

# PUBLIC WELFARE

## CHAPTER 574

SENATE BILL NO. 2537

(Tallackson)

(Approved by the Committee on Delayed Bills)

### GRAFTON STATE SCHOOL LAND TRANSFER

AN ACT to authorize the director of the department of human services to transfer title and convey certain land owned by the state of North Dakota to job service North Dakota for use as a job service office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Grafton state school land transfer authorized. The director of the department of human services is authorized to transfer title and convey the following property to job service North Dakota:

A tract of land located in the southwest one-quarter of the southwest one-quarter of section thirteen, township one hundred fifty-seven north, range fifty-three west, fifth P. M., more accurately described as follows: commencing at a point seventy-five feet north and one hundred thirty-nine and nine-tenths feet east of the southwest corner of said section thirteen; hence continuing south 90 degrees 00 minutes 00 seconds east, and parallel to the south line of section thirteen, one hundred fifty feet; hence north 0 degrees 05 minutes 36 seconds east, two hundred eighty-three feet; hence north 90 degrees 00 minutes 00 seconds west, one hundred fifty feet; hence south 0 degrees 05 minutes 36 seconds west, two hundred eighty-three feet, to the point of beginning. Said tract of land contains 0.97 acres more or less.

The transfer of title and conveyance of this property shall be at no cost to job service North Dakota. The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act. The property transferred under the authority of this Act may only be used for a job service office.

Approved April 19, 1989  
Filed April 19, 1989

## CHAPTER 575

SENATE BILL NO. 2291  
(Senators Mushik, Heigaard, Olson)  
(Representatives Dalrymple, Kelly, Haugland)

### HUMAN SERVICES ADVISORY BOARD

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to the creation of a human services advisory board; to amend and reenact sections 50-06-01, 50-06-01.3, 50-06-05.1, 50-06-16, and 50-06-17 of the North Dakota Century Code, relating to the authority of the human services advisory board and the structure of the department of human services; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01. Definition Definitions. Whenever the word "department" is used in this chapter, it shall mean unless the context otherwise requires:

1. "Board" means the human services advisory board.
2. "Department" means the department of human services.

\*SECTION 2. AMENDMENT. Section 50-06-01.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.3. Executive Appointment of executive director —Appointment - Compensation. The governor shall appoint the executive director of the department shall be appointed by, and who shall serve at the pleasure of, the governor. The board may advise the governor concerning the appointment or reappointment of an executive director. The executive director shall take the oath of office required of civil officers by section 44-01-05 and shall must be bonded as required of civil officers by section 44-01-06. The executive director shall is entitled to receive compensation in the amount established by the governor within the limits of legislative appropriations.

SECTION 3. A new section to chapter 50-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Human services advisory board - Membership - Meetings - Compensation and expenses - Responsibilities.

1. The governor shall appoint nine members of the human services advisory board. Each member appointed to the board must possess expertise that the governor determines will assist the board in recommending and reviewing department policy for the delivery of human services. The board must represent a broad constituency from across the state, and must include persons who are recipients of

\* NOTE: Section 50-06-01.3 was also amended by section 53 of Senate Bill No. 2056, chapter 69.

- human services. No board member may be an employee of the department or serve simultaneously on a regional human service center advisory council.
2. The governor shall appoint three members with terms ending June 30, 1992, three members with terms ending June 30, 1994, and three members with terms ending June 30, 1996. One member must be appointed from each regional human service area and one member must be appointed at large. All subsequent appointments are for terms of six years, with the terms commencing on July first. A vacancy on the board may be filled for the unexpired term only. Members serve until their successors are appointed and may serve for no more than one full six-year term. The governor may remove a member for cause.
  3. The governor or the governor's designee, who may not be an employee of the department, shall act as president of the board. Before September 1, 1990, and every July first thereafter, the board shall meet and elect a vice president, a secretary, and other officers as the board determines necessary. The board shall meet quarterly and at other times determined necessary by the executive director, the president, or a majority of the members of the board.
  4. All board members are entitled to receive the same compensation for their services as provided in section 54-35-10 for members of the legislative council. Members are entitled, as provided in sections 44-08-04 and 54-06-09, to receive reimbursement for their necessary travel and mileage expenses incurred in attending meetings of the board and while engaged in the performance of their duties.
  5. The board shall recommend and review policy for the department, and shall advise the executive director with respect to other issues and concerns.

SECTION 4. AMENDMENT. Section 50-06-05.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-05.1. Powers and duties of the department. The department shall have has the following powers and duties to be administered, with the advice of the board, by the department through its state office or through regional human service centers or otherwise as directed by it:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.

4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of deprived, unruly, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate social legislation to the legislative assembly.
8. To direct and supervise county social service board activities as may be financed in whole or in part by or with funds allocated or distributed by the department.
9. To inform the public as to social conditions and ways of meeting social needs.
10. To secure, hold, and administer for the purpose for which it is established, any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the board or department, and to administer ~~said~~ those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
11. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department including child-care facilities, nonmedical adult-care facilities and maternity homes, and persons or organizations receiving and placing children, and to require ~~such~~ those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
12. To permit the making of any surveys of human service needs and activities if ~~deemed by the department~~ determined to be necessary and expedient.
13. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever ~~the department deems it~~ necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena ~~shall~~ may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
14. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self,

- parent, guardian, county social service board, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the Grafton state school, state hospital, or North Dakota industrial school.
15. To provide marital counseling to individuals ordered to participate in such treatment by the family court.
  16. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court, all reports to be kept confidential for the use of the judge except as may be disclosed by the judge.
  17. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case, all reports to be kept confidential for use by the judge except as may be disclosed by the judge.
  18. To act as the official agency of the state in the administration of the food stamp program and to direct and supervise county administration of that program. Provided, however, that the department with the consent of the budget section of the legislative council may terminate the program ~~should~~ if the rate of federal financial participation in administrative costs provided under Public Law 93-347 ~~be~~ is decreased or limited, or ~~should~~ if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.
  19. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing assistance payments, and rental subsidies under any rental assistance programs initiated by the federal government not otherwise by law made the responsibility of another state agency possessing statewide jurisdiction.
  20. To act as the official agency of the state in the administration of the energy assistance program; to direct and supervise county administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. Provided, however, that the department with the consent of the budget section of the legislative council may terminate the program ~~should~~ if the rate of federal financial participation in administrative costs ~~be~~ is decreased or limited to less than fifty percent of total administrative costs, or ~~should~~ if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.
  21. ~~Repealed by S.L. 1987, ch. 502, § 30, effective July 14, 1987.~~
  - ~~22.~~ 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 adopted family, and whose adopted 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 the child.

22. To exercise and carry out any other powers and duties granted the department under state law.

SECTION 5. AMENDMENT. Section 50-06-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-16. Authority to adopt rules Rulemaking authority. The department may adopt rules necessary to carry out its the responsibilities under this chapter of the department in conformity with any statute administered or enforced by the department. The board shall review the adoption, amendment, or repeal of any rules by the department. All rules adopted shall must be published in the North Dakota Administrative Code. Rules adopted by agencies prior to January 1, 1982, which relate to functions or agencies covered by this chapter shall remain in effect until such time as they are specifically amended or repealed by the department.

SECTION 6. AMENDMENT. Section 50-06-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-17. Biennial report to governor and office of management and budget - Budget estimates. The department shall submit to the governor and the office of management and budget a board shall review and make recommendations concerning the biennial report as prescribed by section and budget estimate prior to the department's submission of the report and estimate in accordance with sections 54-06-04 and 54-44.1-04.

SECTION 7. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved April 19, 1989  
Filed April 19, 1989

## CHAPTER 576

HOUSE BILL NO. 1110  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

### **VOCATIONAL REHABILITATION ADVISORY BODIES**

AN ACT to create and enact a new subsection to section 50-06.1-04 of the North Dakota Century Code, relating to the establishment of advisory bodies to the division of vocational rehabilitation; and to repeal section 25-15-03 of the North Dakota Century Code, relating to a vocational rehabilitation facilities advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 50-06.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Shall appoint such advisory bodies with emphasis on consumer participation as deemed necessary for compliance with any federal act pertaining to vocational rehabilitation or for the proper and efficient carrying out of the duties of the division.

SECTION 2. REPEAL. Section 25-15-03 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 29, 1989  
Filed March 30, 1989

## CHAPTER 577

HOUSE BILL NO. 1401  
(Representatives Oban, Kelly)  
(Senators Mushik, Heinrich)

### **BLIND AND VISUALLY IMPAIRED REHABILITATION PROGRAM**

AN ACT to provide for the establishment of a rehabilitation teacher program throughout the state to serve the blind and visually impaired.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Establishment of rehabilitation teaching program - Authorization of positions. The office of vocational rehabilitation may establish two rehabilitation teacher positions and one half-time teacher and half-time supervisor position for the rehabilitation of the blind and visually impaired. Each teacher shall provide rehabilitation teaching services that may include evaluation, counseling, adjustment training, communication, mobility, and other rehabilitation services to the blind and the visually impaired. Those services must be provided in the home of blind and visually impaired individuals, nursing homes, intermediate care facilities, senior citizen centers, and other facilities and centers in which one may find blind or visually impaired individuals. Rehabilitation teachers may provide aids and appliances, as well as assistance with meal planning, medication management, transportation needs, and recreation and social needs. Rehabilitation teachers may provide orientation to blindness instruction for those working directly with or otherwise involved in daily activities of the blind and visually impaired, including home health aids, homemakers, senior companions, staff of nursing homes and other professionals, paraprofessionals, and family members. The administrator of services for the blind and deaf in the office of vocational rehabilitation shall coordinate the activities and the services to be provided by persons employed pursuant to the provisions of this Act.

SECTION 2. Cooperation between agencies. The office of vocational rehabilitation and other divisions of the department of human services shall work cooperatively to locate eligible clients and to identify and provide them with the services they require to lead a full and meaningful life.

Approved April 15, 1989  
Filed April 17, 1989



## CHAPTER 578

HOUSE BILL NO. 1167  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

### QUALIFIED SERVICE PROVIDERS

AN ACT to create and enact a new subsection to section 50-06.2-02 and a new section to chapter 50-06.2 of the North Dakota Century Code, relating to the definition of qualified service provider and the freedom of choice of qualified service provider; and to amend and reenact subsection 4 of section 50-06.2-02, section 50-06.2-03, and subsection 3 of section 50-06.2-04 of the North Dakota Century Code, relating to the definition of family home care, payment for human services, and the availability of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 50-06.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Family home care" means the provision of room, board, supervisory care, and personal services to an eligible elderly or disabled person by the spouse, or by one of the following relatives, or the current or former spouse of one of the following relatives, of the elderly or disabled person: parent, grandparent, adult child, adult sibling, or adult grandchild of an eligible elderly or disabled person, adult niece, or adult nephew. The family home care provider need not be present in the home on a twenty-four-hour basis if the welfare and safety of the client is maintained.

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

"Qualified service provider" means a county agency or independent contractor which agrees to meet standards for service and operations established by the state agency.

SECTION 3. AMENDMENT. Section 50-06.2-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.2-03. Powers and duties of the state agency. The state agency shall have the following powers or duties under this chapter:

1. To act as the official agency of the state in the administration of the human services programs for individuals and families in conformity with state and federal requirements.

2. To prepare, at least biennially, a comprehensive human services plan which must:
  - a. Include human services determined essential in effectuating the purposes of this chapter.
  - b. Detail the human services identified by the state agency for provision by human service centers and the services which the county agencies have agreed to make available in approved county plans as a condition for the receipt of any funds allocated or distributed by the state agency.
3. To make available, through county agencies or human service centers, any or all of the services set out in the comprehensive human services plan on behalf of those individuals and families determined to be eligible for those services under criteria established by the state agency.
4. To supervise and direct the comprehensive human services administered by county agencies and human service centers through standard-setting, technical assistance, approval of county and regional plans, preparation of the comprehensive human services plan, evaluation of comprehensive human service programs, and distribution of public money for services.
5. Within the limits of legislative appropriations and at rates determined payable by the state agency, to reimburse county agencies pay qualified service providers, which meet standards for services and operations, for the provision of the following services as defined in the comprehensive human service plan which are provided to persons who, on the basis of functional assessments, income, and resources, 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;
  - 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 and appropriate to sustain individuals in their homes and in their communities and to delay or prevent institutional care.
6. To take actions, give directions, and adopt rules as necessary to carry out the provisions of this chapter.

For purposes of this chapter, resources do not include the person's primary home and the first fifty thousand dollars in assets.

SECTION 4. AMENDMENT. Subsection 3 of section 50-06.2-04 of the 1987 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 as 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 sections. 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 qualified service provider in its provision of those enumerated services.

SECTION 5. A new section to chapter 50-06.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Freedom of choice. Each person eligible for services under this chapter, or the person's representative, must be free to choose among available qualified service providers that offer competitively priced services. The county agency shall inform each eligible applicant for services, provided under this chapter, of the identity of qualified service providers available to provide the service required by the applicant. The county agency shall make and document reasonable efforts to inform potential service providers of the anticipated need for services in the county.

Approved April 6, 1989  
Filed April 7, 1989

## CHAPTER 579

HOUSE BILL NO. 1521  
(Representatives D. Olsen, A. Olson, Skjervén)  
(Senator Nalewaja)

### COUNTY HUMAN SERVICES LEVY

AN ACT to create and enact a new subsection to section 57-15-06.7 of the North Dakota Century Code, relating to the limitation on county levies for certain comprehensive human services programs; and to amend and reenact section 50-06.2-05 of the North Dakota Century Code, relating to the authority of the board of county commissioners to levy a tax for comprehensive human services programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06.2-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.2-05. Appropriation of county funds. The board of county commissioners of each county shall annually appropriate and make available to the poor relief fund an amount sufficient to pay the local expenses of administration and provision of the human services required by state law and by federal law or regulation as a condition for the receipt of federal financial participation in programs administered by county agencies under the provisions of this title. For purposes of this section, the board of county commissioners may levy an annual tax for poor relief purposes not exceeding the limitation in section 2 of this Act, and if this amount is not sufficient, may levy for deficiency purposes under chapter 50-03.

SECTION 2. A new subsection to section 57-15-06.7 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Counties levying an annual tax for poor relief purposes as provided in section 50-06.2-05 may levy a tax not exceeding twenty mills.

Approved April 3, 1989  
Filed April 3, 1989

## CHAPTER 580

SENATE BILL NO. 2090  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

### COUNTY SHARE FOR SOCIAL SERVICES

AN ACT to create and enact a new section to chapter 50-09 of the North Dakota Century Code, relating to the Family Support Act of 1988; to amend and reenact sections 50-09-20, 50-09-20.1, and 50-09-21 of the North Dakota Century Code, relating to the appropriation of county funds for certain programs, state reimbursement of certain county expenditures, and the amount for which the county is liable.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

State agency to submit plans - Administer Family Support Act. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under the Family Support Act of 1988 [Pub. L. 100-485; 102 Stat. 2343]. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of the Family Support Act of 1988 and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The state agency may seek appropriate waivers of the requirements of federal statutes or regulations as authorized by federal law.

SECTION 2. AMENDMENT. Section 50-09-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-20. Appropriation of county funds. For the purpose of carrying out the provisions of this chapter, the board of county commissioners of each county annually shall appropriate and make available an amount sufficient to pay:

1. Local expenses of administration and the county's share of assistance payments as specified in ~~subsection 1~~ of section 50-09-21; ~~and~~
2. Local expenses of administration of the child support enforcement program; and
3. Local expenses of administration and the county's share of program costs of the early childhood services program, job opportunity and basic skills training program, transportation program, and case management program as specified in section 50-09-21.

If the financial condition of any county is such that it cannot make an appropriation or levy a tax for aid to dependent children or cannot issue warrants legally in an amount sufficient to provide the necessary funds to comply with the provisions of this chapter, the board of county commissioners shall report such fact to the state agency. After a hearing before the state agency, and such investigation as the state agency may make, the state agency may increase the amount to be supplied from state funds and adjust accordingly the amount to be supplied from county funds.

SECTION 3. AMENDMENT. Section 50-09-20.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-20.1. Amounts state liable for - Reimbursement by state. The state agency shall reimburse each county, upon claim being made therefor by the county agency, for fifty percent of the amount expended ~~for the child support enforcement program in~~ by the county agency in excess of the amount provided by the federal government for the administration of the child support enforcement program, the early childhood services program, the job opportunity and basic skills training program, the transportation program, and the case management program.

\* SECTION 4. AMENDMENT. Section 50-09-21 of the 1987 Supplement to 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, in the county, for aid to dependent children in such county, and program costs of the early childhood services program, job opportunity and basic skills training program, transportation program, and case management program, in excess of the amount provided by the federal government for assistance payments to dependent children and for the program costs, except payments for children approved and granted foster care for children, for which the county share of payment must be reimbursed to the state agency by the county liable therefor under chapter 50-02.

Approved April 28, 1989

Filed April 28, 1989

\* NOTE: Section 50-09-21 was also amended by section 1 of Senate Bill No. 2163, chapter 581.

## CHAPTER 581

SENATE BILL NO. 2163  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

### COUNTY REIMBURSEMENT FOR CHILDREN'S PROGRAMS

AN ACT to amend and reenact section 50-09-21 of the North Dakota Century Code, relating to the reimbursement of the county share of aid to dependent children, foster care, and subsidized adoption payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 50-09-21 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-21. Amount county liable for - Reimbursement by county.

1. 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 payments for children approved and granted foster care for children; for which the county share of payment must be reimbursed to the state agency by the county liable therefor under chapter 50-02.~~
2. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for an amount equal to one-half of that county's share of all counties' shares based upon the combined percentage average of the four-year period beginning November 1983 and ending October 1987, and the one-year period beginning November 1986 and ending October 1987, plus one-half of that county's share of all counties' shares allocated according to each county's percentage of population of persons under age eighteen according to the 1980 census, in excess of any amount provided by the federal government, for payments for children approved and granted foster care for children or subsidized adoption.

Approved March 14, 1989  
Filed March 15, 1989

\* Note: Section 50-09-21 was also amended by section 4 of Senate Bill No. 2090, chapter 580.

## CHAPTER 582

HOUSE BILL NO. 1368  
(Representatives J. DeMers, Smette)  
(Senators Mushik, Nalewaja)

### FAMILY CHILD CARE HOME LIMITS

AN ACT to amend and reenact subsection 6 of section 50-11.1-02 of the North Dakota Century Code, relating to the definition of a family child care home for the purpose of requirements for early childhood services facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 50-11.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-aged children during the two hours immediately before and after the school day and all day, except Saturday and Sunday, when school is not in session during the official school year.

Approved April 10, 1989  
Filed April 11, 1989



## CHAPTER 583

SENATE BILL NO. 2198

(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

### MEDICARE CATASTROPHIC COVERAGE AND SPOUSE RESOURCE

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the Medicare Catastrophic Coverage Act of 1988; to amend and reenact section 50-24.1-02.2 of the North Dakota Century Code, relating to the resources of a separated spouse; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department to submit plans and seek waivers. The department of human services may submit state plans in forms that are consistent with and which meet requirements for such plans which are or may be imposed under the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100-360; 102 Stat. 729; 42 U.S.C. 1396a, et seq., as amended]. The department may take such actions as are reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of the Medicare Catastrophic Coverage Act of 1988 and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The department may seek appropriate waivers of the requirements of the federal statutes or regulations as authorized by federal law.

SECTION 2. AMENDMENT. Section 50-24.1-02.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-02.2. Resources of separated spouse not to be considered Community spouse resource allowance. In determining eligibility for medical assistance applicants and recipients, the department of human services may not consider the resources of a noninstitutionalized spouse of any applicant for or recipient of medical assistance when the applicant or recipient has lived separately and apart from the noninstitutionalized spouse for at least six months and the value of all resources, not otherwise disregarded, and separately owned by the noninstitutionalized spouse do not exceed the resource limitations in the property provisions of the rules adopted by the department of human services by more than shall establish a community spouse resource allowance of at least twenty-five thousand dollars for an ineligible community spouse.

SECTION 3. EFFECTIVE DATE. Section 2 of this Act is effective on October 1, 1989.

Approved March 22, 1989  
Filed March 23, 1989

## CHAPTER 584

HOUSE BILL NO. 1194  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Office of Management and Budget)

### NURSING HOME PAYMENT CLASSIFICATIONS

AN ACT to create and enact a new section to chapter 50-24.4 of the North Dakota Century Code, relating to nursing home resident payment classifications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.4 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Nursing home resident payment classifications - Procedures for reconsideration.

1. For purposes of this section:
  - a. "Department" means the department of health and consolidated laboratories; and
  - b. "Resident's representative" includes the resident's guardian or conservator, a person authorized or required to pay the nursing home expenses of the resident, or any other person designated by the resident in writing.
2. The department of human services shall establish resident payment classifications for the care of residents of nursing homes.
3. The department shall assign nursing home residents to the appropriate payment classification based upon assessments of the residents.
4. The department shall notify each resident, and the nursing home in which the resident resides, of the payment classification established under subsection 3. The notice must inform the resident of the classification that was assigned, the opportunity to review the documentation supporting the classification, the opportunity to obtain clarification from the department, and the opportunity to appeal the classification. The notice of resident classification must be sent by first-class mail. The individual resident notices may be sent to the resident's nursing home for distribution to the resident in which event the nursing home is responsible for the distribution of the notice to the resident and to the resident's representative, if any. This notice must be distributed to the resident and sent first-class mail or hand-delivered to the resident's representative within three

working days after the nursing home's receipt of the notice from the department.

5. The resident or the nursing home may appeal the assigned payment classification to the department. The appeal must be submitted in writing to the department within thirty days of the receipt of the notice of resident classification. For appeals submitted by or on behalf of the resident, the time period for submission of the request begins on the date the classification notice is delivered to the resident, or mailed or delivered to the resident's representative, whichever is latest. The appeal must be accompanied by the name of the resident, the name and address of the nursing home in which the resident resides, the reasons for the appeal, the requested classification changes, and documentation supporting the requested classification. The documentation accompanying the appeal is limited to documentation intended to establish that the needs of the resident, at the time of the assessment resulting in the disputed classification, justify a change of classification.
6. Upon written request, the nursing home shall give the resident or the resident's representative a copy of the assessment form and the other documentation that was given to the department to support the assessment findings. The nursing home shall also provide access to and a copy of other information from the resident's record that has been requested by or on behalf of the resident to support a resident's appeal. A copy of any requested material must be provided within three working days of receipt of a written request for the information. Upon request, the nursing home shall assist the resident in preparing an appeal.
7. In addition to the information required in subsection 5, an appeal by a nursing home must be accompanied by the following information: the date the resident payment classification notices were received by the nursing home; the date the classification notices were distributed to the resident or the resident's representative; and a copy of a notice of appeal sent to the resident or to the resident's representative. This notice must tell the resident or the resident's representative that the resident's classification is being appealed, the reason for the appeal, that the resident's rate will change if the appeal is approved by the department and the extent of the change, that copies of the nursing home's appeal and supporting documentation are available for review, and that the resident also has the right to appeal. If the nursing home fails to provide this information with the appeal, the appeal must be denied, and the nursing home may not make further appeals concerning that specific resident payment classification until such time as the resident's payment classification is reestablished by the department.
8. The appeal determination of the department must be made by individuals not involved in reviewing the assessment that established the disputed classification. The appeal determination must be based upon the initial assessment and upon the information provided to the department under subsection 5. If the department determines that it is necessary for the appeal determination, it may conduct onsite reviews. Within fifteen working days of

receiving the appeal, the department shall affirm or modify the original resident classification. The original classification must be modified if the department determines that the assessment resulting in the classification did not accurately reflect the needs of the resident at the time of the assessment. The resident and the nursing home must be notified within five working days after the decision is made.

9. The appeal determination under subsection 8 is the final administrative decision of the agency. That decision is subject to appeal to the district court, and for that purpose, the decision must be treated as a decision on a petition for rehearing made pursuant to section 28-32-14. Appeal to the district court must be taken in the manner required by section 28-32-15.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 585

SENATE BILL NO. 2146  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

### CHILD ABUSE AND NEGLECT REPORTING

AN ACT to amend and reenact subsection 3 of section 50-25.1-02, subsection 1 of section 50-25.1-03, sections 50-25.1-03.1, 50-25.1-04, 50-25.1-05, subsection 9 of section 50-25.1-11, and section 50-25.1-13 of the North Dakota Century Code, relating to child abuse and neglect; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 50-25.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Department" means the department of human services or its designee.

SECTION 2. AMENDMENT. Subsection 1 of section 50-25.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 that person in that person's official or professional capacity~~ is abused or neglected shall report the circumstances to the department ~~or the department's designee~~ if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity.

SECTION 3. AMENDMENT. Section 50-25.1-03.1 of the 1987 Supplement to 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 must be taken by law enforcement officials, physicians, or medical facility professionals upon the request of any person or official required to report under this chapter.

Photographs and x-rays taken, or copies of them, must be sent to the 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 1987 Supplement to 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 department or the department's designee. Oral reports must be followed by written reports within forty-eight hours if so requested by the department or the department's designee. A requested written report must include information specifically sought by the department if the reporter possesses or has reasonable access to that information. Reports involving known or suspected institutional child abuse or neglect must be made and received in the same manner as all other reports made under this chapter.

\* SECTION 5. AMENDMENT. Section 50-25.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05. Investigation. The department, in accordance with rules adopted by the department, shall forthwith investigate, or cause to be investigated immediately initiate an investigation, or cause an investigation of, any report of child abuse or neglect made directly to the department, including, when appropriate, the investigation of 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 6. AMENDMENT. Subsection 9 of section 50-25.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Parents or a legally appointed guardian of a child who is suspected to be of being, or having been, 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, provided the identity of persons making reports or supplying information under this chapter is protected.

\*\* SECTION 7. AMENDMENT. Section 50-25.1-13 of the 1987 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 or to supply information concerning 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 March 31, 1989  
Filed March 31, 1989

\* NOTE: Section 50-25.1-05 was also amended by section 1 of Senate Bill No. 2057, chapter 586.

\*\* NOTE: Section 50-25.1-13 was also amended by section 2 of Senate Bill No. 2061, chapter 588.

## CHAPTER 586

SENATE BILL NO. 2057  
(Legislative Council)  
(Interim Law Enforcement Committee)

### CHILD ABUSE OR NEGLECT INVESTIGATIONS

AN ACT to create and enact a new section to chapter 50-25.1 of the North Dakota Century Code, relating to interviews conducted on school property by law enforcement agencies or the department of human services pursuant to investigations of reports of child abuse or neglect; and to amend and reenact section 50-25.1-05 of the North Dakota Century Code, relating to investigations of reports of child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 50-25.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05. Investigation. The department, in accordance with rules adopted by the department, shall forthwith investigate, or cause to be investigated, immediately initiate an investigation, or cause an investigation of any report of child abuse or neglect made directly to the department, including, when appropriate, 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. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department, or the department's designee, and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department, department's designee, or appropriate law enforcement agency may interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the alleged perpetrator. The department, department's designee, or law enforcement agency may conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.

SECTION 2. A new section to chapter 50-25.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interviews on school property. The department, department's designee, or appropriate law enforcement agency shall notify the school principal or other appropriate school administrator of its intent to conduct an interview on school property pursuant to section 50-25.1-05. The school administrator may not disclose the nature of the notification or any other related information concerning the interview to any person, including a person responsible for the child's welfare. The school administrator and department, department's designee, or law enforcement agency shall make every effort to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school property.

Approved March 22, 1989  
Filed March 23, 1989

\* NOTE: Section 50-25.1-05 was also amended by section 5 of Senate Bill No. 2146, chapter 585.

## CHAPTER 587

SENATE BILL NO. 2059  
(Legislative Council)  
(Interim Law Enforcement Committee)

### CHILD ABUSE INVESTIGATION RULES

AN ACT to create and enact a new section to chapter 50-25.1 of the North Dakota Century Code, relating to the adoption of rules by the department of human services to resolve complaints and conduct reviews concerning investigations of reports of child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-25.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department of human services to adopt rules for review of investigations. The department of human services shall adopt rules to resolve complaints and conduct appeal hearings requested by the subject of a report of suspected child abuse or neglect who is aggrieved by the conduct of the investigation of the suspected child abuse or neglect.

Approved March 31, 1989  
Filed March 31, 1989



## CHAPTER 588

SENATE BILL NO. 2061  
(Legislative Council)  
(Interim Law Enforcement Committee)

### CHILD ABUSE REPORT PROTECTION AND PENALTY

AN ACT to amend and reenact sections 50-25.1-09.1 and 50-25.1-13 of the North Dakota Century Code, relating to employer retaliation against employees in cases of child abuse or neglect and falsified reports of child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-25.1-09.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-09.1. ~~Employee discipline~~ Employer retaliation prohibited.

1. An employer who ~~imposes any form of employee discipline~~ retaliates against an employee solely because ~~that~~ the employee in good faith reported having reasonable cause to suspect that a child was abused or neglected ~~shall be~~, or because the employee is a child with respect to whom a report was made, is guilty of a class B misdemeanor. It ~~shall be~~ is a defense to any charge brought under this section that the presumption of good faith, described in section 50-25.1-09, has been rebutted.
2. The employer of a person required or permitted to report pursuant to section 50-25.1-03 who retaliates against the person because of a report of abuse or neglect is liable to that person in a civil action for all damages, including exemplary damages, costs of the litigation, and reasonable attorney's fees.
3. There is a rebuttable presumption that any adverse action within ninety days of a report is retaliatory. For purposes of this subsection, an "adverse action" is action taken by an employer against the person making the report or the child with respect to whom a report was made, including:
  - a. Discharge, suspension, termination, or transfer from any facility, institution, school, agency, or other place of employment;
  - b. Discharge from or termination of employment;
  - c. Demotion or reduction in remuneration for services; or

d. Restriction or prohibition of access to any facility, institution, school, agency, or other place of employment, or persons affiliated with it.

\* SECTION 2. AMENDMENT. Section 50-25.1-13 of the 1987 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~~ Penalty and civil liability for 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. A person who willfully makes a false report, or willfully provides false information that causes a report to be made, under this chapter is also liable in a civil action for all damages suffered by the person reported, including exemplary damages.

Approved March 17, 1989  
Filed March 17, 1989

\* NOTE: Section 50-25.1-13 was also amended by section 7 of Senate Bill No. 2146, chapter 585.

## CHAPTER 589

HOUSE BILL NO. 1058  
(Legislative Council)  
(Interim Law Enforcement Committee)

### VULNERABLE ADULT PROTECTIVE SERVICES

AN ACT to establish a program of protective services for vulnerable adults; to provide for a statement of legislative intent regarding the funding of the vulnerable adult protective services program; to repeal section 14-07.1-09 of the North Dakota Century Code, relating to immunity for making reports and penalties for making false reports; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Abuse" means any willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult.
2. "Adult" includes a minor emancipated by marriage.
3. "Adult protective services" means remedial, social, legal, health, mental health, and referral services provided for the prevention, correction, or discontinuance of abuse or neglect which are necessary and appropriate under the circumstances to protect an abused or neglected vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse or neglect, and promote self-care and independent living. The term includes the following services provided by the department or the department's designee:
  - a. Receiving, evaluating, and assessing reports of alleged abuse or neglect;
  - b. Arranging for and coordinating the provision of essential services;
  - c. Providing case management and counseling for the purposes of planning and providing social and other services needed by vulnerable adults;
  - d. Arranging for and coordinating the provision of other services, including financial management or assistance, legal assistance, and the services of domestic violence programs;

- e. Monitoring the delivery of services to vulnerable adults and making progress assessments; and
  - f. Arranging for or providing, and coordinating, other services consistent with this Act.
4. "Caregiver" means any person who has assumed the legal responsibility or a contractual obligation for the care of a vulnerable adult, or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by any public or private agency, organization, or institution which provides services to, and has assumed responsibility for the care of, a vulnerable adult.
  5. "Department" means the department of human services.
  6. "Essential services" means those services necessary to maintain and safeguard the physical and mental health of a vulnerable adult which include sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for mental or physical needs, appropriate treatment for medical needs as determined by a physician or other health care provider, and proper supervision.
  7. "Financial exploitation" means the taking or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.
  8. "Least restrictive alternative" means adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty and no more intrusive than necessary to achieve and ensure the provision of essential services.
  9. "Living independently" includes using the telephone, shopping, preparing food, housekeeping, and administering medications.
  10. "Mental anguish" means psychological or emotional damage that requires medical treatment or care, or is characterized by behavioral change or physical symptoms.
  11. "Neglect" means the failure of a caregiver to provide essential services necessary to maintain the physical and mental health of a vulnerable adult, or the inability or lack of desire of the vulnerable adult to provide essential services necessary to maintain and safeguard the vulnerable adult's own physical and mental health.
  12. "Physical injury" means damage to bodily tissue caused by nontherapeutic conduct, which includes fractures, bruises, lacerations, internal injuries, dislocations, physical pain, illness, or impairment of physical function.
  13. "Self-care" includes maintaining personal hygiene, eating, and dressing.

14. "Sexual abuse or exploitation" includes those sex offenses defined in sections 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11.
15. "Substantial functional impairment" means a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, evaluation, or assessment.
16. "Substantial mental impairment" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, evaluation, or assessment.
17. "Vulnerable adult" means an adult who has a substantial mental or functional impairment.
18. "Willfully" means willfully as defined in section 12.1-02-02.

SECTION 2. Adult protective services program - Rules. The department, with the advice and cooperation of county social service boards, shall develop, administer, and cause to be implemented a program of protective services for vulnerable adults consistent with this Act. In developing and administering the program, the department, within the limits of legislative appropriation, shall allocate and distribute funds for the purpose of providing adult protective services. All law enforcement agencies, courts of competent jurisdiction, and appropriate state and local agencies shall cooperate in the implementation and enforcement of this Act. The department may adopt rules in accordance with chapter 28-32 for the purpose of implementing the provisions of this Act.

SECTION 3. Voluntary reporting of abuse or neglect - Method of reporting.

1. A person who has reasonable cause to believe that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, may report the information to the department or the department's designee or to an appropriate law enforcement agency. A law enforcement agency receiving a report under this section shall immediately notify the department or the department's designee of the report.
2. A person reporting under this section may make an oral or written report, as soon as possible. To the extent reasonably possible, a person who makes a report under this section shall include in the report:
  - a. The name, age, and residence address of the alleged vulnerable adult;
  - b. The name and residence address of the caregiver, if any;
  - c. The nature and extent of the alleged abuse or neglect or the conditions and circumstances that would reasonably be expected to result in abuse or neglect;

- d. Any evidence of previous abuse or neglect, including the nature and extent of the abuse or neglect; and
- e. Any other information that in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse or neglect, and the identity of the individual responsible for the alleged abuse or neglect.

SECTION 4. Referral of complaints concerning long-term care facilities. Any report received by the department or the department's designee under section 3 of this Act complaining of any administrative action, as defined in section 50-10.1-01, that may adversely affect or may have adversely affected the health, safety, welfare, or personal or civil rights of a resident in a long-term care facility, as defined in section 50-10.1-01, or a person who was discharged from a long-term care facility within nine months of the complaint, must be referred to the state long-term care ombudsman for investigation pursuant to chapter 50-10.1.

SECTION 5. Evaluation and assessment - Participation by law enforcement agencies - Entry.

1. The department or the department's designee shall immediately evaluate and assess any report received by the department or the department's designee under section 3 of this Act, including the residence of the alleged vulnerable adult and the circumstances surrounding the report. For the purpose of evaluating a report or providing other adult protective services, the department or the department's designee may:
  - a. Interview the alleged vulnerable adult, with or without notice to the caregiver or any other person, and interview the caregiver and any other person who may have knowledge of the circumstances surrounding the report;
  - b. Enter any premises in which the alleged vulnerable adult is an occupant, with the consent of the alleged vulnerable adult or the caregiver;
  - c. Have access to all records of the vulnerable adult:
    - (1) If the vulnerable adult, or the caregiver or legal representative of the vulnerable adult, has authorized the department or the department's designee to have access; or
    - (2) If the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize the department or the department's designee to have such access, does not have a legal guardian or other legal representative, and is a person with respect to whom a report was received by the department or the department's designee; and
  - d. Coordinate the assessment and the provision of other adult protective services with other state or local agencies, departments, or institutions, including the protection and advocacy project under the supervision of the executive committee of the governor's council on human resources, or

private agencies, organizations, and professionals providing services necessary or advisable for the vulnerable adult.

2. If a report alleges, or circumstances surrounding the report indicate, a violation of a criminal statute or an imminent danger of serious physical injury or death of the vulnerable adult, the department or the department's designee shall notify the appropriate law enforcement agency. In such a case, the law enforcement agency may investigate the allegations in the report, take immediate steps if necessary to protect the vulnerable adult, and institute legal proceedings if appropriate. The law enforcement agency shall notify the department or the department's designee if such action is taken. 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. In all other cases of alleged abuse or neglect, the department or the department's designee may request assistance in an evaluation or the provision of other adult protective services from an appropriate law enforcement agency if necessary under the circumstances.
3. If the alleged vulnerable adult, or the caregiver, does not consent to an evaluation or investigation, a search warrant may be issued by a magistrate pursuant to law upon a showing of probable cause to believe that abuse or neglect has occurred. A law enforcement officer may make a reasonable entry of the premises without a search warrant or consent of the alleged vulnerable adult or caregiver for the purpose of rendering assistance if the officer has probable cause to believe that the delay of entry would cause the alleged vulnerable adult to be in imminent danger of serious physical injury or death.

SECTION 6. Provision of adult protective services. If the department or the department's designee determines that a vulnerable adult demonstrates a need for adult protective services, the department or the department's designee shall provide, or arrange for the provision of, adult protective services, provided the vulnerable adult consents to and accepts the services.

SECTION 7. Refusal or inability to accept adult protective services - Department alternatives. If a vulnerable adult who is subject to abuse or neglect is unable to consent and accept, or the caregiver refuses, adult protective services determined by the department or the department's designee to be necessary under this Act, the department or the department's designee may pursue any administrative, legal, and other remedies authorized by law which are necessary and appropriate under the circumstances to protect the vulnerable adult and prevent further abuse or neglect. The state's attorney of the county in which the vulnerable adult resides or is located shall assist the department or the department's designee, upon request, in pursuing an appropriate remedy. Available remedies include seeking:

1. The appointment of a guardian under chapter 30.1-28 or a conservator under chapter 30.1-29;
2. A restraining order or other court order necessary under the circumstances;

3. The removal of an abusive or neglectful guardian or conservator and appointment of a suitable person as guardian or conservator, pursuant to sections 30.1-28-07 and 30.1-29-15;
4. The provision of appropriate treatment under chapter 25-03.1;
5. The criminal prosecution of the individual responsible for the abuse or neglect; and
6. Any other available administrative, legal, or other remedies on behalf of the vulnerable adult.

**SECTION 8. Cost of adult protective services.** The vulnerable adult is responsible for the costs of providing adult protective services, except the receipt, evaluation, and assessment of reports of suspected abuse or neglect pursuant to subdivision a of subsection 3 of section 1 of this Act, if the department or the department's designee determines, based on standards set by the department, that the vulnerable adult is financially capable of paying for the protective services received either through the vulnerable adult's own income or resources or other programs for which the vulnerable adult may be eligible. The department or the department's designee is not responsible for the cost of providing adult protective services unless the provision of the services is specifically provided by law and funding exists to provide the services.

**SECTION 9. Immunity from liability.** The following persons are immune from any civil or criminal liability that otherwise might result from the person's actions taken pursuant to this Act:

1. Any person, other than an alleged perpetrator, making a report or participating in an investigation, evaluation, or assessment under this Act if the person is acting in good faith.
2. Any person, employed by the department or the department's designee or a law enforcement agency, conducting or supervising an investigation, evaluation, or assessment or implementing or enforcing the provisions of this Act if the person is acting in good faith and exercising due care.

**SECTION 10. Penalty and civil liability for false reports.**

1. Any person who willfully makes a false report, or provides false information which causes the report to be made, 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.
2. A person who willfully makes a false report, or provides false information that causes a report to be made, is liable in a civil action for all damages suffered by the person reported.

**SECTION 11. Retaliation prohibited - Presumption - Penalty.**

1. An employer who imposes any form of discipline or retaliation against an employee solely because the employee reported in good faith having knowledge of or reasonable cause to suspect that a vulnerable adult is or has been abused or neglected, or because the



employee is a vulnerable adult with respect to whom a report was made, is guilty of a class B misdemeanor.

2. The employer of a person permitted to report pursuant to section 3 of this Act who retaliates against the person because of a report is liable to that person in a civil action for all damages.
3. A rebuttable presumption that retaliation has occurred arises when an adverse action is taken within ninety days of the report. An adverse action includes:
  - a. The discharge from or termination of employment;
  - b. The demotion, negative work performance evaluation, reduction of hours worked, reduction of benefits or work privileges, or reduction in remuneration for services of the employee; or
  - c. The restriction or prohibition of access by the employee to any place of employment, or persons affiliated with the place of employment.

SECTION 12. Confidentiality of records - Authorized disclosures. All reports made under this Act and all records and information obtained or generated as a result of the reports are confidential, but must be made available to:

1. A physician who examines a vulnerable adult whom the physician reasonably suspects may have been subject to abuse or neglect.
2. Authorized staff of the department or the department's designee, law enforcement agencies, and other agencies investigating, evaluating, or assessing the report or providing adult protective services.
3. A person who is the subject of a report if the identity of persons reporting under section 3 of this Act is protected.
4. Public officials, and their authorized agents, who require the information in connection with the discharge of their official duties.
5. A court when it determines that the information is necessary for determination of an issue before the court.
6. A person engaged in a bona fide research or auditing purpose if no information identifying the subjects of a report is made available to the researcher or auditor.

SECTION 13. Information, education, and training programs.

1. The department, in cooperation with county social service boards and law enforcement agencies, shall conduct a public information and education program. The elements and goals of the program must include:
  - a. Informing the public regarding the laws governing the abuse or neglect of vulnerable adults, the voluntary reporting

authorized by this Act, and the need for and availability of adult protective services.

- b. Providing caregivers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caregiver and vulnerable adult relationship.
2. The department, in cooperation with county social service boards and law enforcement agencies, shall institute a program of education and training for the department, the department's designee, and law enforcement agency staff and other persons who provide adult protective services.

SECTION 14. Implementation contingent upon appropriation. The department and county social service boards are not required to implement or enforce this Act with respect to any region, area, or county of this state if the legislative assembly does not provide an appropriation to support the implementation and enforcement of this Act within that region, area, or county.

SECTION 15. LEGISLATIVE INTENT - PROGRAM FUNDING. It is the intent of the legislative assembly that \$150,000 of the appropriation to the department of human services, as contained in Senate Bill No. 2538, shall be used to continue the adult protective service demonstration program, pursuant to this Act, as initially authorized by section 2 of chapter 293 of the 1987 Session Laws of North Dakota, in Cass County and the multicounty region served by the Lake Region human service center.

SECTION 16. REPEAL. Section 14-07.1-09 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 17. EFFECTIVE DATE. Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, subsection 1 of section 13, and section 16 of this Act become effective on January 1, 1990.

Approved April 28, 1989  
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