

MENTALLY ILL AND RETARDED, TUBERCULAR, BLIND, AND DEAF

CHAPTER 333

HOUSE BILL NO. 1205

(Committee on State and Federal Government)

(At the request of the Office of Management and Budget)

DEVELOPMENTAL DISABILITY AND HUMAN RESOURCE PROGRAMS

AN ACT to provide for a committee on protection and advocacy for persons with developmental disabilities or mental illnesses; to amend and reenact sections 25-01-01.1, 50-26-01, 50-26-03, 50-26-04, and 50-27-03 of the North Dakota Century Code, relating to the placement of the state council on developmental disabilities and the governor's council on human resources within the office of the governor; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In sections 1 through 12 of this Act, unless the context otherwise requires:

1. "Abuse" means:
 - a. Willful use of offensive, abusive, or demeaning language by a caretaker that causes mental anguish of any person with developmental disabilities;
 - b. Knowing, reckless, or intentional acts or failures to act which cause injury or death to a developmentally disabled or mentally ill person or which placed that person at risk of injury or death;
 - c. Rape or sexual assault of a developmentally disabled or mentally ill person;
 - d. Corporal punishment or striking of a developmentally disabled or mentally ill person;
 - e. Unauthorized use or the use of excessive force in the placement of bodily restraints on a developmentally disabled or mentally ill person; and
 - f. Use of bodily or chemical restraints on a developmentally disabled or mentally ill person which is not in compliance with federal or state laws and administrative regulations.
2. "Advocacy" means action to assist or represent a person or group of persons with developmental disabilities or mental illnesses in securing their rights, obtaining needed services, investigating complaints, and removing barriers to identified needs.
3. "Advocate" means an employee of the project.

4. "Caretaker" means a person, organization, association, or facility who has assumed legal responsibility or a contractual obligation for the care of a person with developmental disabilities or mental illness, or a parent, spouse, sibling, other relative, or person who has voluntarily assumed responsibility for the person's care.
5. "Committee" means the committee on protection and advocacy.
6. "Complaint" means an allegation of a violation of human or legal rights, or a lack of needed services, which is not a report of abuse, neglect, or exploitation.
7. "Developmental disability" is a disability as defined in section 25-01.2-01.
8. "Eligibility for services" means persons eligible for services of the project, including:
 - a. An adult with developmental disabilities.
 - b. An adult suffering from a mental illness who is an inpatient or resident in a facility rendering care or treatment, even if the location of the person is unknown.
 - c. An adult suffering from a mental illness who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility.
 - d. An adult suffering from a mental illness who within the last ninety days was an inpatient or resident of a facility rendering care or treatment.
 - e. A child with developmental disabilities or a child with mental illness who meets the criteria of subdivision b, c, or d of this subsection is eligible for advocacy services.
 - f. A child with developmental disabilities or mental illness who is not an abused or neglected child as defined in chapter 50-25.1 is eligible for protective services.
9. "Exploitation", when committed by a caretaker or relative of, or any person in a fiduciary relationship with, a person with developmental disabilities or mental illness, means:
 - a. The taking or misuse of property or resources of a person with developmental disabilities or mental illness by means of undue influence, breach of fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means;
 - b. The use of the services of a person with developmental disabilities or mental illness without just compensation; or
 - c. The use of a person with developmental disabilities or mental illness for the entertainment or sexual gratification of others under circumstances that cause degradation, humiliation, or

mental anguish to the person with developmental disabilities or mental illness.

10. "Facility" means a school, residence center, group home, nursing home, foster home, boarding home, or other facility operated by any public or private agency, organization, or institution, which provides services to a person with developmental disabilities or mental illness.
11. "Mental health professional" means a mental health professional as defined in section 25-03.1-02.
12. "Mental illness" means significant mental illness or emotional impairment as determined by a mental health professional.
13. "Neglect" means:
 - a. Inability of a person with developmental disabilities or mental illness to provide food, shelter, clothing, health care, or services necessary to maintain the mental and physical health of that person;
 - b. Failure by any caretaker of a person with developmental disabilities or mental illness to meet, either by commission or omission, any statutory obligation, court order, administrative rule or regulation, policy, procedure, or minimally accepted standard for care of persons with developmental disabilities or mental illnesses;
 - c. Negligent act or omission by any caretaker which causes injury or death to a person with developmental disabilities or mental illness or which places that person at risk of injury or death;
 - d. Failure by any caretaker, who is required by law or administrative rule, to establish or carry out an appropriate individual program or treatment plan for a person with developmental disabilities or mental illness;
 - e. Failure by any caretaker to provide adequate nutrition, clothing, or health care to a person with developmental disabilities or mental illness;
 - f. Failure by any caretaker to provide a safe environment for a person with developmental disabilities or mental illness; and
 - g. Failure by any caretaker to maintain adequate numbers of appropriately trained staff at a facility providing care and services for persons with developmental disabilities or mental illnesses.
14. "Project" means the protection and advocacy project.
15. "Protective services" means actions to assist persons with developmental disabilities or mental illnesses who are unable to manage their own resources or to protect themselves from abuse, neglect, exploitation, or other hazards.

16. "Report" means a verbal or written communication, including an anonymous communication, alleging the abuse, neglect, or exploitation of a person with developmental disabilities or mental illness.

SECTION 2. Committee on protection and advocacy. The governor shall appoint a committee on protection and advocacy. The committee must consist of seven members who broadly represent or are knowledgeable about the needs of the persons served by the protection and advocacy project. The committee is responsible for the administrative supervision and direction and for the planning, design, implementation, and functioning of the project. The committee in its capacity of supervising and directing the project shall operate independently of the governor or any state agency that provides treatment, services, or habilitation to persons with developmental disabilities or mental illness.

SECTION 3. Director - Administrative authority. The committee shall appoint a director, who serves at the will of the committee. The committee shall set the salary of the director within the limits of the amount appropriated for salaries by the legislative assembly. The director shall employ necessary staff, including advocates, who must be classified under the state personnel merit system. The director and other employees of the project are entitled to reimbursement for expenses incurred in carrying out their duties at the same rate and in the same manner as other state officials and employees. The director, with the advice and consent of the committee, may adopt rules for administration of the project, the conduct of its employees, the performance of its business, and the custody, use, and preservation of the records, documents, and property pertaining to the committee. The director shall submit to the committee bimonthly reports concerning the status of revenue, expenditures, and protection or advocacy efforts engaged in by project personnel.

SECTION 4. Reporting of abuse, neglect, or exploitation - Immunity for good faith reports.

1. Every medical, mental health, or developmental disabilities professional, educational professional, police or law enforcement officer, or caretaker having knowledge of or reasonable cause to suspect that an adult with developmental disabilities or mental illness coming before the individual providing services in that individual's official or professional capacity is abused, neglected, or exploited shall report the circumstances of that abuse, neglect, or exploitation to the project. For the purposes of this section:
 - a. "Educational professional" means a professional providing educational services either at a school, academy, or other educational facility, or at a private facility or residence, as a teacher, professor, tutor, aid, administrator, or other education professional.
 - b. "Medical, mental health, or developmental disabilities professional" means a professional providing health care or services to persons with developmental disabilities or mental illnesses, on a full-time or part-time basis, on an individual basis or at the request of a caretaker, and includes a physician, medical examiner, coroner, dentist, optometrist,

chiropractor, nurse, physical therapist, mental health professional, hospital personnel, nursing home personnel, congregate care personnel, social worker, or any other person providing medical, mental health, or developmental disabilities services.

2. An individual not listed in subsection 1 having knowledge of or reasonable cause to suspect that an adult with developmental disabilities or mental illness is abused, neglected, or exploited may report those circumstances to the committee or the project.
3. An individual other than the alleged perpetrator participating in good faith in the making of a report, assisting an investigator, furnishing information to an advocate or other employee of the committee, or in providing protective services under this section, is immune from any liability, civil or criminal, that otherwise might result from the reporting of the alleged case of abuse, neglect, or exploitation.

SECTION 5. Retaliation - Presumptions - Penalty.

1. An employer that imposes any form of discipline or retaliation against an employee solely because the employee reported having knowledge of or reasonable cause to suspect that a person with developmental disabilities or mental illness was abused, neglected, or exploited is guilty of a class B misdemeanor.
2. A rebuttable presumption that retaliation has occurred arises when an adverse action is taken within ninety days of the report. For the purpose of this subsection, "adverse action" means any action taken against the reporter or the person with developmental disabilities or mental illness about whom the report was made by a facility or person involved in a report because of the report. Adverse action includes:
 - a. Discharge from or termination of the employment of the employee.
 - b. Demotion, negative work performance evaluation, reduction of hours worked or benefits or work privileges, or reduction in remuneration for services of the employee.
 - c. Restriction or prohibition of access by the employee to a facility or to the residents of the facility.
 - d. Discharge or transfer of the person with developmental disabilities or mental illness from or within a facility or from the supervision of a caretaker.
 - e. Failure of a facility to perform customary services for the person with developmental disabilities or mental illness.
3. It is a defense to any charge brought under this section that the good faith of the individual making the report, described in subsection 3 of section 4 of this Act, has been rebutted, but only as to actions taken against the employee.

SECTION 6. Authority of project. Pursuant to rules adopted by the committee, the project, within the limits of legislative appropriations, shall provide advocacy and protective services for persons with developmental disabilities and persons with mental illnesses. The rules adopted by the committee relating to the need for the consent of the client must balance the rights of persons with developmental disabilities or mental illnesses to privacy and to refuse services under section 11 of this Act with the committee's duties to protect the human and legal rights of persons eligible for services and to monitor facilities for compliance with federal and state laws and rules. The project may:

1. Represent persons with developmental disabilities or mental illnesses so that they may realize the rights and services to which they are entitled.
2. Investigate complaints and reports if the alleged incidents are reported to the committee or the project or if there is probable cause to believe that the incidents occurred.
3. Monitor individual habilitation or treatment plans, program plans, educational plans, facilities and programs, and all other services and care provided to persons with developmental disabilities or mental illnesses.
4. Employ counsel to represent clients to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of persons with developmental disabilities or mental illnesses, and employ counsel to represent the project or the committee when, in the opinion of the attorney general, a conflict of interest under the North Dakota Rules of Professional Conduct exists between the office of attorney general and the committee or the project, and the conflict cannot be avoided by the appointment of counsel under subsection 3 of section 54-12-01 or section 54-12-08.
5. Pursue legal, administrative, and other appropriate remedies to ensure the protection and the rights of persons with developmental disabilities or mental illnesses. Prior to instituting any legal action in a federal or state court on behalf of a person with developmental disabilities or mental illnesses, the project shall exhaust in a timely manner all administrative remedies if appropriate. If, in pursuing administrative remedies, the project determines that any matter with respect to that person will not be resolved within a reasonable time, the project may pursue alternative remedies, including the initiation of a legal action with the consent of the committee. However, exhaustion of administrative remedies is not a prerequisite to initiation of a legal action when that action is instituted to prevent or eliminate imminent serious harm to a person with developmental disabilities or mental illnesses.
6. Sign any criminal complaint necessary to protect the interests of any person with developmental disabilities or mental illness, or group of persons with developmental disabilities or mental illnesses, who appear to have been victimized by or subjected to criminal conduct.

7. Review each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act with respect to any facility rendering care or treatment to persons with developmental disabilities or mental illnesses.
8. Provide the public, on an annual basis, an opportunity to comment on the priorities established by, and the activities of the committee.
9. Establish a grievance procedure for clients or prospective clients to ensure that persons with developmental disabilities or mental illnesses have full access to the services of the committee.
10. Prepare an annual report to the legislative assembly and the governor describing the priorities, activities, accomplishments, and expenditures of the system.
11. Provide information on and referral to programs and services addressing the needs of persons with developmental disabilities or mental illnesses.
12. Accept and administer gifts, grants, or contracts with persons or organizations, including the federal government, on such terms as may be beneficial to the state.
13. Contract with any person, public or private, to carry out any responsibilities of the project under this Act.

SECTION 7. Access to records, facilities, and persons - Rules. A caretaker shall provide the project access to the person with developmental disabilities or mental illness and to the facility where the person resides. The committee shall adopt rules regarding access to the records of a client for the purpose of investigating complaints or reports and monitoring service delivery systems. Any rules adopted under this section must comply with subsection 4 of section 25-01.2-03, section 25-16-07, 42 U.S.C. 6042, and 42 U.S.C. 10805.

SECTION 8. Investigation of reports.

1. Upon receipt of any report of suspected abuse, neglect, exploitation, or a complaint made pursuant to sections 1 through 12 of this Act, the project shall assess the need for an investigation of the report or complaint. If the project determines that the report or complaint is warranted, the project shall investigate or cause the report or complaint to be investigated. For the purpose of investigating a report or a complaint, the project may:
 - a. Interview the alleged victim who has developmental disabilities or mental illness at any time of the day or night, with or without notice.
 - b. Interview any other individual who may have knowledge of the situation.

- c. Access all locations under the control of the caretaker where records or other information exist, including the residence of the alleged victim.
 - d. Coordinate investigations with other agencies, departments, or other entities providing services necessary or advisable for the person with developmental disabilities or mental illness.
 - e. Delegate investigatory powers to the extent necessary and appropriate to any person or entity.
2. This section does not limit the responsibilities of law enforcement agencies to enforce the laws of this state or preclude law enforcement agencies from investigating, as appropriate, any alleged criminal conduct.

SECTION 9. Conflict of interest. In any situation in which the project is representing, or has been requested to represent, two or more persons with developmental disabilities or mental illnesses, if those persons have conflicting interests in the matter for which the project is requested to act, the project may provide services to the first person making application for services for that purpose. Any additional person, with conflicting interests, may be referred to another agency or individuals for assistance.

SECTION 10. Confidentiality and privileged information.

1. All documents, records, information, memoranda, reports, complaints, or written or nonwritten communication in the possession of the committee, project, or any advocate relating to an identified or identifiable person with developmental disabilities or mental illness are confidential and are not subject to disclosure, except:
 - a. When release is consented to in writing by all persons with developmental disabilities or mental illnesses identified or identifiable in the documents, records, information, memoranda, reports, complaints, or written or nonwritten communications;
 - b. In a judicial proceeding when ordered by the presiding judge; or
 - c. To officers of the law or, in the discretion of the committee, any other legally constituted board or agency serving the interests of persons with mental illness or developmental disabilities; or
 - d. To the parents of a minor who is an eligible person under sections 1 through 12 of this Act or legal guardians of the person with mental illness or developmental disability except that no information may be released to the person with mental illness who is the subject of the information when such release is prohibited by state or federal law.
2. Unless ordered by a court of competent jurisdiction, the name of a person who in good faith makes a report or complaint may not be released or disclosed by the committee or the project.

SECTION 11. Refusal of services - Alternatives. If a person with developmental disabilities or mental illness refuses an offer of services from the project and, in the judgment of the project, the person's life, safety, or health is seriously jeopardized, the project may petition a court of competent jurisdiction for the appointment of a guardian or conservator. The project may also refer the matter to an appropriate agency, department, or authority for possible civil action on behalf of the person with mental illness or developmental disabilities, or for criminal prosecution of any individual abusing, neglecting, or exploiting a person with mental illness or developmental disabilities.

SECTION 12. Penalties.

1. A person who permits or allows the unauthorized disclosure of reports or complaints obtained under sections 1 through 12 of this Act is guilty of an infraction.
2. A person who willfully fails to report the abuse, neglect, or exploitation of any person with developmental disabilities or mental illness, if required to report pursuant to sections 1 through 12 of this Act, is guilty of an infraction.

SECTION 13. AMENDMENT. Section 25-01-01.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01-01.1. State council on developmental disabilities. There ~~is hereby created and shall~~ must be maintained in the state department of human services office of the governor a state council on developmental disabilities consisting of one representative of each of the following departments, divisions, institutions, and organizations designated by the head of such agency or organization:

1. Office of superintendent of public instruction.
2. North Dakota department of human services.
3. State department of health and consolidated laboratories.
4. Developmental center at Grafton state school.
5. Job service North Dakota.
6. Director of institutions.

The council shall have consumer representation in conformity with federal regulations regarding developmental disabilities. All members of the council ~~shall~~ must be appointed by the governor from the list of designees provided by agency heads pursuant to this section. The council shall select its own officers who shall serve for a term of two years commencing on October first of each year. Meetings ~~shall~~ must be held at least twice a year or at the call of the chairman or upon notice in writing signed by not less than three members of the council. A simple majority of the council ~~shall constitute~~ constitutes a quorum and ~~shall have authority to~~ may act upon any matter coming before the council. Members of the council ~~shall be reimbursed~~ are entitled to reimbursement in the same manner and at the same rate provided by law for other state officials.

The council shall assist in the development of the state plan for developmental disabilities, monitor and evaluate the implementation of such state plan, review and comment on all state plans in the state which relate to programs affecting persons with developmental disabilities, provide protection and advocacy to developmentally disabled individuals when requested by a state department, division, institution, or organization, and establish a committee on professional standards and certification ~~that~~ which will develop rules ~~and regulations~~ for the certification of developmental disability professionals. The council, with the approval of the governor, shall appoint a full-time director who shall assist the council. The director must be classified under the state personnel merit system. The council shall also perform studies and surveys of the needs of developmentally disabled persons in North Dakota, and shall facilitate coordination of the activities of all state departments, divisions, agencies, and institutions having responsibilities in the field of developmental disabilities.

SECTION 14. AMENDMENT. Section 50-26-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-26-01. Establishment of governor's council on human resources - Certain committees to constitute - Appointment. There is hereby established a governor's council on human resources, to be maintained within the ~~department of human services, which shall~~ office of the governor. The council must consist of a committee on aging, a committee on children and youth, a committee on employment of the handicapped persons with disabilities, a commission on the status of women, and other committees having a related interest in human resources as may be appointed. Each of these committees shall consist of an executive committee of no more than nine members; each of whom, except as provided by this section, shall committee member must be appointed by the governor for a term of three years, staggered so that the terms of one-third of the members of each committee expire July first of each year, except that initial appointments to the committees ~~shall~~ must be made on the basis of a one-year term for one-third of the members of each committee; a two-year term for one-third of the members of each committee; and a full three-year term for the remaining members of each committee. At least one-third of the members appointed to the ~~executive~~ committee on children and youth must have expertise in the prevention of child abuse and neglect. Each of the ~~executive~~ committees of the governor's council on human resources may appoint to their committee the chairman of the mayor's committee or ~~his~~ the chairman's designated representative. A vacancy occurring other than by reason of the expiration of a term ~~shall~~ must be filled in the same manner as original appointments, except that ~~such~~ the appointment ~~shall~~ may be made for the remainder of the unexpired term only.

SECTION 15. AMENDMENT. Section 50-26-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-26-03. Human resources committees - Organization - Expenses. The governor's committees on aging, children and youth, ~~the employment of the handicapped persons with disabilities, the commission on the status of women,~~ and such other committees who have a related interest in human resources, at their first meetings after July first of each year, shall elect from their ~~executive~~ committee membership a chairman and vice chairman. Every meeting of each committee ~~shall~~ must be called by the chairman of ~~such~~ the committee and ~~shall~~ must be presided over by ~~such~~ the chairman unless ~~he~~ the chairman is unable to act, in which case the vice chairman shall succeed to the powers

and duties of the chairman. Each of the committee members ~~shall~~ is entitled to be paid for all necessary mileage and other actual expenses incurred in the performance of their official duties as members of such committees in the same amount and in the same manner as other state officials are paid.

SECTION 16. AMENDMENT. Section 50-26-04 of the 1987 Supplement to 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~~ consists of the respective chairman and vice chairman of the committees ~~which that~~ 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~~ are entitled to receive the same mileage and expenses for performance of their official duties as is provided in section 50-26-03. ~~It is the duty of the~~ The executive committee to shall 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,~~ governor, shall appoint a full-time director of the council on human resources whose duty it is 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 must be set by the ~~executive director of the department of human services~~ governor within appropriations by the legislative assembly. ~~A special operating fund for the governor's council on human resources must be maintained within the state treasury. All expenditures from such fund must be within the limits of legislative appropriations and must 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 must be prepared by the office of management and budget. All moneys received as gifts, donations, or bequests and all federal moneys received must 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.~~

SECTION 17. AMENDMENT. Section 50-27-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-27-03. Authority of the executive committee on children and youth. In addition to the powers and duties enumerated in section 50-26-02, the ~~executive~~ committee on children and youth of the governor's council on human resources ~~is authorized to~~ may:

1. Apply for and receive public funds from any source, devises, legacies, bequests, gifts, and donations from private individuals, organizations, or funds from any other source not contrary to law.
2. Meet at least twice each year for the purpose of administering the children's trust fund.
3. Create such advisory committees as may be deemed necessary to assure public involvement in the planning, development, and administration of the children's trust fund.
4. Hire or arrange for appropriate staff, as deemed necessary, to administer and maintain properly the children's trust fund.
5. Develop, implement, and periodically review a written plan to be used in administering the funds expended from and retained in the children's trust fund. The written plan must include the types of activities to be funded, the nature of organizations preferred for funding, the criteria for eligible fund applicants, and the mechanisms for the monitoring and evaluating of funded activities.
6. Award grants from the children's trust fund in accordance with this chapter and any rules that have been adopted.
7. Adopt, after public notice and an opportunity for comment has been given, any rules it determines to be necessary to carry out this chapter.
8. Contract with persons or organizations, including political subdivisions and school districts.
9. Prepare and submit to the executive director of the department of human services a report at the end of each biennium.

The ~~executive director of the department of human services~~ governor shall designate a person with a demonstrated expertise in the prevention of child abuse and neglect as executive secretary to the ~~executive committee of the children and youth committee~~ to assist in the administration of the children's trust fund.

SECTION 18. STATEMENT OF LEGISLATIVE INTENT. The legislative assembly recognizes that the capacity of the department of human services for accommodating the administrative needs and requirements of the developmental disabilities council exceeds that capacity within the governor's office. Therefore, it is the intent of the legislative assembly that the department of human services continue to provide administrative support for the developmental disabilities council. The administrative support by the department must continue to include fiscal management and financial reporting, contract preparation, management, and supplemental clerical and office assistance. It is also the intent of the legislative assembly that the developmental disabilities council remain an autonomous entity completely independent of the governor's council on human resources and that in no way is the developmental disabilities council accountable to the governor's council on human resources or its committees.

Approved April 15, 1989
Filed April 17, 1989

CHAPTER 334

SENATE BILL NO. 2072
(Senators Mathern, J. Meyer)
(Representatives R. Larson, Marks)

STATE HOSPITAL OBJECT

AN ACT to amend and reenact section 25-02-03 of the North Dakota Century Code, relating to the object of the state hospital at Jamestown.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 25-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-02-03. Object of state hospital. The state hospital is an institution for mental diseases serving specialized populations of the mentally ill, including persons suffering from drug addiction or alcoholism. The state hospital is one component of the North Dakota mental health delivery system and shall serve as a resource to community-based treatment programs. The state hospital shall, pursuant to rules adopted by the department of human services, receive and care for all mentally ill persons residing within this state who may be committed to its care, in accordance with the provisions of this title, and shall furnish to such those mentally ill persons all needed food, shelter, treatment, and support which may tend to restore their mental health or to alleviate their illness or suffering.

Approved April 19, 1989
Filed April 19, 1989

* NOTE: Section 25-02-03 was also amended by section 1 of House Bill No. 1038, chapter 335.

CHAPTER 335

HOUSE BILL NO. 1038
(Legislative Council)
(Interim Budget Committee on Human Services)

STATE HOSPITAL AND PUBLIC TREATMENT FACILITIES

AN ACT to amend and reenact sections 25-02-03 and 25-03.1-04 of the North Dakota Century Code, relating to the purpose of the state hospital and admissions to public treatment facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 25-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-02-03. Object of state hospital. The state hospital is an institution for mental diseases serving specialized populations of the mentally ill, including persons suffering from drug addiction or alcoholism. The state hospital is one component of the North Dakota mental health delivery system and serves as a resource to community-based treatment programs. The state hospital shall, pursuant to rules adopted by the department of human services, receive and care for all mentally ill persons, including persons suffering from drug addiction or alcoholism, residing within this state who may be committed to its care, in accordance with the provisions of this title, and shall furnish to such those mentally ill persons all needed food, shelter, treatment, and support which that may tend to restore their mental health or to alleviate their illness or suffering.

** SECTION 2. AMENDMENT. Section 25-03.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-04. Voluntary admission. An Pursuant to rules adopted by the department, an application for admission to the state hospital or a public treatment facility for observation, diagnosis, care, or treatment as a voluntary patient may be made by any person who is mentally ill, an alcoholic, or a drug addict, or who has symptoms of such illnesses. An application for admission as a voluntary patient may be made on behalf of a minor who is mentally ill, an alcoholic, or a drug addict, or who has symptoms of such illnesses, by his the minor's parent or legal guardian. The application may must be submitted to a public treatment facility or to the state hospital, both of which shall have the authority to admit and treat the applicant regional human services center, or, in an emergency, to the state hospital. Upon receipt of an application, the regional human service center must arrange for an evaluation of the applicant and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or the director shall immediately designate a physician, psychiatrist, clinical psychologist, or mental health professional to examine the patient.

Approved April 13, 1989
Filed April 13, 1989

* NOTE: Section 25-02-03 was also amended by section 1 of Senate Bill No. 2072, chapter 334.

** NOTE: Section 25-03.1-04 was also amended by section 4 of Senate Bill No. 2389, chapter 149.

CHAPTER 336

HOUSE BILL NO. 1106
(Committee on State and Federal Government)
(At the request of the Department of Human Services)

STATE HOSPITAL SUPERINTENDENT

AN ACT to amend and reenact section 25-02-04 of the North Dakota Century Code, relating to the qualifications of the superintendent of the state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-02-04 of the 1987 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 July 21, 1987, whichever is later.~~ A board eligible psychiatrist appointed as superintendent after July 1, 1989, must accomplish board certification within three years after the date of appointment. 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 March 31, 1989
Filed March 31, 1989

CHAPTER 337

HOUSE BILL NO. 1599
(Representatives J. DeMers, Rydell)
(Senators Mathern, Nalewaja)

RESIDENTIAL TREATMENT CENTERS FOR CHILDREN

AN ACT to create and enact a new chapter to title 25 of the North Dakota Century Code, relating to licensing of residential treatment centers for children; to amend and reenact section 50-11-01.3 of the North Dakota Century Code, relating to the use of public funds for foster care; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery, provided by qualified mental health professionals.
2. "Department" means the department of human services.
3. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a mentally ill person using diagnostic, interview, and other relevant assessment techniques provided by a mental health professional.
4. "Individual treatment plan" means a written plan of intervention, treatment, and services for a mentally ill person that is developed under the clinical supervision of a mental health professional on the basis of a diagnostic assessment.
5. "Mentally ill person" has the same meaning provided for in section 25-03.1-02.
6. "Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomate in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing.
7. "Residential treatment" means a twenty-four hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of mentally ill persons.

8. "Residential treatment center for children" means a facility or a distinct part of a facility that provides to children and adolescents, a total, twenty-four hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting.

License required. The operator of a publicly or privately operated residential treatment center for children shall meet the requirements for licensure and shall secure a license from the department.

Requirements for license. The department shall issue a license for the operation of a residential treatment center for children upon a showing that:

1. The premises to be used are in fit, safe, and sanitary condition and properly equipped to provide good care and treatment;
2. The program director of the center holds, at a minimum, a master's degree in social work, psychology, or in a related behavioral science with at least two years of professional experience in the treatment of children and adolescents suffering from mental illnesses or emotional disturbances. The executive director of the center must have, at a minimum, a bachelor's degree in a behavioral science or a bachelor's degree in any field and two years of experience in administration;
3. The staff employed by the center is supervised by the program director and qualified by training and experience to provide services to children and adolescents suffering from mental illnesses or emotional disturbances. The center annually must provide training to staff which is relevant to the needs of the client population;
4. The health, safety, and well-being of the residents cared for and treated in the center will be properly safeguarded;
5. There is sufficient treatment, educational, recreational and leisure, and physical facilities and services available to the residents in the center;
6. The center will provide for a medical and psychological examination of each resident within seventy-two hours of admission and thereafter as needed by the resident;
7. An interdisciplinary team consisting of at least one qualified mental health professional will review each individual treatment plan at least monthly and update or amend the plan to meet the needs of the resident; and
8. The center is in compliance with this chapter and with rules adopted under this chapter.

Conviction not bar to licensure - Exceptions. Conviction of an offense by an owner or operator of a center does not disqualify the center from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a treatment center for children, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

Content of license. The license to operate a treatment center for children must specify:

1. The name of the licensee.
2. The premises to which the license is applicable.
3. The number of residents who may be received in the premises at any one time.
4. The date of expiration of the license.

Admission criteria. A child may be admitted to a residential treatment center for children if, the child has been diagnosed by a psychiatrist or psychologist as suffering from a mental illness or emotional disturbance and the child is in need of and able to respond to active psychotherapeutic intervention and cannot be effectively treated in the child's family, in another home, or in a less restrictive setting. The center must take into account the age and diagnosis of the child in order to provide an environment that is safe and therapeutic for all residents.

Method of providing service. A residential treatment center for children shall provide for the development of an individual treatment plan, based upon a comprehensive interdisciplinary diagnostic assessment, which includes the role of the family, identifies the goals and objectives of the residential treatment, provides a schedule for accomplishing treatment goals and objectives, and identifies the individuals responsible for providing services, consistent with the treatment plan, to residents. Clinical supervision of the treatment plan must be accomplished by full-time or part-time employment of or contracts with qualified mental health professionals. Clinical supervision must be documented by the qualified mental health professionals cosigning individual treatment plans and by entries in the resident's record regarding supervisory activity.

Revocation or denial of license. The department may revoke a license or deny an application for a license under this chapter if:

1. Any requirement and condition of this chapter for the issuance of a license is not met, or has ceased to be met;
2. The license was issued or requested upon fraudulent or untrue representations;
3. The owner or operator has violated any rule of the department; or
4. The owner, operator, or an employee of the center is or has been found guilty of an offense determined by the department to have a direct bearing on the person's ability to serve as an owner, operator, or employee, or the department determines, following

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

Hearing on denial or revocation of license. In any case in which the department determines that a license should be revoked or an application for a license should be denied, written reasons for the revocation or denial must be provided to the licensee or applicant. The licensee or applicant is entitled to a hearing before the department if a hearing is requested within ten days after the charges are provided.

Department may adopt rules. The department may adopt rules for the conduct of residential treatment centers for children.

SECTION 2. AMENDMENT. Section 50-11-01.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11-01.3. Use of public funds. Public funds for the purchase of foster care for children shall be used only in ~~licensed~~ homes or facilities. ~~The provisions of this licensed or approved by the department of human services. This section shall does not apply to any home or institution under the management and control of the state.~~

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 338

HOUSE BILL NO. 1127
 (Committee on Human Services and Veterans Affairs)
 (At the request of the Department of Human Services)

STATE DEVELOPMENTAL CENTER CONTROL

AN ACT to create and enact a new section to chapter 25-04 of the North Dakota Century Code, relating to chapter limitations; to amend and reenact section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 310 of the 1985 Session Laws of North Dakota, section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 311 of the 1985 Session Laws of North Dakota, section 25-04-03 of the North Dakota Century Code as amended by section 3 of chapter 311 of the 1985 Session Laws of North Dakota, and subsection 3 of section 25-04-16 of the North Dakota Century Code, relating to the state developmental center at Grafton; and to repeal sections 25-04-03.1 and 25-04-05.2 of the North Dakota Century Code, section 25-04-03.1 of the North Dakota Century Code as amended by section 4 of chapter 311 of the 1985 Session Laws of North Dakota, and section 11 of chapter 311 of the 1985 Session Laws of North Dakota, relating to san haven and the organization of the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 310 of the 1985 Session Laws is hereby amended and reenacted to read as follows:

25-04-01. State developmental center - ~~Maintained~~ - Name - ~~Administration and control. An institution for the mentally deficient A facility for developmentally disabled persons shall be maintained at or near the city of Grafton in the county of Walsh County. Such institution The facility shall be known and designated as the state developmental center at Grafton. There shall be maintained near Dunseith, in the county of Rolette, a division of the state developmental center at Grafton which shall be known as San Haven. The department of human services shall have administrative authority and control of the state developmental center at Grafton.~~

* SECTION 2. AMENDMENT. Section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 311 of the 1985 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

25-04-01. State ~~school~~ developmental center - Name - Administration and control. ~~An institution for the developmentally disabled A facility for developmentally disabled persons shall be maintained at or near the city of Grafton in the county of Walsh County. The institution facility shall be known and designated as Grafton state school the state developmental center at Grafton. There shall be maintained near Dunseith, in the county of Rolette, a division of the Grafton state school which shall be known as San~~

* NOTE: Section 25-04-01 was also amended by sections 4 and 5 of House Bill No. 1229, chapter 239.

~~Haven. The department of human services shall have administrative authority and control of Grafton state school and San Haven the state developmental center at Grafton.~~

SECTION 3. AMENDMENT. Section 25-04-03 of the North Dakota Century Code as amended by section 3 of chapter 311 of the 1985 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

~~25-04-03. Qualifications of superintendent. The superintendent of the state developmental center at Grafton state school shall be a skilled administrator with professional training and experience relating to the needs of the developmentally disabled. The superintendent shall designate a qualified and duly licensed physician as chief of medical staff and such chief of staff shall have the power, with advice and consent of the superintendent, to employ and discharge additional physicians, nurses, and professional assistants and shall be responsible for defining their qualifications and duties. All other employees shall be appointed and removed by the superintendent or a personnel director to be named by him by the superintendent's designee. The salaries of all employees shall be fixed by the superintendent or the personnel director the superintendent's designee within the limits of the legislative appropriations made for such purpose. The superintendent of the Grafton state school shall also serve as the superintendent of San Haven. The superintendent shall appoint an assistant superintendent who shall be the chief administrative officer of San Haven. The superintendent shall designate a qualified and duly licensed physician as chief of medical staff who will with the advice and consent of the superintendent employ the necessary physicians. All other employees shall be appointed by the assistant superintendent with the advice and consent of the superintendent. The assistant superintendent shall make certain that records on each resident be maintained as required by the department of human services and the superintendent. The assistant superintendent, with the advice and consent of the superintendent and the department of human services, shall determine the salaries of all employees at San Haven within the limits of legislative appropriations.~~

* SECTION 4. AMENDMENT. Subsection 3 of section 25-04-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. As used in this chapter, "supervising department" means the director of institutions, or the director's designee department of human services.

SECTION 5. A new section to chapter 25-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Limitations of this chapter. The provisions of this chapter may not be construed to limit or broaden the plaintiff class as defined by order of the United States district court for the district of North Dakota entered on January 13, 1981, in civil number A1-80-141.

SECTION 6. REPEAL. Sections 25-04-03.1 and 25-04-05.2 of the 1987 Supplement to the North Dakota Century Code, section 25-04-03.1 of the North Dakota Century Code as amended by section 4 of chapter 311 of the 1985 Session Laws of North Dakota, and section 11 of chapter 311 of the 1985 Session Laws of North Dakota are hereby repealed.

Approved April 10, 1989
Filed April 11, 1989

* NOTE: Subsection 3 of section 25-04-16 was also amended by section 26 of Senate Bill No. 2056, chapter 69.

CHAPTER 339

HOUSE BILL NO. 1198
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

SUPERINTENDENT OF SCHOOLS FOR DEAF AND BLIND

AN ACT to amend and reenact sections 25-06-03 and 25-07-02 of the North Dakota Century Code, relating to the consolidation of the offices of superintendent of the school for the deaf and the school for the blind.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 25-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-06-03. Superintendent to possess certain qualifications. The superintendent of the school for the blind, who shall also act as superintendent of the school for the deaf, shall possess such qualifications, educational and otherwise, as in the opinion of the director of institutions will fit him the superintendent to instruct and minister to the needs of blind and deaf persons.

SECTION 2. AMENDMENT. Section 25-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-07-02. Superintendent to possess certain qualifications - Special duties. The superintendent of the school for the deaf shall be a capable person skilled in the sign language and in all the methods in use in educating the deaf and shall have knowledge of the wants and requirements of the deaf in their proper training and instruction. He shall reside at the institution deaf shall also act as superintendent of the school for the blind.

Approved March 21, 1989
Filed March 23, 1989

* NOTE: Section 25-06-03 was also amended by section 7 of House Bill No. 1229, chapter 239.

CHAPTER 340

HOUSE BILL NO. 1243
(Marks, Kolbo, P. DeMers, J. DeMers, Myrdal)

SERVICE DOGS IN HEALTH CARE FACILITIES

AN ACT to amend and reenact section 25-13-02 of the North Dakota Century Code, relating to the use of service dogs in public places, including facilities of health care providers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-13-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-13-02. Blind or handicapped person accompanied by guide or service dog to be admitted to public places. Every totally or partially blind person has the right to be accompanied by a guide dog and every handicapped person has the right to be accompanied by a service dog, especially trained for those purposes, in places of public accommodations, common carriers, facilities of a health care provider, and all places in which the public is generally invited, without being required to pay an extra charge for the guide or service dog; provided, that such persons are liable for any damage done to the premises or facilities by the dogs.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 1989
Filed March 15, 1989