
10          if necessary to protect the health or safety of clients at the ~~center~~provider agency. The court  
11          may grant the petition upon a finding that the health or safety of the clients at the ~~center~~provider  
12          agency would be seriously threatened if a condition existing at the time the petition was filed is  
13          permitted to continue. Such a finding may be based upon evidence concerning the physical  
14          plant, the program and services offered by the ~~center~~provider agency, but not solely upon  
15          evidence that a ~~center~~provider agency:

- 16          1.   Has been denied a license to operate as a ~~center~~provider agency, or has had a  
17          previously issued license revoked; or  
18          2.   Has been denied certification as an intermediate care facility for individuals with  
19          intellectual disabilities, or has lost or had revoked such certification.

20          **SECTION 17. AMENDMENT.** Section 25-16.1-03 of the North Dakota Century Code is  
21          amended and reenacted as follows:

22          **25-16.1-03. Appointment of receiver.**

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

30          **SECTION 18. AMENDMENT.** Section 25-16.1-04 of the North Dakota Century Code is  
31          amended and reenacted as follows:



1       **25-16.1-04. Termination of receivership.**

2       The receivership shall be terminated when the receiver and the court certify that the  
3 conditions which prompted the appointment have been corrected, when the license is restored,  
4 when a new license is issued, or, in the case of an election by the owner or owners to  
5 discontinue operation, when the clients are safely placed or provided services in other  
6 centersprovider agencies.

7       **SECTION 19. REPEAL.** Chapter 25-18 of the North Dakota Century Code is repealed.

8       **SECTION 20. EMERGENCY.** This Act is declared to be an emergency measure.