

PUBLIC WELFARE

CHAPTER 569

HOUSE BILL NO. 1459
(Stofferahn, A. Olson, Haugland)

COUNTY SOCIAL SERVICE BOARD MEMBER COMPENSATION

AN ACT to amend and reenact section 50-01-08 of the North Dakota Century Code, relating to the compensation of members of county social service boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-01-08. Members of county social service board - Term of office - Oath - Compensation. The members of the county social service board shall serve for a term of three years or until their successors have duly qualified. Their terms of office shall be arranged so that the term of office of one of the members shall expire in one year, the term of one-half of the remaining members the next year, and the term of the remaining members the third year. Each member of the board shall qualify by taking the oath provided for civil officers. Such oath shall be filed with the county auditor. The members of the county social service board shall receive, in addition to any salaries they may receive from any other source, from the state or county or any municipality, a sum not to exceed ~~twenty-five~~ thirty-five dollars per day for time actually spent in transacting the business of the board not exceeding a maximum of twenty-five days a year. Members shall be reimbursed by the county for expenses actually incurred in the performance of their official duties and shall be paid legal mileage for necessary travel. In counties having a population in excess of thirty thousand, members of the county social service board shall receive, in addition to any salaries they may receive from any other source, from the state or county or any municipality, a sum not to exceed ~~twenty-five~~ thirty-five dollars per day for time actually spent in transacting the business of the board not to exceed a maximum of thirty-five days a year. Members shall be reimbursed by the county for expenses actually incurred in the performance of their official duties and shall be paid legal mileage for necessary travel.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 570

HOUSE BILL NO. 1034
(Legislative Council)
(Interim Budget Committee on Human Services)

HUMAN SERVICES DEPARTMENT STRUCTURE

AN ACT to amend and reenact subsection 4 of section 14-09-09.8, sections 14-13-03, 23-16-08, 25-01-01, 25-10-01, 25-11-02, 25-15-03, 25-15-08, subsection 2 of section 25-16-01, sections 25-16-02, 25-16-03, 25-16-04, 25-16-06, 25-16-08, 25-16-09, 25-16-10, 25-16-12, 50-06-01.4, subsection 1 of section 50-19-01, sections 50-19-02, 50-19-03, 50-19-03.1, 50-19-04, 50-19-06, 50-19-07, 50-19-09, 50-19-10, 50-19-12, 50-19-13, 50-19-14, 50-20-01, 50-20-02, subsections 3 and 7 of section 50-25.1-02, sections 50-25.1-03, 50-25.1-03.1, 50-25.1-04, 50-25.1-04.1, 50-25.1-05, subsection 2 of section 50-25.1-05.2, sections 50-25.1-05.3, 50-25.1-06, 50-25.1-07, 50-25.1-11, and 54-38-01 of the North Dakota Century Code, relating to the structure of the department of human services; and to repeal sections 25-01-02.1, 25-10-02, and 54-38-02 of the North Dakota Century Code, relating to the authority of the state health council to investigate the mental health of persons admitted to the state hospital, the state children's psychiatric outpatient clinic, and the alcoholism and drug abuse division.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 4 of section 14-09-09.8 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A copy of the order and accompanying documents have been sent to the ~~child support enforcement unit of the~~ department of human services.

SECTION 2. AMENDMENT. Section 14-13-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-13-03. Definitions. In this chapter unless the context or subject matter otherwise requires:

- * NOTE: Section 14-09-09.8 was also amended by section 16 of House Bill No. 1903, chapter 183.

1. "Appropriate authority in the receiving state" as used in paragraph 1 of article V of the compact with reference to this state means the executive director of the children and family services division of the department of human services.
2. "Appropriate public authorities" as used in article III of the compact with reference to this state means the children and family services division of the department of human services, and the division department shall receive and act with reference to notices required by article III.

SECTION 3. AMENDMENT. Section 23-16-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-16-08. Offering or advertising to dispose of infants prohibited. No hospital providing maternity care shall in any way offer to dispose of any child or advertise that it will give children for adoption or hold itself out, directly or indirectly, as being able to dispose of children, however, such hospitals may inform an unmarried mother of child-placing agencies licensed by the children and family services division of the department of human services.

SECTION 4. AMENDMENT. Section 25-01-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01-01. Definitions. In this title unless the context or subject matter otherwise requires:

1. "Mentally ill individual" means an individual having a psychiatric or other disease which substantially impairs his mental health.
2. "Mentally deficient person" means any person, minor or adult other than a mentally ill person, who is so mentally defective as to be incapable of managing himself and his affairs and to require supervision, control, and care for his own or the public welfare.
3. "Defective delinquent" ~~shall mean~~ means an incompetent mentally deficient person over eighteen years of age who has been found, in accordance with the procedures established in chapter 25-04, to have demonstrated a pattern of aggravated antisocial behavior such as to present a probable peril to the life, person, or property of others, or who has given substantial evidence of continuing propensity for such behavior.
4. "State hospital" ~~shall mean~~ means the state hospital for the mentally ill.

5. "State school" ~~shall mean~~ means the Grafton state school and San Haven.
6. ~~Repealed by S-L- 1979, ch- 315, § 19-~~
- 7- "School for the blind" ~~shall mean~~ means the North Dakota school for the blind.
- 8- 7. "School for the deaf" ~~shall mean~~ means the school for the deaf of North Dakota.
- 9- 8. "Director" ~~shall mean~~ means the director of institutions.
- 10- 9. "Superintendent" ~~shall mean~~ means the superintendent of the state hospital, of the state school, of San Haven, of the school for the blind, or of the school for the deaf, as the case may be.
- 11- 10. "Licensed physician" means an individual licensed under the laws of this state to practice medicine and also means a medical officer of the government of the United States while in this state in the performance of his official duties.
- 12- ~~Repealed by S-L- 1961, ch- 209, § 5-~~
- 13- 11. "Supervising officer" ~~shall mean~~ means the state health officer of the state department of health, mental health division of the state executive director of the department of human services, or the director of institutions, as the case may be.

SECTION 5. AMENDMENT. Section 25-10-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-10-01. Mental health division services. ~~There is hereby established within the The~~ department of human services a division to be known as the mental health division to shall perform the following functions in the field of mental health:

1. Cooperate in providing services to state and local departments and agencies and other groups for programs of prevention of mental illness, ~~mental retardation,~~ and other psychiatric disabilities.
2. Assist in providing informational and educational services regarding mental health to the public and lay and professional groups.
3. Assist in providing consultative services to schools, courts, and health and welfare human service agencies, both public and private.

4. Assist in providing outpatient diagnostic and treatment services.
5. Assist in providing rehabilitation services for patients suffering from mental or emotional disorders and other psychiatric conditions, particularly those who have received prior treatment in an inpatient facility.

The above services shall be undertaken by the department of human services to the extent funds are available to the department for the performance of these functions.

SECTION 6. AMENDMENT. Section 25-11-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-11-02. Compact administrator - Powers. Pursuant to said compact, the executive director of the mental health and retardation division department of human services shall be the compact administrator and who, acting jointly with like officers of other party states, ~~shall have power to promulgate~~ may adopt rules and ~~regulations~~ to carry out more effectively the terms of the compact. The compact administrator ~~is hereby authorized, empowered and directed to shall~~ cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this state thereunder.

SECTION 7. AMENDMENT. Section 25-15-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-03. Advisory committee. The vocational rehabilitation division shall appoint a vocational rehabilitation facilities advisory committee, nine members of which shall be representatives of each of the following state organizations or agencies:

1. Vocational rehabilitation division.
2. Department of public instruction - special education.
3. Office of management and budget.
4. Job service North Dakota.
5. Organized labor.
6. ~~Mental health division~~ Department of human services.
7. North Dakota chapter association of retarded persons.
8. Vocational education - special needs.
9. Grafton state school.

At least four members shall be appointed from professional, legislative, or civic groups, or from other public or nonpublic voluntary agencies. Such members shall serve at the pleasure of the vocational rehabilitation division without compensation.

It shall be the duty of the ~~The~~ vocational rehabilitation facilities advisory committee ~~to~~ shall recommend standards for community rehabilitation facilities for the handicapped and ~~to~~ submit the recommendations to the appropriate state departments involved in the licensure of the facilities for their approval. These standards shall include those for physical plant, programming, staff, ratio of staff to persons served, policies, records and reports required, and such other standards as the committee deems appropriate. The committee shall also advise the division on the general policy involved in the provision of rehabilitation facilities services and shall perform such other functions as the division may request.

SECTION 8. AMENDMENT. Section 25-15-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-08. Recognition by the division of physical plant licensing by the state department of health and the ~~developmental disabilities division~~ department of human services. In lieu of the vocational rehabilitation division conducting an independent inspection of the physical plant of facilities licensed under chapter 23-16 or 25-16, the division may recognize and accept for purposes of this chapter the licensure of the physical plant of such facilities by the state department of health or by the ~~developmental disabilities division~~ of the department of human services. Division recognition and acceptance of the license issued by the state department of health or the ~~developmental disabilities division~~ department of human services shall not exempt the facilities applying for license under this chapter from the program standards established by the vocational rehabilitation division.

SECTION 9. AMENDMENT. Subsection 2 of section 25-16-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "~~Division~~" "Department" means the ~~developmental disabilities division of the state~~ department of human services.

SECTION 10. AMENDMENT. Section 25-16-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-02. License required. The operator of a treatment or care center for developmentally disabled persons shall secure annually from the ~~division~~ department a license as required by rules adopted under this chapter.

SECTION 11. AMENDMENT. Section 25-16-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-03. Requirements for license. The division department shall issue a license for the operation of a treatment or care center for developmentally disabled persons upon a showing that:

1. The premises to be used are in fit safe sanitary condition and properly equipped to provide good care and treatment;
2. The persons in active charge of the center and their assistants are qualified by training and experience to carry on efficiently the duties required of them;
3. The health, morality, safety, and well-being of the residents cared for and treated therein will be properly safeguarded;
4. There is sufficient entertainment, treatment, educational, and physical facilities and services available to the residents therein;
5. Appropriate arrangements are made for a medical and psychological examination of each resident; and
6. The provider is in compliance with rules adopted by the division department under this chapter.

SECTION 12. AMENDMENT. Section 25-16-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-04. Inspection and report by division department. The division department shall inspect the facilities and premises of the applicant to determine sanitary conditions and the adequacy of medical and nursing services.

SECTION 13. AMENDMENT. Section 25-16-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-06. Division Department to prescribe forms - Regulations Rules. The division department may prescribe forms for the registration and record of the persons residing in treatment or care centers for developmentally disabled persons and may adopt reasonable rules and regulations for the conduct of such centers as are necessary to carry out the purposes of this chapter.

SECTION 14. AMENDMENT. Section 25-16-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-08. Revocation of license. The division department may revoke a license of a treatment or care center for developmentally disabled persons upon a proper showing that:

1. Any of the conditions set forth in section 25-16-03 as requirements for the issuance of the license no longer exists;
2. The license was issued upon fraudulent or untrue representations;
3. The owner or operator has violated any of the rules and regulations of the division department; or
4. The owner or operator of the center has been guilty of an offense determined by the division department to have a direct bearing upon a person's ability to serve the public as an owner or operator, or the division department determines, following conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 15. AMENDMENT. Section 25-16-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-09. Hearing on denial or revocation of license. Before any application for a license to conduct a treatment or care center for developmentally disabled persons is denied or before the revocation of such license by the division department, written charges as to the reasons therefor shall be served upon the applicant or licensee, who shall have the right to a hearing before the division department, if such a hearing is requested within ten days after service of written charges.

SECTION 16. AMENDMENT. Section 25-16-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-10. Purchase of services. The developmental disabilities division of the state department of human services is hereby authorized to may purchase from funds appropriated to it for that purpose, residential care, custody, treatment, training, and education for developmentally disabled persons from any treatment or care center for such persons licensed in the this state of North Dakota.

SECTION 17. AMENDMENT. Section 25-16-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-12. Division efforts Efforts to obtain private and governmental grants. The developmental disabilities division of the state department of human services and the duly licensed treatment

or care centers for developmentally disabled persons are hereby authorized to may exert all possible efforts to obtain grants, both private and governmental, for the care, custody, treatment, training, and education of developmentally disabled persons.

* SECTION 18. AMENDMENT. Section 50-06-01.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.4. Structure of the department. The department shall ~~include~~ includes the state hospital, an office of human services, ~~an office of economic assistance and county administration~~ the governor's council on human resources, the regional human service centers, a vocational rehabilitation division including regional vocational rehabilitation offices, unit, and other units or offices and administrative and fiscal support services as the executive director deems determines necessary, and as many other subdivisions as the executive director may deem appropriate, or as may be provided by law.

- 1- The office of human services shall contain the following divisions:
 - a- Developmental disabilities division-
 - b- Mental health division-
 - c- Children and family services division-
 - d- Aging services division-
 - e- Alcoholism and drug abuse division-
 - f- Crippled children's services division-
- 2- The office of economic assistance and county administration shall include the following divisions:
 - a- Economic assistance division, including a feed stamp unit, an assistance payments unit, a fuel assistance unit, and a child support enforcement unit-
 - b- Medical services division-

Regional supervisors of economic assistance shall be collocated with regional human service centers and shall be responsible for maintaining a close working relationship between county social service boards and regional human service centers. The department shall be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:

* NOTE: Section 50-06-01.4 would have been amended by section 5 of House Bill No. 1033, chapter 766, which was vetoed.

1. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, state youth authority, licensure of day care homes and facilities, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.
2. Administration of programs for persons with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
3. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001, et seq.], home and community-based services, licensure of adult family care homes, and the fund matching program for city or county tax levies for senior citizen activities and services.
4. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.
5. Administration of programs for crippled children, including the provision of services and assistance to crippled children and their families, and the development and operation of clinics for the identification, screening, referral, and treatment of crippled children.
6. Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.
7. Administration of economic assistance programs, including aid to families with dependent children, food stamps, fuel assistance, child support enforcement, refugee assistance, work experience, work incentive, and quality control.
8. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment, the licensure of

boarding homes for the aged and infirm, utilization control, and claims processing.

The executive director of the department shall be responsible for consulting consult with and maintaining maintain a close working relationship with the department of health; with the director of institutions and the superintendents of the Grafton state school; the school for the deaf; and the school for the blind to develop programs for developmentally disabled persons; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with county social service agencies.

SECTION 19. AMENDMENT. Subsection 1 of section 50-19-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "~~Division~~" "Department" means the children and family services division of the department of human services.

SECTION 20. AMENDMENT. Section 50-19-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-02. License required. Any person, partnership, voluntary association or corporation, which operates a maternity home for unmarried mothers shall secure annually from the division department a license as required in this chapter.

SECTION 21. AMENDMENT. Section 50-19-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-03. Requirements for license. A license for the operation of a maternity home for unmarried mothers shall be issued by the division department to a reputable and responsible person, partnership, voluntary association or corporation, upon showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide good care and treatment;
2. The persons in active charge of the home and their assistants are qualified by training and experience to carry on efficiently the duties required of them;
3. The home is to be conducted for the public good and in accordance with sound social policy; and
4. The health and well-being of the infants born therein and the health, morality, and well-being of the parties treated therein will be properly safeguarded.

SECTION 22. AMENDMENT. Section 50-19-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-03.1. Conviction not bar to licensure - Exceptions. Conviction of an offense ~~shall~~ does not disqualify a person from licensure under this chapter unless the ~~division~~ department determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or operator of a maternity home for unmarried mothers, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 23. AMENDMENT. Section 50-19-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-04. Inspection and report by state department of health. The ~~division~~ department shall give notice to the state department of health of all applications for license to operate a maternity home for unmarried mothers. Upon receipt of such notice, the state department of health shall inspect the facilities and premises of the applicant to determine sanitary conditions and the adequacy of medical and nursing services, and shall report its findings to the ~~division~~ department.

SECTION 24. AMENDMENT. Section 50-19-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-06. Regulation by ~~division~~ department. The ~~division~~ department may prescribe forms for the registration and record of persons cared for in maternity homes for unmarried mothers and ~~shall make such may adopt~~ reasonable rules and regulations for the conduct of such homes as are necessary to carry out the purposes of this chapter. The ~~division~~ department shall require reports from the licensee which shall include a statement of plans made for the unmarried mother and her child.

SECTION 25. AMENDMENT. Section 50-19-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-07. Inspection of maternity home for unmarried mothers and the records thereof. The ~~division~~ department and its authorized agents may inspect any maternity home for unmarried mothers licensed under the ~~provisions~~ of this chapter at any time. The ~~division~~ department and its agents shall have free access to every part of such home and to the records thereof, and they may see and interview the patients therein.

SECTION 26. AMENDMENT. Section 50-19-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-09. Reporting births. The licensee of a maternity home for unmarried mothers shall report each birth occurring within the home

to the state department of health in accordance with chapter 23-02.1, and to the division department as may be provided by law.

SECTION 27. AMENDMENT. Section 50-19-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-10. Records of maternity home confidential. No agent of the state department of health or the division department, or the licensee, under the provisions of this chapter, shall may disclose the contents of the records of a maternity home for unmarried mothers nor of the reports received therefrom, except:

1. In a judicial proceeding when ordered by the presiding judge; or
2. To officers of the law or other legally constituted boards or agencies serving the interests of the patient or her infant.

SECTION 28. AMENDMENT. Section 50-19-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-12. Revocation of license. The division department may revoke a license of any maternity home for unmarried mothers upon a proper showing of any of the following:

1. Any of the conditions set forth in section 50-19-03 as requirements for the issuance of the license no longer exists.
2. The license was issued upon fraudulent or untrue representations.
3. The owner or operator has violated any of the rules **and regulations** of the division department.
4. The owner or operator of the maternity home has been guilty of an offense determined by the division department to have a direct bearing upon a person's ability to serve the public as an owner or operator, or the division department determines, following his the owner's or operator's conviction of any other offense, that the owner or operator is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 29. AMENDMENT. Section 50-19-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-13. Hearing on denial or revocation of license. Before any application for a license to conduct a maternity home for unmarried mothers shall be denied or before the revocation of any such license by the division department, written charges as to the reasons therefor shall be served upon the applicant or licensee, who shall have the right to a hearing before the department **of human services**,

if ~~such~~ a hearing is requested within ten days after service of the written charges.

SECTION 30. AMENDMENT. Section 50-19-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-14. **Cooperation of interested persons and agencies.** The licensee of a maternity home for unmarried mothers, the physician, or other responsible person in attendance at birth, the state department of health and its agents, and the ~~division~~ department and its agents shall cooperate in all measures and services for improving and safeguarding the health and social well-being of maternity patients and their infants cared for in a maternity home for unmarried mothers.

SECTION 31. AMENDMENT. Section 50-20-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-20-01. **Births out of wedlock to be reported.** All births out of wedlock in ~~the this state of North Dakota shall~~ must be reported to the ~~children and family services division of the~~ department of human services within twenty-four hours after the birth occurs. The report shall include the date and place of birth, the sex of the child, the name of the mother, the name of the attending physician, and such other information as the ~~division~~ department may require.

SECTION 32. AMENDMENT. Section 50-20-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-20-02. **Births with congenital deformities to be reported.** All births in ~~North Dakota this state~~ of children with a visible congenital deformity shall be reported to the ~~crippled children's services division department of human services~~ within three days after ~~such the~~ birth occurs. The report shall include the date and place of birth, the sex of the child, the names of the parents, the name of the physician or other person attending birth, a diagnosis and description of the deformity, and ~~such any~~ other information as the ~~division~~ department may require.

* **SECTION 33. AMENDMENT.** Subsections 3 and 7 of section 50-25.1-02 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. "~~Division~~" "Department" means the ~~children and family services division of the~~ department of human services.
7. "State child protection team" means a multidisciplinary team consisting of the designee of the ~~executive~~ director of the ~~division~~ department and, where possible of a physician, a representative of a child-placing agency, a representative of the state department of health, a representative of the office of the attorney general, a

* NOTE: Section 50-25.1-02 was also amended by section 1 of House Bill No. 1254, chapter 584, and by section 1 of Senate Bill No. 2244, chapter 583.

representative of the department of public instruction, a representative of the director of institutions, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, shall be staff members of the public or private agency which they represent, or shall serve without remuneration. In no event shall an attorney member of the child protection team be appointed to represent the child or the parents at any subsequent court proceeding nor shall the child protection team be composed of fewer than three persons.

* SECTION 34. AMENDMENT. Section 50-25.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-03. Persons required and permitted to report - To whom reported.

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, social worker, day care center or any other child care worker, police or law enforcement officer having knowledge of or reasonable cause to suspect that a child coming before him that person in his that person's official or professional capacity is abused or neglected shall report the circumstances to the division department.
2. Any person having reasonable cause to suspect that a child is abused or neglected may report such circumstances to the division department.

** SECTION 35. AMENDMENT. Section 50-25.1-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-03.1. Photographs and x-rays. Any person or official required to report under this chapter may cause to be taken color photographs of the areas of trauma visible on a child who is the subject of a report and, if indicated by medical consultation, cause to be performed a radiological examination of the child without the consent of the child's parents or guardian. All photographs taken pursuant to this section shall be taken by law enforcement officials upon the request of any person or official required to report under this chapter. All photographs and x-rays taken, or copies of them, shall be sent to the division department at the time the initial report of child abuse or neglect is made or as soon thereafter as possible.

* NOTE: Section 50-25.1-03 was also amended by section 2 of Senate Bill No. 2244, chapter 583.

** NOTE: Section 50-25.1-03.1 was also amended by section 3 of Senate Bill No. 2244, chapter 583.

* SECTION 36. AMENDMENT. Section 50-25.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-04. Method of reporting. All persons mandated or permitted to report cases of known or suspected child abuse or neglect shall immediately cause oral or written reports to be made to the division department. Oral reports shall be followed by written reports within forty-eight hours if so requested by the executive director of the division department or his the executive director's designee. Reports involving known or suspected institutional child abuse or neglect shall be made and received in the same manner as all other reports made under this chapter.

** SECTION 37. AMENDMENT. Section 50-25.1-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-04.1. State child protection team - How created - Duties. The executive director of the division department shall name the members of the state child protection team. The members shall be appointed for three-year staggered terms. The member who represents the division department shall serve as chairperson and shall be responsible for the transmittal of all team reports made pursuant to this chapter. The chairperson shall set meetings for the purposes of fulfilling the duties set forth in sections 50-25.1-02, 50-25.1-04, and 50-25.1-05.1. Under procedures adopted by the team, it may meet at any time, confer with any individuals, groups, and agencies, and may issue reports or recommendations on any aspect of child abuse or neglect it deems appropriate. All reports or recommendations issued shall be subject to the provisions of section 50-25.1-11, except that the team shall make available information reflecting the disposition of reports of institutional child abuse or neglect, where the identity of persons reporting, and of the children and parents of children involved, is protected.

*** SECTION 38. AMENDMENT. Section 50-25.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05. Investigation. The executive director of the division department shall forthwith investigate, or cause to be investigated, any report of child abuse or neglect made directly to the executive director, including the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.

**** SECTION 39. AMENDMENT. Subsection 2 of section 50-25.1-05.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In all other cases, upon a determination that probable cause exists to believe that child abuse or neglect is indicated, the executive director of the division

* NOTE: Section 50-25.1-04 was also amended by section 4 of Senate Bill No. 2244, chapter 583.

** NOTE: Section 50-25.1-04.1 was also amended by section 5 of Senate Bill No. 2244, chapter 583.

*** NOTE: Section 50-25.1-05 was also amended by section 6 of Senate Bill No. 2244, chapter 583.

**** NOTE: Section 50-25.1-05.2 was also amended by section 8 of Senate Bill No. 2244, chapter 583.

department or a designee of the executive director shall promptly make written report to the juvenile court having jurisdiction in the matter.

* SECTION 40. AMENDMENT. Section 50-25.1-05.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05.3. Disposition of reports implicating a person not responsible for the child's health or welfare. Upon determination by the division department or its designee that a report made under this chapter implicates a person other than a person responsible for a child's welfare, the division department may refer the report to an appropriate law enforcement agency for investigation and disposition.

** SECTION 41. AMENDMENT. Section 50-25.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-06. Protective and other services to be provided. The division department and the appropriate county social service board shall provide protective services for the abused or neglected child and other children under the same care as may be necessary for their well-being, and shall provide other appropriate social services, as the circumstances warrant, to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children.

*** SECTION 42. AMENDMENT. Section 50-25.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-07. Protective custody. Any physician examining a child with respect to whom abuse or neglect is known or suspected, after reasonable attempts to advise the parents, guardian, or other person having responsibility for the care of the child that he the physician suspects has been abused or neglected, may keep the child in the custody of the hospital or medical facility for not to exceed ninety-six hours and must immediately notify the juvenile court and the division department in order that child-protective proceedings may be instituted.

**** SECTION 43. AMENDMENT. Section 50-25.1-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-11. Confidentiality of records - Authorized disclosures. All reports made under this chapter, as well as any other information obtained, are confidential and shall be made available to:

1. A physician who has before him a child whom he the physician reasonably suspects may have been abused or neglected.

* NOTE: Section 50-25.1-05.3 was also amended by section 9 of Senate Bill No. 2244, chapter 583.

** NOTE: Section 50-25.1-06 was also amended by section 10 of Senate Bill No. 2244, chapter 583.

*** NOTE: Section 50-25.1-07 was also amended by section 11 of Senate Bill No. 2244, chapter 583.

**** NOTE: Section 50-25.1-11 was also amended by section 12 of Senate Bill No. 2244, chapter 583.

2. A person who is authorized to place a child in protective custody and has before him a child whom he the person reasonably suspects may have been abused or neglected and the person requires the information in order to determine whether to place such child in protective custody.
3. Authorized staff of the division department, appropriate county social service boards, and appropriate state and local child protection team members.
4. Any person who is the subject of a report; provided, however, that the identity of persons reporting under this chapter is protected.
5. Public officials and their authorized agents who require such information in connection with the discharge of their official duties.
6. A court whenever it determines that the information is necessary for the determination of an issue before the court.
7. A person engaged in a bona fide research purpose; provided, however, that no information identifying the subjects of a report is made available to the researcher unless the information is absolutely essential to the research purpose and the executive director of the division department gives prior approval.
8. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.

SECTION 44. AMENDMENT. Section 54-38-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-38-01. **Definitions.** In this chapter unless the context or subject matter otherwise requires:

1. "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or while chronically or habitually under the influence of alcoholic beverages, endangers public morals, health, safety, or welfare.
2. "Alcoholism" means the pathological condition attendant upon the excessive and habitual use of alcoholic beverages.
3. "Department" means the department of human services.

4. "Division" means the alcoholism and drug abuse division within the department.
5. "Drug abuse" means the use of drugs solely for their stimulant, depressant, or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent prescribed in the course of medical treatment or in a program of research operated under the direction of a physician or pharmacologist.
- 6- 5. "Drug dependent persons" means any person who has developed a state of psychic or physical dependence, or both, upon a drug following administration of that drug upon a repeated periodic or continuous basis.
- 7- 6. "Patients" means persons who are under the supervision or care of the department.

SECTION 45. REPEAL. Sections 25-01-02.1, 25-10-02, and 54-38-02 of the North Dakota Century Code are hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 571

HOUSE BILL NO. 1156
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

DEPENDENT CHILD ASSISTANCE

AN ACT to create and enact a new subsection to section 50-06-05.1 and two new sections to chapter 50-09 of the North Dakota Century Code, relating to special needs adoptions, foster care children, and rulemaking authority; to amend and reenact sections 50-09-01, 50-09-06, 50-09-09, 50-09-21, and subsection 1 of section 50-11-00.1 of the North Dakota Century Code, relating to aid to dependent children and foster care for children; and to repeal sections 50-09-10, 50-09-10.1, 50-09-11, 50-09-12, and 50-09-19 of the North Dakota Century Code, relating to aid to dependent children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 50-06-05.1 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adoptive family, and whose adoptive family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of such child.

SECTION 2. AMENDMENT. Section 50-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Applicant" shall mean a person or agency having the custody of a dependent child making application for aid for such child under the provisions of this chapter.
2. "Assistance" shall mean means money payments with respect to, or goods and services provided for dependent children, including payments for the care of unmarried mothers or fathers and their infants.
3. 2. "County agency" shall mean means the county social service board in each of the counties of the state.
4. "Dependent child" shall mean any needy child:
 - a. Who is living in the home of a relative by birth, marriage, or adoption, who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is:
 - (1) Under the age of eighteen years,
 - (2) Under the age of twenty-one years and physically or mentally incapacitated, or
 - (3) Under the age of twenty-one years and a student regularly attending and making satisfactory progress in pursuance of a course of study of academic or vocational training designed to fit him for gainful employment.
 - b. Under the age of twenty-one years, who is living in a licensed foster home or in a licensed child-caring or child-placing institution:
 - (1) Who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of the parent,
 - (2) Who is abandoned by his parent, guardian, or custodian,
 - (3) Whose parent, guardian, or custodian is unable, neglects, or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for his health, morals, or well-being, or
 - (4) Who is in need of special care as provided by a private agency for which his parent, guardian, or custodian is unable, neglects, or refuses to provide.

- e- Under the age of twenty-one years, who is living in an adoptive home and would in all probability go without adoption except for acceptance by the adoptive family, and whose adoptive family does not have the economic ability and resources as established by guidelines and rules of the state agency to take care of the special needs of such child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of such child, in which case the state agency may make payments to the adoptive parents in accordance with the provisions of this chapter and the rules and regulations established thereunder-

Under this chapter no fee shall be paid for the adoptive study or the supervision and evaluation of the placement-

- 5- "Private agency" shall mean a private child-caring or child-placing agency duly licensed under the laws of North Dakota, or a private maternity home providing special care exclusively for unmarried expectant mothers or mothers and their infants, and duly licensed under the laws of North Dakota-

- 3- "Dependent child" means any needy child who is described in a state plan for aid and services to needy families submitted pursuant to title IV-A of the Social Security Act [42 U.S.C. §601, et seq.]. The state agency is authorized to submit a state plan in a form which is consistent with and which meets the requirements for such plans which are or may be imposed by that Act.

- 6- 4- "State agency" means the North Dakota department of human services.

SECTION 3. AMENDMENT. Section 50-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-06. Application for assistance - Assignment of support rights. Application for aid to a dependent child under this chapter shall be made to the county agency in the manner and form prescribed by the state agency. The application shall contain such information as the state agency may require, except that application for aid to a dependent child living in a home maintained and operated or selected by a private agency may be made direct to the state agency, and the action of the state agency in approving and granting assistance in such case or in disapproving and denying assistance shall be final and binding on the county agency. An applicant for assistance under this chapter is deemed to have assigned to the state agency and county agency at the time of application all rights to child support from any other person the applicant may have in his own behalf or in behalf of any other family member for whom application is made. The assignment:

1. Is effective as to both current and accrued child support obligations.
2. Takes effect upon a determination that the applicant is eligible for assistance under this chapter.
3. Terminates when an applicant ceases to receive assistance under this chapter, except with respect to the amount of any unpaid support obligation accrued under the assignment.

SECTION 4. A new section to chapter 50-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Application for foster care for children - Assignment of support rights. Application for foster care for children must be made to the county agency in the manner and form prescribed by the state agency. The application must contain such information as the state agency may require. An application for foster care for children is deemed to create and effect an assignment of all rights to support, which the child may have or come to have, to the state agency and county agency. The assignment:

1. Is effective as to both current and accrued child support obligations.
2. Takes effect upon a determination that the child is eligible for foster care for children.
3. Terminates when the child ceases to receive foster care for children, except with respect to the amount of any unpaid support obligation accrued under the assignment.

SECTION 5. AMENDMENT. Section 50-09-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-09. Award of assistance. Upon completion of the investigation of an applicant for assistance under this chapter, the county agency ~~or the private agency~~ shall determine, in accordance with the rules ~~and regulations~~ of the state agency:

1. That the applicant is eligible for assistance under the provisions of this chapter;
2. The amount of assistance the applicant shall receive; and
3. The date upon which such assistance shall begin.

In all cases, a statement of the findings of the county agency ~~or the private agency~~ forthwith shall be transmitted to the state agency.

SECTION 6. AMENDMENT. Section 50-09-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-21. Amount county liable for - Reimbursement by county. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for one-fourth of the amount expended for aid to dependent children in such county, in excess of the amount provided by the federal government for assistance payments to dependent children, except ~~assistance payments for dependent children defined in subdivision b of subsection 4 of section 50-09-01~~ approved and granted foster care for children, for which the county share of payment shall be reimbursed to the state agency by the county liable therefor under chapter 50-02.

SECTION 7. A new section to chapter 50-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Authority to adopt rules. The state agency may adopt rules reasonable or necessary to carry out its responsibilities under this chapter.

SECTION 8. AMENDMENT. Subsection 1 of section 50-11-00.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Foster care for children" means the provision of substitute parental child care for those children ~~described in subdivision b of subsection 4 of section 50-09-01~~ who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a foster family home, group home, or residential child care facility.

SECTION 9. REPEAL. Sections 50-09-10, 50-09-10.1, 50-09-11, 50-09-12, and 50-09-19 of the North Dakota Century Code are hereby repealed.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 572

SENATE BILL NO. 2036
(Legislative Council)
(Interim Budget Committee on Human Services)

CHRONICALLY MENTALLY ILL SERVICES

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to development of a plan for a continuum of services for chronically mentally ill individuals; and to amend and reenact section 25-02-04 of the North Dakota Century Code, relating to the qualifications of the superintendent of the North Dakota state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Continuum of services for chronically mentally ill individuals. The department of human services shall develop a plan for an integrated, multidisciplinary continuum of services for chronically mentally ill individuals. The continuum may consist of an array of service provided by private mental health professionals, private agencies, county social service agencies, human service centers, community-based residential care and treatment facilities, and private and public inpatient psychiatric hospitals. To the extent feasible, access to the continuum must be through human service centers. Within the limits of legislative appropriations, the plan for a continuum may include:

1. Programs, and appropriate related facilities, to provide socialization skills.
2. Programs, and appropriate related facilities, to provide basic living skills.
3. Appropriate residential facilities.
4. Appropriate training, placement, and support to enhance potential for employment.
5. Appropriate delivery and control of necessary medication.

6. Appropriate economic assistance.
7. An inpatient facility with appropriate programs to respond to persons who require hospitalization.

The continuum of care must provide that a person requiring treatment be submitted to the least restrictive available conditions necessary to achieve the purposes of treatment. The department shall ensure appropriate cooperation with county social service agencies and private providers in achieving the continuum of care.

SECTION 2. AMENDMENT. Section 25-02-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-02-04. Superintendent to possess certain qualifications - Employees. The superintendent of the state hospital shall be a board eligible or board certified psychiatrist. If the superintendent is board eligible, he or she shall accomplish board certification within three years of the date of his or her appointment, or of the effective date of this Act, whichever is later. The superintendent shall appoint with the approval of the executive director of the department of human services an assistant superintendent of administration who shall be under the superintendent's supervision and who shall be a qualified and experienced hospital administrator. The superintendent shall appoint and employ the professional staff and define their qualifications and duties. Every physician on the professional staff must have a license issued by the state board of medical examiners. The assistant superintendent shall employ such other personnel as may be necessary and shall define their qualifications and duties.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 573

SENATE BILL NO. 2330
(Senators Stenehjem, Waldera)
(Representatives Kelly, Dalrymple)

MENTAL HEALTH PATIENT RECORDS

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to the exchange and transfer of mental health records within the department of human services and agencies under contract with the department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exchange and transfer of patient records. The department shall implement a procedure for the exchange and transfer, among treatment units within the department and treatment units of agencies under contract with the department, of records relating to the examination, custody, care, and treatment of mental health clients receiving services supported by public funds, subject to standards for confidentiality. The department shall adopt, in accordance with chapter 28-32, rules necessary to implement this section.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 574

HOUSE BILL NO. 1465
(Representatives P. DeMers, Kolbo, J. DeMers)
(Senators Richard, J. Meyer)

VENDING ON FEDERAL PROPERTY

AN ACT to create and enact a new section to chapter 50-06.1 of the North Dakota Century Code, relating to the operation of vending facilities on federal property by blind persons; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Division to license blind operators and operate vending facilities - Continuing appropriation of income. The division shall act as the state licensing agency to license the operators of vending facilities on federal property within the state to the extent permitted or required by the Randolph-Sheppard Act [Pub. L. 74-732, 20 U.S.C. 107]. The division may take any action, consistent with the provisions of that Act, for the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting. If there is no blind licensee operating a vending facility on federal property, the division may operate or contract for the operation of a vending facility, provided that all income from such a vending facility is distributed in a manner consistent with the requirements of such Act. There is hereby appropriated on a continuing basis all income from vending facilities which the division operates, or contracts to operate, consistent with the requirements of such Act and the regulations and policies of the United States secretary of education, promulgated thereunder, for the purposes of:

1. Maintenance and replacement of equipment.
2. The purchase of new equipment.
3. Management services.

4. Assuring a fair minimum return to operators of vending facilities.
5. Retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is determined by a majority vote of blind licensees licensed by the division, after the division provides to each such licensee full information on all matters relevant to such proposed program, that income should be used for such purposes.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 575

SENATE BILL NO. 2038
(Legislative Council)
(Interim Budget Committee on Human Services)

COMMUNITY-BASED HUMAN SERVICES

AN ACT to create and enact a new subsection to section 50-06.2-02 of the North Dakota Century Code, relating to the definition of family home care; to amend and reenact subsection 3 of section 50-06.2-01, subsection 5 of section 50-06.2-03, and subsection 3 of section 50-06.2-04 of the North Dakota Century Code, relating to the purposes of the chapter and the powers and duties of the department of human services and county social service boards; and to repeal chapter 50-24.2 of the North Dakota Century Code, relating to family home care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 50-06.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. To provide a continuum of community-based services adequate to appropriately sustain individuals in their homes and in their communities and to delay or prevent or reduce institutional care by providing alternate, cost effective and quality of life enhancing community-based care, home-based care, or other forms of less intensive care.

SECTION 2. A new subsection to section 50-06.2-02 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Family home care" means the provision of room, board, supervisory care, and personal services to an eligible elderly or disabled person by the spouse, parent, grandparent, adult child, adult sibling, or adult grandchild of an eligible elderly or disabled person.

SECTION 3. AMENDMENT. Subsection 5 of section 50-06.2-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. From funds otherwise available for payments under chapter 50-24.1 Within the limits of legislative appropriations and at rates determined payable by the state agency, to reimburse county agencies for the provision of the following services as defined in the comprehensive human service plan at rates not to exceed the nonfederal share of the statewide average of payments of intermediate care under chapter 50-24.1 which are provided to persons who, on the basis of functional assessments, are determined eligible for the services in accordance with rules adopted by the state agency:
- a. Homemaker services;
 - b. Chore services;
 - c. Respite care;
 - d. Home health aide services; and
 - e. Case management;
 - f. Family home care;
 - g. Personal attendant care;
 - h. Adult family foster care; and
 - i. Such other services as the state agency determines to be essential in preventing or reducing and appropriate to sustain individuals in their homes and in their communities and to delay or prevent institutional care.

SECTION 4. AMENDMENT. Subsection 3 of section 50-06.2-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. To make available the human services detailed in the comprehensive human service plan which the county agency has included in the approved county plan and to provide such other human services the county agency determines essential in effectuating the purposes of this chapter within the county. To the extent funding is made available under section 50-06.2-03 and chapter 50-24.1, the county plan must include the services enumerated in those provisions. The county agency must make these services available to any individual requesting service and determined eligible on the basis of functional assessment. The individual shall pay for the services in accordance with a fee scale based on family size and income. The county agency may contract with any public or private agency or person approved by the state agency in its provision of those enumerated services.

SECTION 5. REPEAL. Chapter 50-24.2 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 576

HOUSE BILL NO. 1183
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

LONG-TERM CARE OMBUDSMAN DUTIES

AN ACT to amend and reenact subsection 1 of section 50-10.1-03, and sections 50-10.1-05 and 50-10.1-06 of the North Dakota Century Code, relating to the duties of long-term care ombudsmen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 50-10.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Investigate and resolve complaints about administrative actions that may adversely affect or may have adversely affected the health, safety, welfare, or personal or civil rights of persons in long-term care facilities or persons who have been discharged from long-term care facilities within nine months of the complaint against the facility.

SECTION 2. AMENDMENT. Section 50-10.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.1-05. Chapter to be posted - Retaliation prohibited. A copy of this chapter ~~shall~~ must be posted in a conspicuous place in each long-term care facility, along with a statement of the right to file a complaint concerning administrative actions which affect any resident and the address where a complaint may be filed. Each resident, the spouse of each resident having a spouse, and any designated representative of a resident ~~shall~~ must be provided with copies of the posted documents at the time the resident is admitted to the long-term care facility. ~~However, each person who is a resident on July 1, 1983, the spouse of each resident having a spouse, and any designated representative of a resident shall be provided with copies of the posted documents at that time.~~ A long-term care facility, and its agents, may not take or threaten retaliatory action against a resident, employee, or any other person on account of the filing of a complaint by or on behalf of that

resident, or on account of the providing of information to a long-term care ombudsman constituting or relating to a complaint.

SECTION 3. AMENDMENT. Section 50-10.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.1-06. Establishment of reporting system - Recognition of reports by ombudsmen. The department shall establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The department shall submit this information to the appropriate state agency which is responsible for the licensing or certification of the long-term care facility involved and to the appropriate federal agency. Each state agency responsible for licensing or certification of long-term care facilities shall coordinate its activities with the statewide uniform reporting system by submitting to the department in a timely manner all complaints and information it receives on conditions that adversely affect the health, safety, welfare, or personal or civil rights of residents; provided, that the information is not privileged under the law. The ombudsman program may recognize investigative reports conducted by an appropriate agency or organization.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 577

SENATE BILL NO. 2510
(Senators Heinrich, Thane, Stenehjem)
(Representatives Myrdal, J. DeMers)

HEALTH CARE FACILITY RESIDENTS' RIGHTS

AN ACT to create and enact a new section to chapter 50-10.2 of the North Dakota Century Code, relating to enforcement of rights of health care facility residents; and to amend and reenact sections 50-10.2-01, 50-10.2-02, and 50-10.2-03 of the North Dakota Century Code, relating to the rights of residents of health care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-10.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Conflict of interest" means any type of ownership in a facility or membership on the governing body of a facility by a provider of goods or services to that facility or by a member of that person's immediate family.
2. "Department" means the department of human services.
3. "Facility" means a skilled nursing care facility, intermediate care facility, foster care home for adults, boarding home for the aged and infirm, boarding homes, or any combination thereof house, or swing bed hospital approved to furnish long-term care services.
4. "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchild, uncle, aunt, niece, nephew, or grandchild.
5. "Remodeling" means any alteration in structure, refurbishing, or repair that would:

- a. Prevent the facility staff from providing customary and required care; or
- b. Seriously endanger or inconvenience any resident with noise, dust, fumes, inoperative equipment, or the presence of workmen.

2- 6. "Resident" means a person residing ~~and receiving personal care from~~ in a facility.

SECTION 2. AMENDMENT. Section 50-10.2-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.2-02. Residents' rights - Implementation.

1. All facilities shall adopt and make public a statement of the rights and responsibilities of their residents and must treat residents in accordance with provisions of that statement, upon a resident's admission, provide in hand to the resident and a member of the resident's immediate family or any existing legal guardian of the resident a statement of the resident's rights while living in the facility. Within thirty days after admission, the statement must be orally explained to the resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident, and thereafter annually so long as the resident remains in the facility. This The statement must include rights, responsibilities of both the resident and the facility, and rules governing resident conduct ~~and must be provided to the resident or legal guardian prior to or at the time of admission to the facility.~~ Facilities must treat residents in accordance with provisions of the statement. The statement must include provisions ensuring each resident the following minimum rights:
 - a. The right to civil and religious liberties, including knowledge of available choices, the right to independent personal decisions without infringement, and the right to encouragement and assistance from the staff of the facility to promote the fullest possible exercise of these rights.
 - b. The right to have private meetings, associations, and communications with any person of the resident's choice within the facility.
 - c. The right of each resident, the resident's immediate family, any existing legal guardian of the resident, friends, facility staff, and other persons to present complaints ~~on one's behalf or on the behalf of other residents~~ the resident to the facility's staff or, the

facility's administrator, to governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint. The facility shall adopt a grievance process and make the process known to each resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident. An individual making a complaint in good faith is immune from any civil liability that otherwise might result from making the complaint.

- d. The right to send and receive unopened personal mail, and the right of access to and use of telephones for private conversations.
- e. The right to assured private visits by one's spouse, or if both are residents of the same facility, the right to share a room, within the capacity of the facility, unless sharing a room is not medically advisable as documented in the medical records by the attending physician.
- f. The right to manage one's own financial affairs if not under legal guardianship, or to delegate that responsibility in writing to the administrator or manager of the facility, but only to the extent of funds held in trust by the facility for the resident. If such a trust is established, then a written quarterly accounting of any transactions made on behalf of the resident must be furnished along with a verbal an explanation by the facility to the resident or the person legally responsible for the resident.
- g. The right to be fully informed in writing prior to or at the time of admission and during one's stay, of services provided and the charges for those services, including ancillary charges. Residents, or their guardian legal guardians, must be informed at least thirty days prior to any change in the costs or availability of the services. No facility may demand or receive any advance payment or gratuity to assure admission.
- h. The right to be adequately informed of one's medical condition and proposed treatment and to participate in the planning of all medical treatment, including the right to refuse medication and treatment unless otherwise indicated by that resident's physician, to be discharged from the facility upon written request, and to be notified by the resident's attending physician of the medical consequences of any such actions.

- i. The right to have privacy in treatment and in caring for personal needs, to use personal belongings, to have security in storing and using personal possessions, and to have confidentiality in the treatment of personal and medical records, and security in storing and using personal possessions. The resident has the right to view, and authorize release of, any personal or medical records.
- j. The right to be treated courteously, fairly, and with the fullest measure of dignity.
- k. The right to be free from mental and physical abuse; and the right to be free from physical and or chemical restraint, except for these restraints in documented emergencies or when necessary to protect the resident from injury to self or to others. In such cases, the restraint must be authorized in writing and documented by a physician for a specified and limited period of time or as necessitated by an emergency. In the case of an emergency, restraint may only be applied by a qualified licensed or registered nurse who shall set forth in writing the circumstances requiring the use of a restraint and in the case of use of a chemical restraint, a physician must be consulted immediately thereafter and, if the restraint is a chemical one, it must be administered by a licensed nurse or physician. Except as provided in this subdivision, drugs or physical restraints may not be used or threatened to be used for the purposes of punishment, for the convenience of staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or for any other purpose not part of an approved treatment plan.
- l. The right not to be transferred or discharged only except for:
- (1) Medical reasons;
 - (2) The resident's welfare or that of other residents; or
 - (3) Nonpayment of one's rent or fees.
- The rights in this subdivision do not apply. Residents may be temporarily transferred during times of rebuilding, remodeling, refurbishing, or general renovation of a facility.
- m. The right to receive a thirty-day advance notice of any transfer or discharge, except in the case of an emergency as determined by physician when the resident is being discharged to another facility or the resident's own home, or when the resident is being

- transferred or discharged because of a change in the resident's level of care; and the right to receive advance notice of transfer or discharge under all other circumstances to the extent not prohibited by sound medical reasons, or incompatibility which affects a resident's welfare or that of another resident.
- n. The right to refuse to perform services on behalf of the facility, unless agreed to by the resident or legal guardian and established in the plan of care as being therapeutic, as deemed by a physician care.
- o. The right to a claim for relief against a facility for any violation of rights guaranteed under this chapter.
- p. The right to have each facility display a notice that the following information is available for public review and make the information available on request:
- (1) A complete copy of every inspection report, deficiency report, and plan of correction the facility received during the previous two years.
 - (2) The facility's grievance process.
 - (3) A copy of the statement of ownership, board membership, and partners.
 - (4) A statement of ownership setting forth any conflict of interest in the operation of the facility.
- q. The right to a pharmacist of the resident's choice irrespective of the type of medication distribution system used by the facility.
- r. The right to not be discriminated against by a facility in the admissions process or in the provision of appropriate care on the basis of the resident's source of payment to the facility. Any applicant for admission to a facility who is denied admission must be given the reason for the denial in writing upon request.
- s. The right of residents and their families to organize, maintain, and participate in resident advisory and family councils.
- t. The right of residents receiving services performed by a provider from outside the facility to be informed, on request, of the identity of the provider.

2. Waiver of any of the rights guaranteed by this chapter may not be made a condition of admission to a facility.
3. Each facility must prepare a written plan and appropriate provide staff training to implement this chapter.
4. The department shall hold open meetings at least once every two years in each region established by the governor's executive order 1978-12 dated October 5, 1978, having a facility, to advise and to facilitate communication and cooperation between facility personnel and the residents in their mutual efforts to improve resident care; and to document concerns and issues needing to be addressed. Appropriate advance notice must be given.
5. The department shall develop and coordinate with the facility licensing and regulatory agencies a relocation plan in the event a facility is decertified or unlicensed.

SECTION 3. AMENDMENT. Section 50-10.2-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.2-03. Rulemaking authority of department. The department of human services may adopt rules in accordance with chapter 28-32, consistent with and necessary for the implementation and enforcement of this chapter through the ombudsman program under chapter 50-10.1.

SECTION 4. A new section to chapter 50-10.2 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Enforcement - Injunction. Any facility that violates this chapter may be enjoined by a district court. Actions for injunction under this section may be prosecuted by the attorney general or any state's attorney in the name of the state. Actions for injunction under this section must be prosecuted in the county where the case arises.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 578

SENATE BILL NO. 2243
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

EARLY CHILDHOOD SERVICES FACILITIES

AN ACT to create and enact a new subsection to section 50-11.1-03 of the North Dakota Century Code, relating to disposition of fees from licenses for early childhood services facilities; to amend and reenact subsection 5 of section 50-11.1-02 of the North Dakota Century Code, relating to definition of the term "early childhood services"; and to repeal section 19 of chapter 526 of the 1985 Session Laws of North Dakota, relating to the licensing of day care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 50-11.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Early childhood services" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is provided in exchange for money, goods, or other services and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week. Early childhood services does not include:
 - a. Substitute parental child care provided pursuant to chapter 50-11.
 - b. Child care provided in any educational facility, whether public or private, in grade one or above.
 - c. Child care provided in a kindergarten which has been established pursuant to chapter 15-45 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15-34.1-03.

- d. Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
- e. Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, other than employment, on or near the premises.
- f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism or other classes for religious instruction.
- g. Summer resident or day camps for children which serve no preschool age children for more than two weeks.
- h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
- i. Headstart programs that are federally funded and meet federal headstart standards.
- j. Child care provided by a hospital by medical personnel within the physical structure of the hospital to children who are ill.

SECTION 2. A new subsection to section 50-11.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

All fees collected under subsection 3 must be paid to the county social service board and must be used to defray the cost, to that board, of investigating, inspecting, and evaluating the applications or to provide training to providers of early childhood services.

SECTION 3. REPEAL. Section 19 of chapter 526 of the 1985 Session Laws of North Dakota is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 579

SENATE BILL NO. 2265
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

MEDICAL ASSISTANCE PROGRAM ELIGIBILITY

AN ACT to amend and reenact section 50-24.1-02 of the North Dakota Century Code, relating to eligibility for the medical assistance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-02. Eligibility. Within the limits of legislative appropriations, medical assistance may be paid for any person who either has income and resources insufficient to meet the costs of necessary medical care and services or is eligible for or receiving financial assistance under chapter 50-09 or title XVI of the Social Security Act, as amended, and:

1. Has not at any time before or after making application for medical assistance made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this chapter. For the purposes of making any determination or redetermination of eligibility, the phrase "assignment or transfer" includes, but is not limited to, actions or failures to act which effect a renunciation or disclaimer of any interest which the applicant or recipient might otherwise assert or have asserted, or which serve to reduce the amounts which an applicant or recipient might otherwise claim from a decedent's estate, a trust or similar device, or a person obligated by law to furnish support to the applicant or recipient.
2. Has applied or agrees to apply all proceeds received or receivable by him or his eligible spouse from automobile accident medical benefits coverage and private health care coverage to the costs of medical care for himself and his eligible spouse and children. The department of human

services may require from any applicant or recipient of medical assistance the assignment of any rights accruing under automobile medical benefits coverage or private health care coverage. Any rights or amounts so assigned shall be applied against the cost of medical care paid on behalf of the recipient under this chapter. The assignment is not effective as to any carrier before the receipt of notice of assignment by such carrier.

3. Is eligible under rules and regulations established by the department of human services.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 580

HOUSE BILL NO. 1625
(Hoffner)

MEDICAL ASSISTANCE ELIGIBILITY

AN ACT to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to pre-need funeral plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-02.3. When pre-need funeral plan not to be considered in eligibility determination. In determining eligibility for medical assistance, the department of human services may not consider as an available resource any prepayments or deposits which total three thousand dollars or less, and the interest accrued thereon, made under a pre-need funeral service contract by an applicant for or recipient of medical assistance.

Approved April 13, 1987
Filed April 14, 1987

CHAPTER 581

SENATE BILL NO. 2037
(Legislative Council)
(Interim Budget Committee on Human Services)

PREADMISSION ASSESSMENT

AN ACT to create and enact a new section to chapter 50-24.3 of the North Dakota Century Code, relating to preadmission assessment of persons entering facilities furnishing skilled or intermediate medical care; to amend and reenact sections 50-24.3-01, 50-24.3-03, and 50-24.3-04 of the North Dakota Century Code, relating to the powers and duties of the department of human services and preadmission assessment of persons entering facilities furnishing skilled or intermediate medical care; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.3-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.3-01. Assessment mechanism - Establishment. The department of human services shall establish a mechanism to assess, prior to admission to a skilled nursing facility, intermediate care facility, or a hospital swing-bed facility approved to furnish skilled or intermediate care services, the health and social needs of medical assistance recipients and individuals who may become eligible for medical assistance within one hundred eighty days of each person making application for admission to such facilities the facility.

SECTION 2. AMENDMENT. Section 50-24.3-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.3-03. Department of human services - Powers and duties. The department of human services shall have the following powers and duties which it may delegate to any acute care facility which provides discharge planning entity which provides assessment services approved by the department:

1. To seek cooperation from other public and private agencies in the community which offer services to disabled and elderly persons.
2. To provide information and education to the general public regarding availability of the assessment program.
3. To accept referrals from individuals, families, human services professionals and nursing home personnel.
4. To assess the health and social needs of referred individuals.
5. To identify available noninstitutional services to meet the needs of referred individuals.
6. To prepare recommendations for individuals receiving assessment program services as to the need for skilled nursing care, or intermediate care as provided in a facility, or other care which is available in the community.
7. To inform referred individuals of the extent to which home and community-based services are available, and of their opportunity to choose, in consultation with an attending physician and family member, among the appropriate alternatives that may be available.

SECTION 3. AMENDMENT. Section 50-24.3-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.3-04. Assessment Preadmission assessment of persons. Prior to admission to a skilled nursing facility or an intermediate care facility, or a hospital swing-bed facility approved to furnish skilled or intermediate care services, the department shall assess or arrange for assessing the needs of all persons receiving medical assistance and, if requested to do so, of all persons who, due to income and resource considerations, reasonably anticipate the necessity to apply for medical assistance within one hundred eighty days of admission to a nursing home applicants for admission, except patients transferred from other nursing homes or patients who, having entered acute care facilities from nursing homes or swing beds, are returning to nursing home care. Any other interested person may be assessed upon payment of a fee based upon a sliding fee scale to be established by the department of human services. The cost for assessing persons must be defrayed by federal, state, and county funds.

SECTION 4. A new section to chapter 50-24.3 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Facility's duties - Preadmission assessment - Alternative care. As a condition for receiving reimbursement from the department of human services for the care of the individual, each skilled nursing facility, intermediate care facility, or hospital swing-bed facility approved to furnish skilled or intermediate care services shall assure that each person requiring an assessment under this chapter receives the assessment prior to admission to the facility.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on July 1, 1988.

Approved April 9, 1987
Filed April 9, 1987

CHAPTER 582

HOUSE BILL NO. 1448
(Representatives Strinden, Haugland, Kelly)
(Senators Thane, Mushik, Redlin)

NURSING HOME RATES

AN ACT to provide for the setting of rates to be paid for services provided to residents of nursing homes and to provide conditions for the receipt of medical assistance payments by nursing homes; to amend and reenact subsection 18 of section 54-12-01 of the North Dakota Century Code, relating to the duties of the attorney general regarding appointment of hearing officers; and to repeal subsection 21 of section 50-06-05.1 and section 50-24.1-09 of the North Dakota Century Code, relating to the powers and duties of the department of human services regarding administrative hearings and limitation on reimbursement of long-term care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. For the purposes of this Act:

1. "Actual allowable historical operating cost per diem" means the per diem operating costs allowed by the department for the most recent reporting year.
2. "Actual resident day" means a billable, countable day as defined by the department.
3. "Department" means the department of human services.
4. "Depreciable equipment" means the standard movable resident care equipment and support service equipment generally used in long-term care facilities.
5. "Final rate" means the rate established after any adjustment by the department, including, but not limited to, adjustments resulting from cost report reviews and audits.
6. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, and uniform allowances.

7. "General and administrative costs" means all allowable costs for administering the facility, including, but not limited to: salaries of administrators, assistant administrators, accounting personnel, data processing personnel, security personnel, and all clerical personnel; board of directors' fees; business office functions and supplies; travel, except as necessary for training programs for dietitians, nursing personnel and direct resident care related personnel required to maintain licensure, certification, or professional standards requirements; telephone and telegraph; advertising; membership dues and subscriptions; postage; insurance, except as included as a fringe benefit under subsection 6; professional services such as legal, accounting, and data processing services; central or home office costs; management fees; management consultants; employee training, for any top management personnel and for other than direct resident care related personnel; and business meetings and seminars.
8. "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the department has reviewed those costs and determined them to be allowable costs under the medical assistance program, and after the department has applied appropriate limitations such as the limit on administrative costs.
9. "Nursing home" means a facility, not owned or administered by the state government, described in subsection 3 of section 43-34-01.
10. "Operating costs" means the day-to-day costs of operating the facility in compliance with licensure and certification standards.
11. "Payment rate" means the rate determined under section 6 of this Act.
12. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
13. "Private-paying resident" means a nursing home resident on whose behalf the nursing home is not receiving medical assistance payments and whose payment rate is not established by any other third party, including the veteran's administration or medicare.
14. "Rate year" means the fiscal year for which a payment rate determined under this Act is effective, from January first to the next December thirty-first.

15. "Real estate" means improvements to real property and attached fixtures used directly for resident care.
16. "Reporting year" means the period from July first to June thirtieth, immediately preceding the rate year, for which the nursing home submits reports required under this Act.
17. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, nursing home administrators, and any other person performing functions ordinarily performed by such personnel.

SECTION 2. Authority. The department shall establish, by rule, procedures for determining rates for care of residents of nursing homes which qualify as vendors of medical assistance, and for implementing the provisions of this Act. The procedures must be based on methods and standards which the department finds are adequate to recognize the costs that must be incurred for the care of residents in efficiently and economically operated nursing homes. The department shall identify costs that are recognized for establishing payment rates.

SECTION 3. Federal requirements - Supremacy. If any provision of this Act is determined by the United States government to be in conflict with existing or future requirements of the United States government with respect to federal participation in medical assistance, the federal requirements prevail.

SECTION 4. Payment rates. Payment rates paid to any nursing home receiving medical assistance payments must be those rates established pursuant to this Act and rules adopted under it.

SECTION 5. Requirements. No medical assistance payments may be made to any nursing home unless the nursing home is certified to participate in the medical assistance program under title XIX of the federal Social Security Act and has in effect a provider agreement with the department meeting the requirements of state and federal statutes and rules. No medical assistance payments may be made to any nursing home unless the nursing home complies with all requirements of North Dakota law including, but not limited to, this Act and rules adopted under it that govern participation in the program. This section applies whether the nursing home participates fully in the medical assistance program or is withdrawing from the medical assistance program.

SECTION 6. Rate determination. The department shall determine prospective payment rates for resident care costs. For rate years beginning on or after January 1, 1990, the department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.

The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.

SECTION 7. Nonallowable costs. The following costs may not be recognized as allowable: political contributions; salaries or expenses of a lobbyist, as defined in section 54-05.1-02, for lobbying activities; advertising designed to encourage potential residents to select a particular nursing home; fines and penalties; legal and related expenses for unsuccessful challenges to decisions by governmental agencies; memberships in sports, health, or similar social clubs or organizations; and costs incurred for activities directly related to influencing employees with respect to unionization. The department shall by rule exclude the costs of other items or services not directly related to the provision of resident care.

SECTION 8. Notice of increases to private-paying residents. No increase in nursing home rates for private-paying residents is effective unless the nursing home notifies the resident or person responsible for payment of the increase in writing thirty days before the increase takes effect. A nursing home may adjust its rates without giving the notice required by this section when the purpose of the rate adjustment is to reflect a necessary change in the category of care provided to a resident. If the department fails to set rates at least forty days prior to the beginning of a rate year, the time required for giving notice is decreased by the number of days by which the department was late in setting the rates.

SECTION 9. Interim rates. In setting rates for payment for services furnished by nursing homes prior to January 1, 1990, the department shall operate the ratesetting process as it presently exists, or in any other fashion which may be permitted by law. The department may, in its discretion, prior to July 1, 1988, direct that nursing homes engage in any activity which will be reasonably necessary to permit an orderly transition to the establishment of payment rates under this Act.

SECTION 10. Operating costs after January 1, 1990.

1. For rate years beginning on or after January 1, 1990, the department shall establish procedures for determining per diem reimbursement for operating costs.
2. The department shall maintain access to national and state economic change indices that can be applied to the appropriate cost categories when determining the operating cost payment rate.
3. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred

by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.

4. The department shall establish limits on actual allowable historical operating cost per diems based on cost reports of allowable operating costs for the reporting year that begins July 1, 1987, taking into consideration relevant factors including resident needs, nursing hours necessary to meet resident needs, size of the nursing home, and the costs that must be incurred for the care of residents in an efficiently and economically operated nursing home. The limits established by the department may not be less, in the aggregate, than the sixtieth percentile of total actual allowable historical operating cost per diems for each group of nursing homes established under this Act based on cost reports of allowable operating costs in the previous reporting year. The limits established under this subsection remain in effect until the department establishes a new base period. Until the new base period is established, the department shall adjust the limits annually using the appropriate economic change indices established in subsection 5. In determining allowable historical operating cost per diems for purposes of setting limits and nursing home payment rates, the department shall divide the allowable historical operating costs by the actual number of resident days, except that where a nursing home is occupied at less than ninety percent of licensed capacity days, the department may establish procedures to adjust the computation of the per diem to an imputed occupancy level at or below ninety percent. The department shall establish efficiency incentives as appropriate. The department may establish efficiency incentives for different operating cost categories. The department shall consider establishing efficiency incentives in care-related cost categories. The department may combine one or more operating cost categories and may use different methods for calculating payment rates for each operating cost category or combination of operating cost categories.
5. The department shall establish a composite index or indices by determining the appropriate economic change indicators to be applied to specific operating cost categories or combination of operating cost categories.
6. Each nursing home shall receive an operating cost payment rate equal to the sum of the nursing home's operating cost payment rates for each operating cost category. The operating cost payment rate for an operating cost category must be the lesser of the nursing home's historical operating cost in the category increased by the appropriate index established in subsection 5 of this section for the operating cost category plus an efficiency

incentive established pursuant to subsection 4 of this section or the limit for the operating cost category increased by the same index. If a nursing home's actual historic operating costs are greater than the prospective payment rate for that rate year, there may be no retroactive cost settle-up. In establishing payment rates for one or more operating cost categories, the department may establish separate rates for different classes of residents based on their relative care needs.

SECTION 11. Adjustment of historical operating costs.

1. For rate years beginning on or after January 1, 1991, the department may allow a one-time adjustment to historical operating costs of a nursing home that has been found by the department to be significantly below care related minimum standards appropriate to the mix of resident needs in that nursing home when it is determined by the department that the nursing home is unable to meet minimum standards through reallocation of nursing home costs and efficiency incentives or allowances. In developing procedures to allow adjustments, the department shall specify the terms and conditions governing any additional payments made to a nursing home as a result of the adjustment. The department shall establish procedures to recover amounts paid under this section, in whole or in part, and to adjust current and future rates, for nursing homes that fail to use the adjustment to satisfy care related minimum standards.
2. If the department learns that unallowable expenditures have been included in the nursing home's historical operating costs, the department shall disallow the expenditures and recover the entire overpayment out of future payments otherwise due to the nursing home under chapter 50-24.1, or otherwise, as the department may determine.

SECTION 12. Avoiding detrimental effect on quality of care. If the department learns that expenditures for direct resident care have been reduced in amounts large enough to indicate a possible detrimental effect on the quality of care, the department shall notify the state health department.

SECTION 13. Exclusion. Until procedures for determining operating cost payment rates according to mix of resident needs are established for nursing homes that exclusively provide residential services for the nongeriatric physically handicapped, such nursing homes may not be included in the calculation of the percentiles of any group. Each of these nursing homes shall receive their actual allowed historical operating cost per diem adjusted by a percentage amount equal to the increase, if any, in the national or state economic change index, made available under section 10 of this Act,

and which the department determines to be relevant to residential services for the nongeriatric physically handicapped.

SECTION 14. General and administrative costs after January 1, 1990. For rate years beginning on or after January 1, 1990, all general and administrative costs must be included in general and administrative costs in total, without direct or indirect allocation to other cost categories. In a nursing home of sixty or fewer beds, part of an administrator's salary may be allocated to other cost categories to the extent justified in records kept by the nursing home. Central or home office costs representing services of consultants required by law in areas including, but not limited to, dietary, pharmacy, social services, or activities may be allocated to the appropriate department, but only if those costs are directly identified by the nursing home. Central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of nursing, medical records, dietary, other care related services, and plant operations may be allocated to the appropriate operating cost category of a nursing home according to subsections 1 through 5.

1. Only the salaries, fringe benefits, and payroll taxes associated with the individual performing the service may be allocated. No other costs may be allocated.
2. The allocation must be based on direct identification and only to the extent justified in time distribution records that show the actual time spent by the consultant performing the services in the nursing home.
3. The cost in subsection 1 for each consultant must not be allocated to more than one operating cost category in the nursing home. If more than one nursing home is served by a consultant, all nursing homes shall allocate the consultant's cost to the same operating category.
4. Top management personnel must not be considered consultants.
5. The consultant's full-time responsibilities are to provide the services identified in this section.

SECTION 15. Property-related costs after January 1, 1990. For all rate years beginning on or after January 1, 1990:

1. The department shall reimburse nursing home providers that are vendors in the medical assistance program for the use of real estate and depreciable equipment.
2. In developing the method for determining that part of the payment rate for the use of real estate and depreciable equipment, the department shall consider factors designed to:

- a. Simplify the administrative procedures for determining payment rates for property-related costs;
- b. Minimize discretionary or appealable decisions;
- c. Eliminate any incentives to sell nursing homes;
- d. Recognize legitimate costs of preserving and replacing property;
- e. Recognize the existing costs of outstanding indebtedness allowable under the statutes and rules in effect on July 1, 1985; and
- f. Reward efficient management of capital assets.

SECTION 16. Special rates. For nursing homes with a capacity increase and for newly constructed nursing homes, which first provide services on or after July 1, 1988, and which are not included in the calculation of the percentile for any group, the department shall establish by rule procedures for determining interim operating cost payment rates. The interim payment rate may not be in effect for more than fifteen months. The department shall establish procedures for determining the interim rate and for making a retroactive cost settle-up after the first year of operating; the cost settled operating cost per diem may not exceed one hundred ten percent of the sixtieth percentile established for the appropriate group.

SECTION 17. Adjustments and reconsideration procedures.

1. Rate adjustments may be made to correct errors subsequently determined and must also be retroactive to the beginning of the facility's rate year except with respect to rates paid by private-paying residents. Any adjustments that result in a cumulative change of more than twenty-five cents per day from the desk rate will be included in the next subsequent cost report to the extent not corrected by a rate adjustment made pursuant to this subsection.
2. Any requests for reconsideration of the rate must be filed with the department's medical services division for administrative consideration within thirty days of the date of the rate notification.

SECTION 18. Appeals.

1. A nursing home dissatisfied with the final rate established may, upon completion of the reconsideration, appeal. An appeal may be perfected by mailing or delivering the information described in subdivisions a through e of this subsection to the department, at such address as the department may designate, mailed or

delivered on or before five p.m. on the thirty-first day after the date of mailing of the determination of the medical services division made with respect to a request for reconsideration. An appeal under this section is perfected only if accompanied by written documents including the following information:

- a. A copy of the letter received from the medical services division advising of that division's decision on the request for reconsideration;
 - b. A statement of each disputed item and the reason or basis for the dispute;
 - c. A computation and the dollar amount which reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;
 - d. The authority in statute or rule upon which the appealing party relies for each disputed item; and
 - e. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.
2. Upon the request of the nursing home, the department shall refer the appeal to the attorney general for the appointment of a hearing officer, knowledgeable in ratesetting matters, who is not an employee of the department and who has not been involved in the decision from which the nursing home has appealed.

SECTION 19. Prohibited practices. From and after January 1, 1990, a nursing home is not eligible to receive medical assistance payments unless it refrains from all of the following:

1. Charging private-paying residents rates for similar services which exceed those rates which are approved by the department for medical assistance recipients, as determined by the prospective desk audit rate, except under the following circumstances: the nursing home may (1) charge private-paying residents a higher rate for a private room, and (2) charge for special services which are not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services in addition to the daily rate paid by the department of human services. Services covered by the payment rate must be the same regardless of payment source. Special services, if offered, must be offered to all residents and charged separately at the same rate. Residents are free to select or decline special services. Special services must not include services which must be provided by the nursing home in order to comply with licensure or certification standards and that if not

provided would result in a deficiency or violation by the nursing home. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing home that charges a private-paying resident a rate in violation of this Act is subject to an action by the state or any of its subdivisions or agencies for civil damages. A private-paying resident or the resident's legal representative has a cause of action for civil damages against a nursing home that charges the resident rates in violation of this Act. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable attorneys' fees or their equivalent.

2. Requiring an applicant for admission to the home, or the guardian or conservator of the applicant, as a condition of admission, to pay any fee or deposit in excess of one hundred dollars, loan any money to the nursing home, or promise to leave all or part of the applicant's estate to the home.
3. Requiring any resident of the nursing home to utilize a vendor of health care services who is a licensed physician or pharmacist chosen by the nursing home.
4. Providing differential treatment on the basis of status with regard to public assistance.
5. Discriminating in admissions, services offered, or room assignment on the basis of status with regard to public assistance. Admissions discrimination shall include, but is not limited to:
 - a. Basing admissions decisions upon assurance by the applicant to the nursing home, or the applicant's guardian or conservator, that the applicant is neither eligible for nor will seek public assistance for payment of nursing home care costs.
 - b. Engaging in preferential selection from waiting lists based on an applicant's ability to pay privately.

The collection and use by a nursing home of financial information of any applicant pursuant to a preadmission screening program does not raise an inference that the nursing home is utilizing that information for any purpose prohibited by this Act.

6. Requiring any vendor of medical care, who is reimbursed by medical assistance under a separate fee schedule, to pay any portion of his fee to the nursing home except as payment for the fair market value of renting or leasing

space or equipment of the nursing home or purchasing support services, if those agreements are disclosed to the department.

7. Refusing, for more than twenty-four hours, to accept a resident returning to his same bed or a bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services.
8. Violating any of the rights of health care facility residents enumerated in section 50-10.2-02.

SECTION 20. Temporary payments - Correction orders. For a period not to exceed one hundred eighty days from the date of mailing formal notice, the department may continue to make medical assistance payments to a nursing home which is in violation of this Act if extreme hardship to the residents would otherwise result. In these cases, the department shall issue an order requiring the nursing home to correct the violation. The nursing home has twenty days from its receipt of the order to correct the violation. If the violation is not corrected within the twenty-day period, the department may reduce the payment rate to the nursing home by up to twenty percent. The amount of the payment rate reduction must be related to the severity of the violation, and must remain in effect until the violation is corrected. The nursing home may seek reconsideration of or appeal the department's action pursuant to the provisions of sections 17 and 18 of this Act.

SECTION 21. Termination. If a nursing home terminates its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the nursing home to receive continued reimbursement only on a temporary basis until medical assistance residents can be relocated to nursing homes participating in the medical assistance program.

SECTION 22. Exception. In the event that the state is determined by the federal government to be no longer eligible for the federal share of medical assistance payments made to a nursing home under this Act, the department may cease medical assistance payments to that nursing home.

SECTION 23. Reporting requirements.

1. No later than October first of each year, each nursing home which receives medical assistance payments from the department shall:
 - a. Provide the department with a copy of its audited report that meets the reporting standards of the American institute of certified public accountants and includes an audited statement of the rate or rates charged to private-paying residents. The examination by the certified public accountant shall be conducted

- in accordance with generally accepted auditing standards as promulgated and adopted by the American institute of certified public accountants;
- b. Provide the department with a statement of ownership for the facility or a certification that ownership has not changed since the most recent statement given pursuant to this subsection;
 - c. Provide the department with separate, audited financial statements as specified in subdivision a of this subsection for every other facility owned in whole or in part by an individual or entity which has an ownership interest in the facility;
 - d. Upon request, provide the department with separate, audited financial statements as specified in subdivision a of this subsection for every organization with which the facility conducts business and which is owned in whole or in part by an individual or entity which has an ownership interest in the facility;
 - e. Provide the department with copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the nursing facility, or a certification that the content of any such document remains unchanged since the most recent statement given pursuant to this subsection;
 - f. Upon request, provide the department with copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services which are claimed as allowable costs; and
 - g. Permit access by the department to the certified public accountant's audit workpapers which support the audited financial statements required in subdivisions a, c, and d of this subsection.
2. Documents or information provided to the department pursuant to this Act shall be public. If the requirements of subsection 1 are not met, the reimbursement rate may be reduced to eighty percent of the rate in effect on the first day of the fourth calendar month after the close of the reporting year, and the reduction shall continue until the requirements are met.

SECTION 24. Incomplete or inaccurate reports. The department may reject any annual cost report filed by a nursing home pursuant to this Act if the department determines that the report or the information required in section 23 of this Act has been filed in a form that is incomplete or inaccurate. In the event that a report

is rejected pursuant to this Act, the department may reduce the reimbursement rate to a nursing home to eighty percent of its most recently established rate until the information is completely and accurately filed.

SECTION 25. Extensions. The department may grant a fifteen-day extension of the reporting deadline to a nursing home for good cause. To receive such an extension, a nursing home shall submit a written request by September first. The department will notify the nursing home of the decision by September fifteenth.

SECTION 26. False reports. If a nursing home knowingly supplies inaccurate or false information in a required report that results in an overpayment, the department shall:

1. Immediately adjust the nursing home's payment rate to recover the entire overpayment within the rate year;
2. Terminate the department's agreement with the nursing home;
3. Prosecute under applicable state or federal law; or
4. Use any combination of the foregoing actions.

SECTION 27. Medicare certification. All nursing homes certified as skilled nursing facilities under the medical assistance program shall participate in medicare part A and part B with respect to every skilled bed in the facility unless, after submitting an application, medicare certification is denied by the federal health care financing administration. Medicare review must be conducted at the time of the annual medical assistance review. Charges for medicare-covered services provided to residents who are simultaneously eligible for medical assistance and medicare must be billed to medicare part A or part B before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by medicare.

SECTION 28. Implementation. The department shall seek appropriations to implement this Act during and after the rate year beginning January 1, 1990.

SECTION 29. AMENDMENT. Subsection 18 of section 54-12-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18. To appoint, upon request, hearing officers to conduct hearings pursuant to chapter 28-32 in those instances where a ~~claimant~~ nursing home requests that the hearing be conducted by an individual who is not employed by the agency which made the decision from which the ~~claimant~~ nursing home has appealed pursuant to section ~~50-06-05.1~~ 18 of this Act.

* SECTION 30. REPEAL. Subsection 21 of section 50-06-05.1 and section 50-24.1-09 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 14, 1987
Filed April 15, 1987

- * NOTE: Section 50-06-05.1 would have been amended by section 6 of House Bill No. 1033, chapter 766, which was vetoed.

CHAPTER 583

SENATE BILL NO. 2244
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

CHILD ABUSE AND NEGLECT PROCEDURES

AN ACT to amend and reenact sections 50-25.1-02, 50-25.1-03, 50-25.1-03.1, 50-25.1-04, 50-25.1-04.1, 50-25.1-05, 50-25.1-05.1, 50-25.1-05.2, 50-25.1-05.3, 50-25.1-06, 50-25.1-07, and 50-25.1-11 of the North Dakota Century Code, relating to child abuse and neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 50-25.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-02. Definitions.

1. "A person responsible for a child's welfare" means the child's parents, guardian, foster parent, an employee of a public or private school or nonresidential child-care facility, an employee of a public or private residential home, institution, or agency, or other person responsible for the child's health and welfare in a residential setting.
2. "Abused child" means an individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means by a person responsible for the child's health or welfare, or who is suffering from or was subjected to any act involving that individual in violation of sections 12.1-20-01 through 12.1-20-08.
3. "~~Division~~" "Department" means ~~the children and family services division~~ of the department of human services.
4. "Harm" means negative changes in a child's health which occur when ~~the parent or other~~ a person responsible for his the child's health and welfare:

* NOTE: Section 50-25.1-02 was also amended by section 33 of House Bill No. 1034, chapter 570, and by section 1 of House Bill No. 1254, chapter 584.

- a. Inflicts or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or
 - b. Commits, allows to be committed or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20.
5. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect where the person responsible for the child's welfare is an employee of a residential child-care facility, a treatment or care center for mentally retarded, a public or private residential educational facility, a maternity home or any residential facility owned or managed by the state or a political subdivision of the state.
- 5.1. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, shall be staff members of the public or private agencies which they represent or shall serve without remuneration. In no event shall an attorney member of the child protection team be appointed to represent the child or the parents at any subsequent court proceeding nor shall the child protection team be composed of fewer than three members.
6. "Neglected child" means a deprived child as defined in chapter 27-20.
7. "Protective services" includes services performed after an investigation of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.
8. "State child protection team" means a multidisciplinary team consisting of the designee of the ~~director of the division~~ department and, where possible of a physician, a representative of a child-placing agency, a representative of the state department of health, a representative of the office of the attorney general, a representative of the department of public instruction, a representative of the director of institutions, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team

members, at the time of their selection and thereafter, shall be staff members of the public or private agency which they represent, or shall serve without remuneration. In no event shall an attorney member of the child protection team be appointed to represent the child or the parents at any subsequent court proceeding nor shall the child protection team be composed of fewer than three persons.

* SECTION 2. AMENDMENT. Section 50-25.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-03. Persons required and permitted to report - To whom reported.

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, day care center or any other child care worker, police or law enforcement officer having knowledge of or reasonable cause to suspect that a child coming before him in his official or professional capacity is abused or neglected shall report the circumstances to the division department or the department's designee.
2. Any person having reasonable cause to suspect that a child is abused or neglected may report such circumstances to the division department or the department's designee.

** SECTION 3. AMENDMENT. Section 50-25.1-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-03.1. Photographs and x-rays. Any person or official required to report under this chapter may cause to be taken color photographs of the areas of trauma visible on a child who is the subject of a report and, if indicated by medical consultation, cause to be performed a radiological examination of the child without the consent of the child's parents or guardian. All photographs taken pursuant to this section shall be taken by law enforcement officials upon the request of any person or official required to report under this chapter. ~~All photographs~~ Photographs and x-rays taken, or copies of them, shall be sent to the division department or the department's designee at the time the initial report of child abuse or neglect is made or as soon thereafter as possible.

*** SECTION 4. AMENDMENT. Section 50-25.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 50-25.1-03 was also amended by section 34 of House Bill No. 1034, chapter 570.
- ** NOTE: Section 50-25.1-03.1 was also amended by section 35 of House Bill No. 1034, chapter 570.
- *** NOTE: Section 50-25.1-04 was also amended by section 36 of House Bill No. 1034, chapter 570.

50-25.1-04. **Method of reporting.** All persons mandated or permitted to report cases of known or suspected child abuse or neglect shall immediately cause oral or written reports to be made to the division department or the department's designee. Oral reports shall be followed by written reports within forty-eight hours if so requested by the director of the division or his department or the department's designee. Reports involving known or suspected institutional child abuse or neglect shall be made and received in the same manner as all other reports made under this chapter.

* **SECTION 5. AMENDMENT.** Section 50-25.1-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-04.1. **State child protection team - How created - Duties.** The director of the division department shall name the members of the state child protection team. The members shall be appointed for three-year staggered terms. The member who represents the division department shall serve as chairperson and shall be responsible for the transmittal of all team reports made pursuant to this chapter. The chairperson shall set meetings for the purposes of fulfilling the duties set forth in sections 50-25.1-02, 50-25.1-04, and 50-25.1-05.1. Under procedures adopted by the team, it may meet at any time, confer with any individuals, groups, and agencies, and may issue reports or recommendations on any aspect of child abuse or neglect it deems appropriate. All reports or recommendations issued shall be subject to the provisions of section 50-25.1-11, except that the team shall make available information reflecting the disposition of reports of institutional child abuse or neglect, where the identity of persons reporting, and of the children and parents of children involved, is protected.

** **SECTION 6. AMENDMENT.** Section 50-25.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05. **Investigation.** The director of the division department shall forthwith investigate, or cause to be investigated, any report of child abuse or neglect made directly to the director department, including the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.

SECTION 7. AMENDMENT. Section 50-25.1-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05.1. **Determination of probable cause.** Upon completion of the investigation of the initial report of child abuse or neglect, a determination shall be made that there does or does not exist probable cause to believe that child abuse or neglect is indicated.

1. This determination shall be the responsibility of:

* NOTE: Section 50-25.1-04.1 was also amended by section 37 of House Bill No. 1034, chapter 570.

** NOTE: Section 50-25.1-05 was also amended by section 38 of House Bill No. 1034, chapter 570.

- a. The state child protection team in all cases of alleged institutional child abuse or neglect; and
 - b. In all other cases of alleged abuse or neglect, by the director of the division or his department or the department's designee.
2. Probable cause to believe that child abuse or neglect is indicated may not be determined where the suspected child abuse or neglect arises solely out of conduct involving the legitimate practice of religious beliefs by a parent or guardian. This exception shall not preclude a court from ordering that medical services be provided to the child where his the child's life or safety requires it.

* SECTION 8. AMENDMENT. Section 50-25.1-05.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05.2. Report to the court.

1. The state child protection team, upon a determination that institutional child abuse or neglect is indicated, shall promptly make written report to the juvenile court having jurisdiction in the matter. When the subject of the report is a state-operated institution, the state child protection team shall promptly notify the governor that such report has been made to the juvenile court.
2. In all other cases, upon a determination that probable cause exists to believe that child abuse or neglect is indicated, the director of the division or a designee of the director department or the department's designee shall promptly make written report to the juvenile court having jurisdiction in the matter.

** SECTION 9. AMENDMENT. Section 50-25.1-05.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05.3. Disposition of reports implicating a person not responsible for the child's health or welfare. Upon determination by the division or its department or the department's designee that a report made under this chapter implicates a person other than a person responsible for a child's welfare, the division department may refer the report to an appropriate law enforcement agency for investigation and disposition.

*** SECTION 10. AMENDMENT. Section 50-25.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-06. Protective and other services to be provided. The division department and the appropriate county social service board

- * NOTE: Section 50-25.1-05.2 was also amended by section 39 of House Bill No. 1034, chapter 570.
- ** NOTE: Section 50-25.1-05.3 was also amended by section 40 of House Bill No. 1034, chapter 570.
- *** NOTE: Section 50-25.1-06 was also amended by section 41 of House Bill No. 1034, chapter 570.

shall provide protective services for the abused or neglected child and other children under the same care as may be necessary for their well-being, and shall provide other appropriate social services, as the circumstances warrant, to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children.

* SECTION 11. AMENDMENT. Section 50-25.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-07. Protective custody. Any physician examining a child with respect to whom abuse or neglect is known or suspected, after reasonable attempts to advise the parents, guardian, or other person having responsibility for the care of the child that he the physician suspects has been abused or neglected, may keep the child in the custody of the hospital or medical facility for not to exceed ninety-six hours and must immediately notify the juvenile court and the division department in order that child-protective proceedings may be instituted.

** SECTION 12. AMENDMENT. Section 50-25.1-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-11. Confidentiality of records - Authorized disclosures. All reports made under this chapter, as well as any other information obtained, are confidential and shall be made available to:

1. A physician who has before him a child whom he reasonably suspects may have been abused or neglected.
2. A person who is authorized to place a child in protective custody and has before him a child whom he reasonably suspects may have been abused or neglected and the person requires the information in order to determine whether to place such child in protective custody.
3. Authorized staff of the division department, appropriate county social service boards, and appropriate state and local child protection team members.
4. Any person who is the subject of a report; provided, however, that the identity of persons reporting under this chapter is protected.
5. Public officials and their authorized agents who require such information in connection with the discharge of their official duties.
6. A court whenever it determines that the information is necessary for the determination of an issue before the court.

* NOTE: Section 50-25.1-07 was also amended by section 42 of House Bill No. 1034, chapter 570.

** NOTE: Section 50-25.1-11 was also amended by section 43 of House Bill No. 1034, chapter 570.

7. A person engaged in a bona fide research purpose; provided, however, that no information identifying the subjects of a report is made available to the researcher unless the information is absolutely essential to the research purpose and the ~~director of the division~~ department gives prior approval.
8. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
9. Parents or a legally appointed guardian of a child who is suspected to be abused or neglected, provided, however, that subsection 4 governs the availability of information to a parent or guardian who is also the subject of a report.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 584

HOUSE BILL NO. 1254
(Ulmer)

LOCAL CHILD PROTECTION TEAM COORDINATION

AN ACT to amend and reenact subsection 5.1 of section 50-25.1-02 of the North Dakota Century Code, relating to the definition of a local child protection team.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 5.1 of section 50-25.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 5.1. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, shall be staff members of the public or private agencies which they represent or shall serve without remuneration. In no event shall an attorney member of the child protection team be appointed to represent the child or the parents at any subsequent court proceeding nor shall the child protection team be composed of fewer than three members. The department shall coordinate the organization of local child protection teams on a county or multicounty basis.

Approved March 27, 1987
Filed March 30, 1987

- * NOTE: Section 50-25.1-02 was also amended by section 33 of House Bill No. 1034, chapter 570, and by section 1 of Senate Bill No. 2244, chapter 583.

CHAPTER 585

SENATE BILL NO. 2314
(Heinrich)

FALSE CHILD ABUSE REPORTS

AN ACT to amend and reenact section 50-25.1-13 of the North Dakota Century Code, relating to false reports of child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-25.1-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-13. Penalty for failure to report - False reports. Any person required by this chapter to report a case of known or suspected child neglect or abuse who willfully, as defined in section 12.1-02-02, fails to do so is guilty of a class B misdemeanor. Any person who willfully, as defined in section 12.1-02-02, makes a false report, or provides false information which causes a report to be made, under this chapter is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 586

HOUSE BILL NO. 1212
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

COUNCIL ON HUMAN RESOURCES

AN ACT to amend and reenact section 50-26-04 of the North Dakota Century Code, relating to the governor's council on human resources.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-26-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-26-04. Executive committee - Powers - Employment of executive director. The executive committee of the governor's council on human resources shall consist of the respective chairman and vice chairman of the committees which constitute the council. They shall select a chairman from their membership and shall meet at such times and at such places as the chairman may direct. Members of the executive committee shall receive the same mileage and expenses for performance of their official duties as is provided in section 50-26-03. It shall be the duty of the executive committee to determine the number of meetings each committee shall hold, the areas in which they shall devote their time, and generally, to supervise all functions of any committee. The executive committee shall coordinate all functions of the council with other state departments, agencies, and other organizations and shall assure that the council cooperate with such departments, agencies, and other organizations wherever possible. The executive committee of the governor's council shall, with the approval of the executive director of the department of human services, appoint a full-time director of the council on human resources whose duty it shall be to assist the committees in any manner authorized by the executive committee of the council. The executive committee of the council may authorize the council director to employ such clerical help as they deem necessary. The compensation of the director and clerical help shall be set by the executive director of the department of human services within appropriations by the legislative assembly. A special operating fund for the governor's council on human resources shall be maintained within the state treasury. All expenditures from such fund shall be within the limits of legislative

appropriations and shall be made upon vouchers, signed and approved by the executive director of the department of human services or the executive director's designee. Upon approval of such vouchers by the office of the budget, warrant-checks shall be prepared by the office of management and budget. All moneys received as gifts, donations, or bequests and all federal moneys received shall be deposited in the special operating fund. The state treasurer shall make periodic transfers upon order of the director of the office of management and budget from the governor's council on human resources general fund appropriation to such special operating fund whenever its balance falls so low as to require supplementation. The executive committee is authorized on behalf of the council to accept any federal funds and any other gifts and money from any source that may be offered to them.

Approved March 12, 1987
Filed March 16, 1987