HEALTH AND SAFETY

CHAPTER 243

HOUSE BILL NO. 1058

(Legislative Council)
(Interim Natural Resources Committee)
(Representatives Carlisle, Hanson, Coats)
(Senator Nalewaja)

STATE DEPARTMENT OF HEALTH NAME CHANGE

AN ACT to rename the state department of health and consolidated laboratories the state department of health; and to amend and reenact section 23-01-01.1 of the North Dakota Century Code, relating to changing references to the state department of health and consolidated laboratories to the state department of health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

23-01-01.1. State department of health ~~and consolidated laboratories~~ to replace state department of health and consolidated laboratories. Wherever the terms "North Dakota state department of health", "state department of health", "department of health", ~~or~~ "health department" ~~appear in this code, the term,~~ "state department of health and consolidated laboratories" ~~must be substituted therefor.~~

~~Wherever the terms,~~ "North Dakota state laboratories department", "state laboratories department", "state laboratories department director", or "state laboratories director" appear in this code, the term "state department of health ~~and consolidated laboratories~~" must be substituted therefor ~~unless otherwise provided herein~~.

Wherever the terms "state food commissioner and chemist" and "commissioner" when referring to the state food commissioner and chemist appear in chapters 19-17 and 19-18 ~~of the North Dakota Century Code~~, the term "state department of health ~~and consolidated laboratories~~" must be substituted therefor ~~unless otherwise provided herein~~.

*** SECTION 2. STATUTORY REFERENCES RELATING TO STATE DEPARTMENT OF HEALTH.** The legislative council may insert appropriate references in the sections of law listed in this section, consistent with usages contained in this Act. References inserted may be adjusted to suit the context and grammar of the sections and must be inserted so as to harmonize existing law with regard to the name changes provided by this Act. The sections of the North Dakota Century Code to which the authority of this section applies are sections 4-18.1-08, 6-09.6-02, 6-09.6-04, 11-19.1-16, 14-02.1-02, 14-02.1-02.1, 14-02.1-07, 14-02.1-07.1, 14-02.1-09, 14-07.1-01, 14-17-04, 15-10-17, 15-21.1-03, 15-52-03, 15-59-02.1, 15-59-05.2, 15-59.3-07, 19-01-01, 19-01-07, 19-02.1-01, 19-02.1-07, 19-02.1-10, 19-02.1-16, 19-03.1-01.1, 19-03.1-17, 19-03.1-37, 19-05.1-05, 19-06.1-05, 19-07-02,

19-10-01, 19-13.1-01, 19-13.1-12, 19-16.1-01, 19-17-05, 19-18-02, 19-20.1-01, 19-21-01, 20.1-03-04, 23-01-01, 23-01-01.1, 23-01-03, 23-01-04.1, 23-01-04.2, 23-01-05, 23-01-06, 23-01-10, 23-01-11, 23-01-14, 23-01-15, 23-01-16, 23-01-18, 23-01-19, 23-01-21, 23-01.1-02, 23-01.1-06, 23-01.1-07, 23-02.1-02, 23-02.1-04, 23-02.1-05, 23-02.1-11, 23-02.1-15, 23-02.1-16, 23-02.1-18, 23-02.1-19, 23-02.1-20, 23-02.1-22, 23-02.1-25, 23-02.1-27, 23-02.1-28, 23-02.1-29, 23-02.1-30, 23-03-07, 23-03-10, 23-04-01, 23-04-02, 23-04-02.1, 23-04-05, 23-04-06, 23-05-01, 23-05-02, 23-06-04, 23-06-07, 23-06-20, 23-06-21, 23-06-22, 23-06-23, 23-06-27, 23-06-30, 23-06.2-11.1, 23-07-01, 23-07-01.1, 23-07-02, 23-07-02.1, 23-07-02.2, 23-07-03, 23-07-05, 23-07-07.5, 23-07-15, 23-07-16.1, 23-07-17.1, 23-07-21, 23-07.3-01, 23-07.4-01, 23-07.4-02, 23-09-01, 23-09-02, 23-09-02.1, 23-09-09, 23-09-10, 23-09-11, 23-09-14, 23-09-16, 23-09-17, 23-09-18, 23-09-19, 23-09-22, 23-09.1-01, 23-09.1-02, 23-09.1-03, 23-09.2-01, 23-09.3-01, 23-09.4-01, 23-10-01, 23-12-10.2, 23-14-01.1, 23-14-07, 23-14-09, 23-16-01, 23-16-03, 23-16-05, 23-16-06, 23-16-09, 23-16-12, 23-16.1-01, 23-17.1-03, 23-17.2-02, 23-17.2-09, 23-17.3-01, 23-17.3-08, 23-17.4-01, 23-19-02, 23-19-03, 23-19-05, 23-19-07, 23-20-03, 23-20-04, 23-20.1-01, 23-20.1-02, 23-20.1-04.5, 23-20.3-02, 23-21-16, 23-21.1-02.1, 23-21.1-03, 23-23-03, 23-25-02, 23-26-02, 23-27-03, 23-27-04.2, 23-29-03, 23-31-01, 23-31-02, 23-31-03, 23-32-01, 23-33-02, 25-01-01.1, 25-17-01, 25-17-02, 25-17-03, 25-17-04, 25-17-05, 26.1-36-08, 26.1-36-09, 27-21-09, 32-37-05, 38-11.1-03.1, 38-11.1-05, 38-14.1-03, 38-14.1-21, 39-26-02, 39-26-10, 43-04-11, 43-10-12, 43-10-23, 43-11-11, 43-15-10, 43-18-02, 43-18-09, 43-26-10, 43-28-02, 43-34-01, 43-35-19, 43-35-19.1, 43-35-19.2, 43-35-20, 43-43-01, 43-48-05, 49-18-31, 50-06-01.2, 50-06-01.4, 50-11.1-07, 50-19-04, 50-19-09, 50-19-10, 50-19-14, 50-21-02, 50-21-03, 50-21-04, 50-24.4-12, 50-25.1-02, 54-06-04, 54-12-08, 54-23.2-04.2, 54-42-06, 54-42-07, 54-42-08, 57-39.2-04, 57-43.2-01, 61-04.1-04, 61-28-02, 61-28.1-02, 61-28.1-03, 61-28.2-01, 61-29-04, 61-30-01, and 65-14-04.

SECTION 3. MEASURES ENACTED BY THE FIFTY-FOURTH LEGISLATIVE ASSEMBLY RELATING TO STATE DEPARTMENT OF HEALTH. The legislative council may insert appropriate references in any measure enacted by the fifty-fourth legislative assembly which refers to the terms "North Dakota state department of health and consolidated laboratories" or "state department of health and consolidated laboratories" consistent with usages contained in this Act. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the name changes provided by this Act.

SECTION 4. TRANSITION. The state department of health shall use all consumables that refer to the department of health and consolidated laboratories before replacing those consumables with consumables that refer to the state department of health. The department shall do everything necessary to minimize the expense of renaming the state department of health and consolidated laboratories the state department of health.

Approved March 21, 1995
Filed March 23, 1995

* SECTION 2 was affected as follows:

Section 14-07.1-01 was also amended by section 1 of Senate Bill No. 2397, chapter 150.

Section 15-10-17 was also amended by section 1 of House Bill No. 1277, chapter 168.

Section 15-59-02.1 was also amended by section 1 of House Bill No. 1047, chapter 202, and section 4 of Senate Bill No. 2063, chapter 194.

Section 19-03.1-01.1 was also amended by section 2 of House Bill No. 1403, chapter 217.

Section 19-13.1-01 was also amended by section 1 of Senate Bill No. 2075, chapter 219.

Section 19-13.1-12 was also amended by section 10 of Senate Bill No. 2075, chapter 219.

Section 19-18-02 was also amended by section 19 of Senate Bill No. 2075, chapter 219.

Section 19-20.1-01 was also amended by section 32 of Senate Bill No. 2075, chapter 219.

Section 20.1-03-04 was also amended by section 10 of Senate Bill No. 2012, chapter 34, and section 25 of House Bill No. 1027, chapter 120.

Section 23-01-06 was also amended by section 16 of House Bill No. 1026, chapter 350.

Section 23-02.1-20 was also amended by section 15 of Senate Bill No. 2070, chapter 54.

Section 23-05-02 was also amended by section 1 of Senate Bill No. 2477, chapter 251.

Section 23-09-01 was also amended by section 1 of House Bill No. 1314, chapter 253.

Section 23-17.2-02 was also amended by section 16 of Senate Bill No. 2070, chapter 54, and repealed by section 6 of Senate Bill No. 2460, chapter 254.

Section 23-17.2-09 was repealed by section 6 of Senate Bill No. 2460, chapter 254.

Section 23-17.3-01 was also amended by section 4 of Senate Bill No. 2460, chapter 254.

Section 23-27-04.2 was also amended by section 1 of House Bill No. 1283, chapter 257.

Section 25-01-01.1 was also amended by section 10 of Senate Bill No. 2012, chapter 34.

Section 25-17-01 was also amended by section 2 of House Bill No. 1384, chapter 245.

Section 26.1-36-08 was also amended by section 1 of Senate Bill No. 2480, chapter 288.

Section 26.1-36-09 was also amended by section 1 of Senate Bill No. 2292, chapter 289; section 2 of Senate Bill No. 2480, chapter 288; and section 5

of Senate Bill No. 2080, chapter 329.

Section 43-15-10 was also amended by section 2 of Senate Bill No. 2163, chapter 405, and section 4 of House Bill No. 1403, chapter 217.

Section 49-18-31 was repealed by section 1 of Senate Bill No. 2258, chapter 450.

Section 50-06-01.4 was also amended by section 2 of Senate Bill No. 2181, chapter 458.

Section 50-25.1-02 was also amended by section 1 of Senate Bill No. 2068, chapter 472.

Section 54-06-04 was also amended by section 42 of House Bill No. 1026, chapter 350.

Section 54-12-08 was also amended by section 1 of House Bill No. 1439, chapter 504.

CHAPTER 244

HOUSE BILL NO. 1057

(Legislative Council)
(Interim Natural Resources Committee)
(Representatives Oban, Jacobs, Hanson)

STATE DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES DESIGNATED PRIMARY STATE ENVIRONMENTAL AGENCY

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to designation of the state department of health and consolidated laboratories as the primary state environmental agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

State department of health and consolidated laboratories designated primary state environmental agency. The state department of health and consolidated laboratories is the primary state environmental agency.

Approved March 14, 1995
Filed March 14, 1995

CHAPTER 245

HOUSE BILL NO. 1384

(Representatives Rydell, Svedjan, Glassheim)

NEWBORN METABOLIC DISEASE SCREENING TESTS

AN ACT to create and enact a new section to chapter 23-01 and a new subsection to section 25-17-01 of the North Dakota Century Code, relating to the authority of the health council to permit the use of newborn metabolic disease screening tests for research purposes and to the retention and storage of newborn metabolic disease screening tests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Newborn metabolic disease screening tests. The health council may authorize the use of newborn metabolic disease screening tests, as provided for in chapter 25-17, for research purposes. The council shall adopt rules to ensure that the results are used for legitimate research purposes and to ensure that the confidentiality of the newborns and their families is protected.

[142] **SECTION 2.** A new subsection to section 25-17-01 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Provide that, upon completion of the testing, the actual testing materials must be returned to the department. The department shall forward the actual testing materials to the university of North Dakota school of medicine for storage and research purposes. The materials in the possession of the university of North Dakota school of medicine may not be destroyed without the authorization of the department.

Approved March 21, 1995
Filed March 21, 1995

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[142] Section 25-17-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

CHAPTER 246

HOUSE BILL NO. 1050

(Legislative Council)
(Interim Health and Communications Committee)
(Representatives Rydell, Svedjan, Dobrinski)
(Senators Mathern, DeMers, Traynor)

HEALTH CARE REFORM

AN ACT to create and enact two new sections to chapter 23-01, two new sections to chapter 23-17.5, a new chapter to title 26.1, two new sections to chapter 26.1-36, a new chapter to title 32, and two new sections to chapter 50-24.1 of the North Dakota Century Code, relating to the health council, cost and quality review program, modifying preexisting conditions limitations, providing for guaranteed renewal of health insurance products, modified community rating, insurance reimbursement to advanced registered nurse practitioners, establishing a standard benefits package, establishing limits on damages and contingency fees and providing for alternative dispute resolution for medical malpractice claims, and expanding medical assistance; to amend and reenact sections 23-01-02, 23-17.5-01, 23-17.5-02, 23-17.5-03, 23-17.5-04, 23-17.5-07, 23-17.5-08, 23-17.5-10, 23-17.5-11, subdivision a of subsection 1 of section 26.1-08-05, subsection 2 of section 26.1-08-05, subdivision a of subsection 1 of section 26.1-08-06, subsection 2 of section 26.1-08-06, subsection 9 of section 26.1-17-01, subsection 1 of section 26.1-36-04, subdivision e of subsection 2 of section 26.1-36-04, sections 26.1-36-05, 26.1-36-22, subsections 11 and 23 of section 26.1-36.3-01, and subsection 1 of section 26.1-36.3-04 of the North Dakota Century Code, relating to membership of the health council, supervision of health care provider cooperatives, maximum lifetime benefits of a qualified health coverage plan, guaranteed renewal of health insurance products, modified community rating, insurance reimbursement to advanced registered nurse practitioners, and expansion of medical assistance coverage; to repeal section 26.1-17-12.1 of the North Dakota Century Code, relating to insurance reimbursement for nurses; to provide a penalty; to provide an appropriation; to provide for application and retroactive application; to provide for a legislative council study; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Duties of the health council. The health council shall:

1. Monitor overall health care costs and quality of health care in the state.

2. Recommend to the appropriate interim legislative committees, changes to the health care system in the state.

3. Publish an annual report on health care in the state.

SECTION 2. AMENDMENT. Section 23-01-02 of the North Dakota Century Code is amended and reenacted as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council consists of ~~seventeen~~ nine members appointed by the governor in the following manner: ~~Two~~ Four persons from ~~a list of four submitted by the state hospital association, one of whom must represent a rural hospital and one of whom must represent an urban hospital, one person from a list of two submitted by the state medical association, one person from a list of two submitted by the state long term care association, one person from a list of two submitted by the state dental association, one person from a list of two submitted by the state optometric association, one person from a list of two submitted by the state nurses association, one person from a list of two submitted by the state pharmaceutical association, and nine persons who are consumers of health care services and not employed in the health care field to the health council. One health care consumer member must be a representative of the business community, one health care consumer member must be a representative of the agriculture community, one health care consumer member must be a representative of organized labor, and one health care consumer member must be a representative of elderly citizens. For the purposes of this section, a rural hospital is a hospital located in a city with a population of less than twenty thousand, and an urban hospital is a hospital located in a city with a population of twenty thousand or more~~ the health care field and five persons representing consumer interests. The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees the council may find necessary. The chairman of the council shall select the members of these committees ~~must be selected by the chairman of the health council~~. The members of the council are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and their necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04 while attending council meetings, or in the performance of ~~such~~ any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

SECTION 3. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Health care cost and quality review program - Penalty. The department of health and consolidated laboratories shall conduct a continuous program to review and improve the quality of health care in the state. The department may contract with a qualified person or organization to develop and implement the program. The department shall use the program to compile relevant information about the quality of health care in this state which will allow the department to evaluate the cost, quality, and outcomes of health care. The department shall establish and consult a provider advisory committee composed of health care providers regarding the data that is a cost-effective process for collecting and evaluating the information. The state health officer may assess against a provider a penalty of one hundred dollars per day for each day the provider willfully refuses to provide the department with information requested for use with the program, but the penalty may not exceed one

thousand dollars for each request. A provider against whom a fee is assessed may appeal that assessment to the state health council. If the provider fails to pay the penalty, the health council may, in the county where the provider's principal place of business is located, initiate a civil action against the provider to collect the penalty. As used in this section, "provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or professional practice. The department shall ensure that patient privacy is protected throughout the compilation and use of the information. The department shall evaluate data management capabilities in the state and shall organize its capabilities to provide information about the cost of care on an individual provider basis as well as a collective basis.

SECTION 4. AMENDMENT. Section 23-17.5-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-17.5-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Active supervision" means actual state direction, supervision, or control that results in the exercise of power by the department or the attorney general to review anticompetitive conduct that results from, or is authorized by, a cooperative agreement for which a certificate of public advantage has been issued pursuant to this chapter. The term includes the authority granted the department or attorney general by this chapter to terminate or cancel a certificate of public advantage or to investigate or enjoin a cooperative agreement, and other conditions to the certificate provided under section 7 of this Act.

2. "Cooperative agreement" means ~~an~~:

   a. An agreement among two or more health care providers or third-party payers for the sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities, or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by health care providers; or

   b. An agreement among two or more health care providers for acquisition of control, consolidation, merger, or sale of assets of those health care providers.

~~2.~~ 3. "Department" means the state department of health and consolidated laboratories.

~~3. "Health care facility" means a facility licensed in this state as a hospital, nursing home, community-based residential care facility, mental health center, or sanatorium.~~

4. "Health care provider" means any person ~~licensed, registered, permitted, or certified by the state department of health and consolidated laboratories to provide health care services in this state~~ who delivers, administers, or supervises health care products or services, for profit or otherwise, in the ordinary course of business or professional practice.

5. "Third-party payer" means any insurer or other entity responsible for providing payment for health care services, including the workers

compensation bureau, the comprehensive health association of North Dakota, and any self-insured entity.

SECTION 5. AMENDMENT. Section 23-17.5-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-17.5-02. ~~Application for cooperative agreements - Departmental review~~ Discussions or negotiations - Certificate of public advantage. A health care provider may discuss preliminary matters toward, or may negotiate, a cooperative agreement with another health care provider or third-party payer if the likely benefits ~~resulting~~ to health care consumers which may result from the agreement outweigh the disadvantages attributable to a potential reduction in competition that may result from the agreement. The parties to a cooperative agreement may apply to the department for a certificate of public advantage governing the agreement. Although a health care provider or third-party payer is not required to apply for a certificate of public advantage, a party that does not apply for a certificate does not receive the exclusion from state antitrust enforcement and intended federal antitrust immunity provided by section 11 of this Act. The application must include an executed copy of the cooperative agreement and must describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. The applicants shall file a copy of the application and related materials with the attorney general and the department. The department shall review the application and shall hold a public hearing on the application. The department shall grant or deny the application within ninety days of the date of filing of the application. The decision must be in writing and must set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general, and any intervenor. ~~Directors, trustees, or their representatives of a health care provider or third-party payer who participate in the discussion or negotiation are immune from civil actions or criminal prosecution for a violation of state or federal antitrust laws, unless the discussion or negotiation exceeds the scope authorized in this section.~~

SECTION 6. AMENDMENT. Section 23-17.5-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-17.5-03. Standards for certification. The department shall issue a certificate of public advantage for cooperative agreement if the department determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits to health care consumers ~~resulting~~ which may result from the agreement outweigh ~~any~~ the disadvantages attributable to a potential reduction in competition that may result from the agreement. The department shall consult with the attorney general regarding its evaluation of ~~any~~ a potential reduction in competition ~~resulting~~ which may result from a cooperative agreement.

1. In evaluating the ~~potential~~ likely benefits of a cooperative agreement to health care consumers, the department shall consider whether any of the following benefits may result from the cooperative agreement:

   a. Enhancement of the quality of health care services provided to residents of this state;

   b. Preservation of health care facilities or services in geographical proximity to the communities traditionally served by those facilities or services;

c. Gains in the cost efficiency of services provided by the parties involved;

d. Improvements in the utilization of health care resources and equipment; ~~and~~

e. Avoidance of duplication of health care resources; and

f. Enhancement of the ability to cooperatively provide services to underserved or low-income patients.

2. The department's evaluation of ~~any~~ the disadvantages attributable to ~~any~~ a potential reduction in competition ~~likely to~~ which may result from the agreement may include the following factors:

a. The extent of any likely adverse impact on the bargaining power of health maintenance organizations, preferred provider organizations, managed health care service agents, or other health care payers in negotiating payment and service arrangements with hospitals, physicians, allied health care professionals, or other health care providers;

b. The extent of any reduction in competition among physicians, allied health professionals, other health care providers, or persons furnishing goods or services to or in competition with providers or third-party payers that is likely to result directly or indirectly from the cooperative agreement;

c. The extent of any likely adverse impact on patients in the quality, availability, and price of health care services; and

d. The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of likely benefits to health care consumers over disadvantages attributable to ~~any~~ a potential reduction in competition ~~likely to~~ which may result from the agreement.

SECTION 7. A new section to chapter 23-17.5 of the North Dakota Century Code is created and enacted as follows:

Active supervision. The decision granting an application for a certificate of public advantage must include conditions for active supervision. The active supervision must be sufficient for the department to determine periodically whether circumstances may be present to meet the criteria for certificate termination pursuant to section 23-17.5-04, and must otherwise be structured to provide a reasonable basis for state action immunity from federal antitrust laws as interpreted by applicable laws, judicial decisions, opinions of the attorney general, and statements of antitrust enforcement policy issued by the United States department of justice and the federal trade commission. The conditions for active supervision, except the authority granted the department or attorney general by this chapter, may be modified or terminated by agreement between the parties to the cooperative agreement and the department.

SECTION 8. AMENDMENT. Section 23-17.5-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-17.5-04. Certificate termination. The department may, after notice and hearing, terminate a certificate of public advantage if the department determines that:

1. The likely or actual benefits to health care consumers that result, or may result, from ~~a~~ the certified agreement no longer outweigh the disadvantages attributable to a potential or actual reduction in competition ~~resulting~~ which results, or may result, from the agreement; or

2. Performance by the parties under the certified agreement does not conform to the representations made by the parties in the application or to the provisions of any conditions attached to the certificate of public advantage by the department at the time the application was granted.

SECTION 9. AMENDMENT. Section 23-17.5-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-17.5-07. Cooperative agreement enjoined - Automatic stay - Standards for adjudication. The attorney general may seek to enjoin the operation of a cooperative agreement for which an application for certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in district court. The attorney general may file an action before or after the department acts on the application for a certificate, but the action must be brought no later than forty days following the department's approval of an application for certificate of public advantage. Upon the filing of the complaint, the department's certification, if previously issued, must be stayed and the cooperative agreement is of no further force unless the court orders otherwise or until the action is concluded. The attorney general may apply to the court for ancillary temporary or preliminary relief necessary to stay the cooperative agreement pending final disposition of the case. In any action, the applicants for a certificate bear the burden of establishing by clear and convincing evidence that the likely benefits to health care consumers which may result from the cooperative agreement outweigh ~~any~~ the disadvantages attributable to a potential reduction in competition ~~that~~ which may result from the agreement. The court shall review whether the agreement constitutes an unreasonable restraint of trade under state or federal law in assessing the disadvantages attributable to a potential reduction in competition ~~likely to~~ which may result from the agreement.

SECTION 10. AMENDMENT. Section 23-17.5-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-17.5-08. Cancellation of a certificate of public advantage. If, at any time following the forty-day period specified in section 23-17.5-07, the attorney general determines that, as a result of changed circumstances, the benefits to health care consumers which result from a certified agreement no longer outweigh the disadvantages attributable to a reduction in competition resulting from the agreement, the attorney general may file suit in district court seeking to cancel the certificate of public advantage. In an action brought under this section, the attorney general has the burden of establishing by a preponderance of the evidence that, as a result of changed circumstances, the likely or actual benefits to health care consumers which result, or may result, from the agreement and the unavoidable costs of canceling the agreement are outweighed by the disadvantages attributable to a potential or actual reduction in competition ~~resulting~~ which results, or may result, from the agreement. If the attorney general first establishes by a preponderance of the evidence that the department's certification was obtained as a result of material misrepresentation to the department or the attorney general as the result of coercion, threats, or intimidation toward any party to the cooperative agreement, the parties to

the agreement bear the burden of establishing by clear and convincing evidence that the likely or actual benefits to health care consumers which result, or may result, from the agreement and the unavoidable costs of canceling the agreement are outweighed by the disadvantages attributable to ~~any~~ a potential or actual reduction in competition ~~resulting~~ which results, or may result, from the agreement.

[143] **SECTION 11. AMENDMENT.** Section 23-17.5-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-17.5-10. ~~Effective certification - Validity~~ Exclusion from state antitrust enforcement - Federal antitrust immunity intended - **Application.** ~~A cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. If the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating a cooperative agreement is lawful conduct. This section does not immunize any person for conduct in negotiating a cooperative agreement for which an application for a certificate of public advantage is not filed. If the department or the district court determines that the applicants have not established by clear and convincing evidence that the likely benefits to health care consumers which result from a cooperative agreement outweigh any disadvantage attributable to a potential reduction in competition resulting from the agreement, the agreement is invalid and has no force or effect.~~ A health care provider or third-party payer who participates in the discussion or negotiation of a cooperative agreement for which an application is filed is engaged in conduct for which no action may be brought pursuant to chapter 51-08.1 for penalties, damages, injunctive enforcement, or other remedies. A health care provider or third-party payer who participates in the implementation of a cooperative agreement, for which a certificate of public advantage was issued, is engaged in conduct for which no action may be brought pursuant to chapter 51-08.1 for penalties, damages, injunctive enforcement, or other remedies. The intent of this section is that the conduct be provided state action immunity from federal antitrust laws. This exclusion from state antitrust enforcement and intended federal antitrust immunity applies unless the discussion or negotiation exceeds the scope of a cooperative agreement as authorized by this chapter or the implementation exceeds the scope of the cooperative agreement for which a certificate of public advantage was issued. This section does not exempt hospitals or other health care providers from compliance with laws governing hospital cost reimbursement. ~~This chapter does not apply to any agreement among hospitals by which ownership or control over substantially all of the stock, assets, or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals.~~ Notwithstanding any provisions to the contrary, any improvements, construction, expansion, or acquisition of health care equipment or services approved as a condition of a cooperative agreement is not subject to laws governing certificate of need.

SECTION 12. AMENDMENT. Section 23-17.5-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-17.5-11. Assessment - Health care cooperative agreement fund. The department shall establish an assessment to be paid by each party to a cooperative agreement. The aggregate amount of the assessment for a cooperative agreement

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[143] Section 23-17.5-10 was also amended by section 5 of Senate Bill No. 2460, chapter 254.

may not exceed forty thousand dollars. ~~The parties shall pay the assessment to the department when the application for the cooperative agreement is submitted to the department~~, unless the department determines that an extraordinary need exists for an additional amount to ensure effective evaluation of the application or supervision under section 7 of this Act. The parties may require that the determination of the need for an additional amount is subject to approval by the state health council. An appeal may be taken under chapter 28-32 from a determination of the health council. After consultation with the parties, the department may require the payment of the assessment on an incremental basis and may require separate payments for the process of evaluating the application or for the process of active supervision. The assessment may be modified by agreement between the department and the parties to the cooperative agreement. The department shall deposit the moneys received under this section in the health care cooperative agreement fund of the state treasury.

SECTION 13. A new section to chapter 23-17.5 of the North Dakota Century Code is created and enacted as follows:

Health care cooperative agreement fund. The funds in the health care cooperative agreement fund are available to the department of health and consolidated laboratories, subject to legislative appropriation, for evaluation and active supervision of cooperative agreements among health care providers or third-party payers and for reimbursement to the attorney general for expenses incurred pursuant to this chapter. Any amounts reimbursed to the attorney general under this section are hereby appropriated.

SECTION 14. AMENDMENT. Subdivision a of subsection 1 of section 26.1-08-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which must not be less than five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. Coverage may be subject to a maximum lifetime benefit of not less than ~~five hundred thousand~~ one million dollars.

SECTION 15. AMENDMENT. Subsection 2 of section 26.1-08-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A plan of health coverage is a number one qualified plan A if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which must not be less than one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than ~~five hundred thousand~~ one million dollars.

SECTION 16. AMENDMENT. Subdivision a of subsection 1 of section 26.1-08-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which must not be less than five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. The coverage may be subject to a maximum lifetime benefit of not less than ~~five hundred thousand~~ one million dollars.

SECTION 17. AMENDMENT. Subsection 2 of section 26.1-08-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A plan of health coverage is a number one qualified plan B if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which must not be less than one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than ~~five hundred thousand~~ one million dollars.

SECTION 18. AMENDMENT. Subsection 9 of section 26.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Practitioner" includes an optometrist, a physician, ~~or~~ a chiropractor, or an advanced registered nurse practitioner duly licensed to practice ~~his or her~~ one's profession under North Dakota law.

SECTION 19. AMENDMENT. Subsection 1 of section 26.1-36-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 3, each accident and health insurance policy delivered or issued for delivery to any person in this state must contain provisions described in this section. The provisions contained in any policy may not be less favorable in any respect to the insured or the beneficiary.

   a. A provision that the policy, including the endorsements and the attached papers, if any, constitutes the entire insurance contract and that no change in the policy is valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to the policy.

   b. A provision that no agent has authority to change the policy or to waive any of its provisions.

   c. A provision that the validity of the policy may not be contested except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that the validity of the policy may not be contested on the basis of a statement made relating to insurability by any person covered under the policy after the insurance has been in force for two years during the person's lifetime unless the statement is contained in a written instrument

signed by the person making the statement; provided, however, that no such provision precludes the assertion at any time of defenses based upon the person's ineligibility for coverage under the policy.

d. A provision specifying the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy. Any such exclusion or limitation may only apply to a preexisting disease or physical condition which first manifested itself in the five years immediately prior to the effective date of the person's coverage. The exclusion or limitation may not apply to loss incurred or disability commencing after the end of the two-year period commencing on the effective date of the person's coverage.

e. A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which the policy continues in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder is liable to the insurer for the payment of a pro rata premium for the time the policy was in force during the grace period.

f. A provision that if any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept the premium, without requiring in connection therewith an application for reinstatement, reinstates the policy; provided, however, that if the insurer or the agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of the application by the insurer or, lacking the approval, upon the forty-fifth day following the date of the conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The policy must provide that the reinstated policy covers only loss resulting from an accidental injury sustained after the date of reinstatement and loss due to any sickness that begins more than ten days after the date. The policy must provide that in all other respects the insured and insurer have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed thereon or attached thereto in connection with the reinstatement. The provision may include a statement that any premium accepted in connection with a reinstatement will be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement. This statement may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue.

g. A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within this time does not invalidate nor reduce any claim if it is shown not to have been reasonably possible to give the notice and that notice was given as soon as was reasonably possible.

h. A provision that the insurer will furnish to the person making claim, or to the policyholder for delivery to such person, the forms usually furnished for filing proof of loss. If the forms are not furnished before the expiration of fifteen days after the insurer receives notice of any claim under the policy, the person making the claim is deemed to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claims are made.

i. A provision that in the case of claim for loss of time for disability, written proof of loss must be furnished to the insurer within ninety days after the commencement of the period for which the insurer is liable, and that subsequent written proof of continuance of the disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of loss must be furnished to the insurer within ninety days after the date of loss. Failure to furnish the proof within this time does not invalidate nor reduce any claim if it was not reasonably possible to furnish the proof within that time, provided the proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required.

j. A provision that all benefits payable under the policy other than benefits for loss of time will be payable according to the provisions of section 26.1-36-37.1, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid as soon as possible after receipt of proof of loss.

k. A provision that benefits for loss of life of the person insured will be payable to the beneficiary designated by the insured person. However, if the policy contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy terms. In either case, payment of these benefits is subject to the provisions of the policy in the event no such designated or specified beneficiary is living at the death of the insured person. All other benefits of the policy are payable to the insured person. The policy may also provide that if any benefit is payable to the estate of a person, or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay the benefit, up to an amount not exceeding five thousand dollars, to any relative by blood or connection by marriage of the person deemed by the insurer to be equitably entitled to the benefit.

l. A provision that the insurer may examine the individual for whom claim is made when and so often as it may reasonably require during the pendency of claim under the policy and also may make an autopsy in case of death where the autopsy is not prohibited by law.

m. A provision that no action may be brought to recover on the policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of the policy and that no such action may be brought at all unless brought within three years from the expiration of the time which proof of loss is required by the policy.

n. ~~A provision that benefits under the policy may not be denied for any health care service performed by a registered nurse licensed pursuant to chapter 43-12.1 if the following conditions are met: (1) the service performed is within the scope of the registered nurse's license; (2) the policy currently provides benefits for identical services performed by a provider of health care licensed by this state; (3) the service is not performed while the registered nurse is employed within a hospital, skilled nursing facility, or intermediate care facility; and (4) the policy does not offer, at the option of the policyholder, coverage for services rendered by self-employed registered nurses licensed pursuant to chapter 43-12.1. No lack of signature, referral, or employment by any other health care provider, and no provision of chapter 43-17 may be asserted to deny benefits under this provision.~~

~~o.~~ A provision that in the event of the death of an insured, the insurer will refund within thirty days after notice to the insurer of the insured's death the portion of the premium, fees, or other sum paid beyond the month of death after deducting any claim for losses during the current term of the policy. This provision does not apply where the insurer has a valid defense to the payment of benefits under the policy.

SECTION 20. AMENDMENT. Subdivision e of subsection 2 of section 26.1-36-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

e. ~~A~~ Subject to section 22 of this Act, a provision that the insurer may cancel the policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, the cancellation is effective; and after the policy has been continued beyond its original term the insured may cancel the policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in the notice. The provision must provide that in the event of cancellation, the insurer will return promptly the unearned portion of any premium paid, and, if the insured cancels, the earned premium will be computed by the use of the short-rate table last filed in the state where the insured resided when the policy was issued. The provision must provide that if the insurer cancels, the earned premium shall be computed pro rata. The provision must

provide that cancellation is without prejudice to any claim originating prior to the effective date of cancellation.

[144] **SECTION 21. AMENDMENT.** Section 26.1-36-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-05. Group health policy or service contract standard provisions. Neither a group health insurance policy nor a group health service contract may be delivered in this state unless it contains in substance the following provisions, or provisions that in the opinion of the commissioner are more favorable to the persons insured and more favorable to the policyholder or contractholder; provided, however, that subsections 5, 7, and 12 do not apply to credit accident and health insurance policies, that the standard provisions required for individual health insurance policies do not apply to group health insurance policies, and that if any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy or contract, the insurer shall omit from the policy or contract any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision ~~in such manner as~~ to make the provision ~~as~~ contained in the policy or contract consistent with the coverage provided by the policy or contract:

1. A provision that the policyholder or contractholder is entitled to a grace period of fifteen days for monthly premiums and thirty-one days for all others for the payment of any premium due except the first, during which the policy or contract continues in force, unless the policyholder or contractholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy or contract. The policy or contract may provide that the policyholder or contractholder is liable to the insurer for the payment of a pro rata premium for the time the policy or contract was in force during the grace period.

2. A provision that the validity of the policy or contract may not be contested except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that the validity of the policy or contract may not be contested on the basis of a statement made relating to insurability by any person covered under the policy or contract after the insurance has been in force for two years during the person's lifetime unless the statement is contained in a written instrument signed by the person making the statement; provided, however, that no such provision precludes the assertion at any time of defenses based upon the person's ineligibility for coverage under the policy or contract.

3. A provision that a copy of the application, if any, of the policyholder or contractholder will be attached to the policy or contract when issued, that all statements made by the policyholder or contractholder or by the persons insured are deemed representations and not warranties, and that no statement made by any insured person may be used in any contest unless a copy of the instrument containing the statement is or has been

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[144] Section 26.1-36-05 was also amended by section 9 of Senate Bill No. 2162, chapter 276.

furnished to that person or, in the event of the death or incapacity of the insured person, to the individual's beneficiary or personal representative.

4. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the individual's coverage.

5. A provision specifying the additional exclusions or limitations, if any, applicable under the policy or contract with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy or contract. Any such exclusion or limitation may only apply to a disease or physical condition for which medical advice or treatment was received by the person during the twelve months ~~prior to~~ before the effective date of the person's coverage. The exclusion or limitation may not apply to loss incurred or disability commencing after the earlier of the end of a continuance period of twelve months commencing on or after the effective date of the person's coverage during all of which the person has received no medical advice or treatment in connection with such disease or physical condition, or the end of the two-year period commencing on the effective date of the person's coverage.

6. If the premiums or benefits vary by age, a provision specifying an equitable adjustment of premiums or of benefits, or both, to be made in the event the age of a covered person has been misstated. The provision must contain a clear statement of the method of adjustment to be used.

7. A provision that the insurer will issue to the policyholder or contractholder for delivery to each person insured a certificate setting forth a statement as to the insurance protection to which that person is entitled, to whom the insurance benefits are payable, and a statement as to any family member's or dependent's coverage.

8. A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy or contract. Failure to give notice within this time does not invalidate nor reduce any claim if it is shown that it was not ~~to have been~~ reasonably possible to give the notice and that notice was given as soon as was reasonably possible.

9. A provision that the insurer will furnish to the person making claim, or to the policyholder or contractholder for delivery to ~~such~~ the person making claim, the forms usually furnished for filing proof of loss. If the forms are not furnished before the expiration of fifteen days after the insurer receives notice of any claim under the policy or contract, the person making the claim is deemed to have complied with the requirements of the policy or contract as to proof of loss upon submitting within the time fixed in the policy or contract for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which ~~claims are~~ claim is made.

10. A provision that in the case of claim for loss of time for disability, written proof of loss must be furnished to the insurer within ninety days

after the commencement of the period for which the insurer is liable, and that subsequent written proof of continuance of the disability must be furnished to the insurer at ~~such~~ intervals ~~as~~ the insurer may reasonably require, and that in the case of claim for any other loss, written proof of loss must be furnished to the insurer within ninety days after the date of loss. Failure to furnish the proof within this time does not invalidate nor reduce any claim if it was not reasonably possible to furnish the proof within that time, provided the proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required.

11. A provision that all benefits payable under the policy or contract other than benefits for loss of time will be payable not more than sixty days after receipt of proof, and that, subject to due proof of loss, all accrued benefits payable under the policy or contract for loss of time will be paid ~~not less frequently than~~ at least monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of ~~such~~ that period will be paid as soon as possible after receipt of proof of loss.

12. A provision that benefits for loss of life of the person insured will be payable to the beneficiary designated by the insured person. ~~However, if~~ If the policy or contract contains conditions pertaining to family status, however, the beneficiary may be the family member specified by the policy or contract terms. In either case, payment of these benefits is subject to the provisions of the policy or contract in the event ~~no such~~ the designated or specified beneficiary is not living at the death of the insured person. All other benefits of the policy or contract are payable to the insured person. The policy or contract may also provide that if any benefit is payable to the estate of a person, or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay the benefit, up to an amount not exceeding five thousand dollars, to any relative by blood or connection by marriage of the person deemed by the insurer to be equitably entitled to the benefit.

13. A provision that the insurer may examine the individual for whom claim is made when and so often as it may reasonably require during the pendency of claim under the policy or contract and also may make an autopsy in case of death where the autopsy is not prohibited by law.

14. A provision that no action may be brought to recover on the policy or contract prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of the policy or contract and that ~~no such~~ the action may not be brought at all unless brought within three years from the expiration of the time which proof of loss is required by the policy or contract.

~~15. A provision that benefits under the policy may not be denied for any health care service performed by a registered nurse licensed pursuant to chapter 43-12.1 if the following conditions are met: (1) the service performed is within the scope of the registered nurse's license; (2) the policy currently provides benefits for identical services performed by a health care provider licensed by this state; (3) the service is not performed while the registered nurse is employed within a hospital, skilled nursing facility, or intermediate care facility; and (4) the policy does not offer, at the option of the employer, or the group or association~~

~~representative, coverage for services rendered by self-employed registered nurses licensed pursuant to chapter 43-12.1. No lack of signature, referral, or employment by any other health care provider, and no provision of chapter 43-17 may be asserted to deny benefits under this provision.~~

SECTION 22. A new chapter to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Application and scope. This chapter applies to all policies issued or renewed after July 31, 1995. The provisions of chapter 26.1-36 apply when not in conflict with this chapter.

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Insurer" means any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization that provides a plan of health insurance or health benefits subject to state insurance regulation.

2. "Policy" means any hospital or medical or major medical policy, certificate, or subscriber contract issued on a group or individual basis by an insurer. The term does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, limited benefit health insurance, or short-term major medical policies with policy terms no longer than twelve months.

Limits on preexisting conditions provisions. A policy must provide coverage, with respect to a disease or physical condition of a person which existed prior to the effective date of the person's coverage under the policy, except for a preexisting disease or physical condition that was diagnosed or treated within the six months immediately prior to the effective date of the person's coverage. The limitation may not apply to loss incurred after the end of the twelve-month period commencing on the effective date of the person's coverage.

Portability of insurance policies. An insurer shall waive any time period applicable to a preexisting condition, for a policy with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to the services, if the qualifying previous coverage as defined in section 26.1-36.3-01 is continuous until at least ninety days before the effective date of the new coverage. The period of continuous coverage may not include a waiting period or the effective date of the new coverage applied by the insurer.

Guaranteed renewability of health insurance coverage - Discrimination prohibited.

1. An insurer issuing policies under this chapter shall provide for the renewability or continuability of coverage unless:

   a. The individual or group has failed to pay the required premiums.

b. The individual or group has misrepresented information or committed fraud with respect to coverage of the individual or group.

c. The group has failed to comply with the insurer's minimum participation requirements.

d. The insurer has elected to nonrenew all of its policies, other than guaranteed renewable individual policies, in this state. In that case the insurer shall:

(1) Provide advance notice of its decision not to renew to the commissioner; and

(2) Provide notice of the decision not to renew coverage to every affected insured and to the commissioner at least one hundred eighty days before the nonrenewal of the policy or contract by the insurer. Notice to the commissioner under this paragraph must be provided at least three business days before notice to an affected insured.

2. An insurer that elects not to renew a policy as required by this section may not write new business in the individual or group market in this state for a period of five years from the date of notice of its intention not to renew.

3. The commissioner may allow an insurer to nonrenew a policy if the commissioner finds that continuation of coverage is not in the best interests of policyholders or it would impair the insurer's ability to meet its contractual obligations. The commissioner shall assist the policyholder in finding replacement coverage.

Modified community rating. Premium rates for individual policies are subject to the following:

1. For any class of individuals, the premium rates charged during a rating period to the individuals in that class for the same or similar coverage may not vary by a ratio of more than six to one after August 1, 1995, and by a ratio of more than five to one after August 1, 1996, when age, industry, gender, and duration of coverage of the individuals are considered. Gender and duration of coverage may not be used as a rating factor for policies issued after January 1, 1997.

2. An insurer may, in addition to the factors set forth in subsection 1, use geography, family composition, healthy lifestyles, and benefit variations to determine premium rates.

3. The commissioner shall design and adopt reporting forms to be used by an insurer to report information as to insurer's experience as to insurance provided under this chapter on a periodic basis to determine the impact of the reforms and implementation of modified community rating contained in this chapter, and the commissioner shall report to the legislative assembly or a committee designated by the legislative council the findings of the commissioner.

SECTION 23. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health benefits package required. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual or group basis unless the company, corporation, or association actively offers a basic health benefit plan and a standard health benefit plan as approved by the commissioner. The commissioner shall design and adopt a basic health benefit plan and a standard health benefit plan to be offered on an individual and group basis as required by this section. The basic and standard health benefit plans must be those developed under section 26.1-36.3-06. This section does not require a health maintenance organization to provide any benefit it is prohibited from providing under federal law, and does not excuse failure to provide benefits mandated by federal law.

SECTION 24. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Service of advanced registered nurse practitioner - Direct reimbursement required. The insured or any person covered by a health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis issued, delivered, executed, or renewed by an insurance company, nonprofit health service corporation, or health maintenance organization which provides for reimbursement or payment for services that are within the scope of practice of an advanced registered nurse practitioner who has received an advanced license under rules adopted by the North Dakota board of nursing is entitled to reimbursement or payment for services performed by an advanced registered nurse practitioner and the advanced registered nurse practitioner is entitled to direct reimbursement by the insurer.

SECTION 25. AMENDMENT. Section 26.1-36-22 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-22. ~~Group~~ Individual and group health insurance for dependents. ~~A~~ An individual or group health insurance policy may be extended to insure the individuals, employees, or members with respect to their family members or dependents including dependents of dependents, or any class or classes thereof, subject to the following:

1. The premium for the insurance must be paid either from funds contributed by the employer, union, association, or other person to whom the policy has been issued, or from funds contributed by the covered persons, or from both. A policy on which no part of the premium for the family members or dependents coverage is to be derived from funds contributed by the covered persons must insure all eligible employees or members with respect to their family members or dependents, or any class or classes thereof.

2. An insurer may exclude or limit the coverage on any family member or dependent as to whom evidence of individual insurability is not satisfactory to the insurer.

3. A policy that provides coverage for a dependent child of an employee or other member of the covered group must provide such coverage up to a limiting age of ~~nineteen~~ twenty-two years of age, if the dependent child

physically resides with the employee or other member and is chiefly dependent upon the employee or member for support and maintenance.

4. A policy that provides that coverage for a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the policy does not operate to terminate the coverage of a dependent child: (a) while the child is a full-time student and has not attained the age of ~~twenty-three~~ twenty-six years ~~of age~~; or (b) while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee or member for support and maintenance, provided proof of incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

[145] **SECTION 26. AMENDMENT.** Subsection 11 of section 26.1-36.3-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. "Dependent" means a spouse, an unmarried child, including a dependent of an unmarried child, under the age of ~~nineteen~~ twenty-two, an unmarried child who is a full-time student under the age of ~~twenty-three~~ twenty-six and who is financially dependent upon the ~~parent~~ enrollee, and an unmarried child, including a dependent of an unmarried child, of any age who is medically certified as disabled and dependent upon the ~~parent~~ enrollee as set forth in section 26.1-36-22.

[146] **SECTION 27. AMENDMENT.** Subsection 23 of section 26.1-36.3-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23. "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under one or more of the following:

a. Medicare ~~or~~, medicaid, civilian health and medical program for uniformed services, Indian health services program, or any other similar publicly sponsored program.

b. ~~An employer-based~~ A health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.

c. An individual health insurance policy, including coverage issued by a health maintenance organization, nonprofit health service corporation, and fraternal benefit society that provides benefits

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[145] Section 26.1-36.3-01 was also amended by section 10 of Senate Bill No. 2162, chapter 276.

[146] Section 26.1-36.3-01 was also amended by section 10 of Senate Bill No. 2162, chapter 276.

similar to or exceeding the benefits provided under the basic health benefit plan, provided that the policy has been in effect for a period of at least one year.

SECTION 28. AMENDMENT. Subsection 1 of section 26.1-36.3-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Premium rates for health benefit plans subject to this chapter and section 26.1-36-37.2 are subject to the following:

   a. The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than fifteen percent.

   b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to the employers under the rating system for that class of business, may not vary from the index rate by more than twenty percent of the index rate.

   c. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:

      (1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

      (2) Any adjustment due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business; however, the adjustment may not exceed fifteen percent annually and must be adjusted pro rata for rating periods of less than one year; and

      (3) Any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

   d. Adjustments in rates for claim experience, health status, and duration of coverage may not be charged to individual employees or dependents. Premium rates charged for a health benefit plan may not vary by a ratio of greater than four to one after January 1, 1997. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

e. Premium rates for health benefit plans must comply with the requirements of this section notwithstanding any assessment paid or payable by a small employer carrier pursuant to section 26.1-36.3-07.

f. A small employer carrier may utilize industry as a case characteristic in establishing premium rates, but the highest rate factor associated with any industry classification may not exceed the lowest rate factor associated with any industry classification by more than fifteen percent.

g. In the case of health benefit plans delivered or issued for delivery before August 1, 1993, a premium rate for a rating period may exceed the ranges set forth in subdivisions a and b of subsection 1 for a period of three years following August 1, 1993. Under this subdivision, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:

(1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.

(2) Any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the carrier's rate manual for the class of business.

h. (1) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups which differ only by amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.

(2) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

i. For the purposes of this subsection, a health benefit plan that uses a restricted provider network may not be considered similar coverage to a health benefit plan that does not use a restricted provider network, if the use of the restricted provider network results in substantial differences in claims costs.

j. A small employer carrier may not use case characteristics, other than age, gender, industry, geographic area, family composition, and group size, without prior approval of the commissioner.

Gender may not be used as a case characteristic after January 1, 1996.

k. The commissioner shall adopt rules to:

(1) Assure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans;

(2) Prescribe the manner in which case characteristics may be used by small employer carriers; and

(3) Otherwise implement this section.

SECTION 29. A new chapter to title 32 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter:

1. "Alternative dispute resolution" means the resolution of a health care malpractice claim in a manner other than through a health care malpractice action.

2. "Claimant" means any person who alleges a health care malpractice claim, and any person on whose behalf the claim is alleged, including the decedent in the case of an action brought through or on behalf of an estate.

3. "Health care malpractice action" means a claim for relief brought against a health care provider, or other defendant joined in the action, regardless of the theory of liability on which the claim is based, in which the claimant alleges a health care malpractice claim.

4. "Health care malpractice claim" means a claim brought against a health care provider or other defendant joined in a claim alleging that an injury was suffered by the claimant as a result of health care negligence or gross negligence, breach of express or implied warranty or contract, failure to discharge a duty to warn, or failure to obtain consent arising from the provision of or failure to provide health care services.

5. "Health care negligence" means an act or omission by a health care provider which deviates from the applicable standard of care and causes an injury.

6. "Health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

7. "Injury" means an injury, illness, disease, or other harm suffered by an individual as a result of the provision of health care services by a health care provider.

8. "Noneconomic damage" means damage arising from pain; suffering; inconvenience; physical impairment; disfigurement; mental anguish;

emotional distress; fear of injury, loss, or illness; loss of society and companionship; loss of consortium; injury to reputation; humiliation; and other nonpecuniary damage incurred by an individual with respect to which a health care malpractice action or claim is pursued.

Noneconomic damages limited - Reduction of award. With respect to a health care malpractice action or claim, the total amount of compensation that may be awarded to a claimant or members of the claimant's family for noneconomic damage resulting from an injury alleged under the action or claim may not exceed five hundred thousand dollars, regardless of the number of health care providers and other defendants against whom the action or claim is brought or the number of actions or claims brought with respect to the injury. With respect to actions heard by a jury, the jury may not be informed of the limitation contained in this section. If necessary, the court shall reduce the damages awarded by a jury to comply with the limitation in this section.

Alternative dispute resolution.

1. Before initiating a health care malpractice action, the attorney representing a claimant shall advise the claimant about all reasonably available alternative dispute resolution options that may be available to the parties to settle the claim.

2. At the earliest opportunity after the attorney for a health care provider has notice of a potential health care malpractice claim or action, the attorney shall advise the health care provider about all reasonably available alternative dispute resolution options that may be available to the parties to settle the claim.

3. The claimant and health care provider shall make a good-faith effort to resolve part or all of the health care malpractice claim through alternative dispute resolution before the claimant initiates a health care malpractice action.

4. The attorneys for the claimant and health care provider shall state in the pleadings that they have complied with subsections 1 and 2 and that the parties have complied with subsection 3.

5. The court may sanction an attorney who fails to comply with subsections 1 or 2.

6. Notwithstanding section 28-26-01, the court may, upon a finding that a party refused to comply with subsection 3, award reasonable actual and statutory costs, including part or all of the attorney's fees to the prevailing party or parties.

Effective date. Within two years of the effective date of this chapter, each medical malpractice insurance provider shall file with the commissioner of insurance, pursuant to chapter 26.1-25, revised rates, rate schedules, or rate manuals for medical malpractice insurance coverages which reflect the projected impacts of this chapter and shall file a statement of the actual impacts of this chapter on the company's rates, rate schedules, or rate manuals no later than February first of each year in 1997, 1998, and 1999.

SECTION 30. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Medical assistance benefits - Eligibility criteria.

1. The department shall provide medical assistance benefits to otherwise eligible persons who are:

   a. Medically needy persons who have countable income that does not exceed an amount determined under subsection 2; and

   b. Minors who have countable income that does not exceed an amount determined under subsection 3.

2. The department of human services shall establish an income level for medically needy persons at an amount, no less than required by federal law, that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.

3. The department of human services shall establish income levels for minors, based on the age of the minors, at amounts, no less than required by federal law, that provide an income level for all minors born before September 30, 1983, equal to one hundred percent of the federal poverty level in the month for which eligibility for medical assistance benefits is being determined, and that do not exceed legislative appropriations for that purpose.

SECTION 31. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Provider reimbursement rates. If sufficient general fund appropriations are available to increase provider reimbursement rates, the department shall review reimbursement rates paid to providers under this chapter and shall increase the reimbursement rates accordingly.

SECTION 32. REPEAL. Section 26.1-17-12.1 of the North Dakota Century Code is repealed.

SECTION 33. HEALTH CARE COST AND QUALITY REVIEW PROGRAM. It is the intent of the legislative assembly that an amount equal to at least $1,000,000 from the general fund for the establishment of a health care cost and quality review program for the biennium beginning July 1, 1995, and ending June 30, 1997, be provided to the state department of health and consolidated laboratories in House Bill No. 1006. The department shall pursue funding from the Robert Wood Johnson foundation to help fund the operations of the health council.

SECTION 34. EXPANDED MEDICAL ASSISTANCE COVERAGE. It is the intent of the legislative assembly that an amount equal to at least $3,000,451 from the general fund for the purpose of expanding medical assistance coverage to children and pregnant women for the biennium beginning July 1, 1995, and ending June 30, 1997, be provided to the department of human services in Senate Bill No. 2012.

SECTION 35. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $20,000, or so much of the sum as may be necessary, to the supreme court if the court initiates a program to develop alternative dispute resolution options for

parties in disputes, including health care malpractice claims, for the biennium beginning July 1, 1995, and ending June 30, 1997.

SECTION 36. APPROPRIATION. There is hereby appropriated out of any moneys in the insurance regulatory trust fund, not otherwise appropriated, the sum of $96,920, or so much of the sum as may be necessary, to the commissioner of insurance for the purpose of implementing insurance reforms for the biennium beginning July 1, 1995, and ending June 30, 1997.

SECTION 37. APPLICATION OF ACT. The limitation on noneconomic damages in section 29 of this Act applies to injuries that occur after the effective date of this Act. The duties imposed on parties and counsel in the alternative dispute resolution provision of section 29 apply to health care malpractice claims that accrued before the effective date of this Act.

SECTION 38. RETROACTIVE APPLICATION OF ACT. Sections 4 through 13 of this Act apply retroactively to discussions and negotiations for cooperative agreements beginning after July 31, 1993, and any resulting cooperative agreements and certificates of public advantage.

SECTION 39. LEGISLATIVE COUNCIL STUDY - STUDY OF HEALTH INSURANCE COVERED SERVICES. The legislative council shall consider studying the feasibility and desirability of requiring mental health services and alcohol and drug addiction related services to be included as health insurance covered services. The study, if conducted, should include a review of other states' programs, the cost-benefit analysis, current treatment practices and results, and the actuarial impact of the inclusion of the services on health insurance plans.

SECTION 40. EMERGENCY. Sections 4 through 13 of this Act are declared to be an emergency measure.

Approved April 3, 1995
Filed April 3, 1995

CHAPTER 247

HOUSE BILL NO. 1321

(Representatives Poolman, Kliniske)

EPINEPHRINE ADMINISTRATION RULES

AN ACT to provide for the adoption of rules by the state health officer for the administration of epinephrine in emergency situations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State health officer may authorize the administration of epinephrine.

1. The state health officer may adopt rules to authorize laypersons to administer epinephrine to persons who have severe adverse reactions to insect stings.

2. A person authorized to administer epinephrine by the state health officer may obtain premeasured doses of epinephrine and the necessary paraphernalia for its administration from any licensed physician or pharmacist.

3. A person authorized to administer epinephrine by the state health officer is not civilly or criminally liable for any act or omission when acting in good faith while rendering emergency treatment to persons who have severe adverse reactions to insect stings, except when the conduct amounts to gross negligence.

Approved March 21, 1995
Filed March 23, 1995

CHAPTER 248

HOUSE BILL NO. 1185

(Representatives Rydell, Svedjan, Kerzman)
(Senators DeMers, Nalewaja, Traynor)

IMMUNIZATION DATA EXCHANGE

AN ACT to provide for the exchange of patient immunization data.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Immunization data. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange data in any manner with one another, with the patient's verbal or written consent, limited to the date and type of immunization administered to a patient, regardless of the date of the immunization, if the person requesting access to the immunization data provides services to the patient.

Approved March 28, 1995
Filed March 29, 1995

CHAPTER 249

SENATE BILL NO. 2154

(Judiciary Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

ENVIRONMENTAL PERMIT HEARINGS

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to environmental permit hearings conducted for purposes of receiving public comment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Permit hearings - Exemption from chapters 28-32 and 54-57. A permit hearing conducted for purposes of receiving public comment under chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, and 61-28.1 is not a contested case under chapter 28-32 and is not subject to the requirements of chapter 54-57.

Approved March 20, 1995
Filed March 20, 1995

CHAPTER 250

HOUSE BILL NO. 1318

(Representatives Rydell, Dobrinski)
(Senators Krebsbach, DeMers)

TRAUMA AND EMERGENCY MEDICAL SYSTEM

AN ACT to provide for a comprehensive trauma and emergency medical system; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Trauma system established - Duties of health council. The health council, in conjunction with the state department of health and consolidated laboratories, may establish and maintain a comprehensive trauma system for the state. The trauma system may include standards for the following components:

1. A system plan.

2. Prehospital emergency medical services.

3. Hospitals, for which the standards must include:

   a. Standards for designation, redesignation, and dedesignation of trauma centers.

   b. Standards for evaluation and quality improvement programs for designated trauma centers. The standards must require each trauma center to collect quality improvement data and to provide specified portions to the department for use in state and regional trauma quality improvement programs.

   c. Qualifications for trauma center personnel.

4. A trauma registry. Data in the trauma registry is not subject to subpoena or discovery or introduction into evidence in any civil action. Designated trauma centers must participate in the trauma registry. A hospital not designated as a trauma center must provide to the registry a minimum set of data elements for all trauma patients as determined by the health council.

5. A trauma quality improvement program to monitor the performance of the trauma system. The proceedings and records of the program are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter that is the subject of consideration by the program.

SECTION 2. Physician immunity for voluntary medical direction. A physician is immune from liability while providing voluntary medical direction.

SECTION 3. REPORT TO BUDGET SECTION. The state trauma program coordinator shall be available to report on the implementation and

effectiveness of the program to the budget section of the legislative council by October 1, 1996.

SECTION 4. APPROPRIATION. There is hereby appropriated out of any moneys from special funds derived from federal funds and from other income, the sum of $100,000, or so much of the sum as may be necessary, to the state department of health and consolidated laboratories for the purpose of establishing a comprehensive trauma and emergency medical system, for the biennium beginning July 1, 1995, and ending June 30, 1997.

Approved April 3, 1995
Filed April 3, 1995

CHAPTER 251

SENATE BILL NO. 2477

(Senator Heitkamp)
(Representatives Grumbo, Huether)

COUNTY HEALTH PROGRAMS DIRECTOR

AN ACT to create and enact two new subsections to section 23-05-02 of the North Dakota Century Code, relating to the powers and duties of county boards of health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[147] **SECTION 1.** Two new subsections to section 23-05-02 of the North Dakota Century Code are created and enacted as follows:

To appoint a director of health programs, subject to removal for cause by the board. The board may assign to the director the duties of the county health officer under sections 23-03-07 and 23-03-08. The director shall perform the duties under the direction of the county health officer.

To contract with any person to provide the services necessary to carry out the purposes of the board under this chapter and chapter 23-03.

Approved March 31, 1995
Filed April 3, 1995

[147] Section 23-05-02 was also amended by section 2 of House Bill No. 1058, chapter 243.

CHAPTER 252

HOUSE BILL NO. 1300

(Representatives Olson, Monson, Christopherson, Gunter)

COUNTY BURIALS

AN ACT to amend and reenact subsection 4 of section 23-06-03 of the North Dakota Century Code, relating to burial of the dead by county social service boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[148] **SECTION 1. AMENDMENT.** Subsection 4 of section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

4. If the deceased is survived by no person described by subsection 1 or 2 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for poor relief purposes or if residence cannot be established, then the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the burial or cremation. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses, but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars. The ~~cost of the burial must be paid by the~~ county social service board~~, subject to the following:~~

   ~~a. The sum of eight hundred dollars must be allowed for personal property and burial services furnished by a funeral director or funeral home.~~

   ~~b. The reasonable costs of transporting the body to the place of burial, but not exceeding one hundred dollars.~~

   ~~c. The cost of the grave box or vault, not to exceed the sum of two hundred thirty-five dollars, provided that a grave box or vault is required by the cemetery before a burial may be made.~~

   ~~d. The cost of a grave space, not to exceed the sum of one hundred seventy-five dollars.~~

   ~~e. Any grave opening and closing expenses, not to exceed the sum of one hundred seventy-five dollars.~~

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[148] Section 23-06-03 was also amended by section 3 of Senate Bill No. 2037, chapter 456.

~~Payment for services rendered or personal property furnished under subdivisions a, b, and e must be made to the funeral home or funeral director furnishing the same, while payment for a grave space, services rendered, or personal property furnished under subdivisions d and e must be made to the cemetery furnishing the same~~ shall pay the charge for funeral expenses as negotiated by the board of county commissioners, less any amount left by the deceased to defray the expenses.

Approved April 7, 1995
Filed April 7, 1995

CHAPTER 253

HOUSE BILL NO. 1314

(Representative Hagle)
(Senator Kelsh)

FOOD SALVAGE OPERATIONS

AN ACT to create and enact a new section to chapter 23-09 and a new subsection to section 23-09-17 of the North Dakota Century Code, relating to food salvage operations; and to amend and reenact subsections 2, 5, and 7 of section 23-09-01, sections 23-09.1-02.1, and 23-10-04 of the North Dakota Century Code, relating to definitions for purposes of the regulation of hotels, lodginghouses, restaurants, and boardinghouses and inspections of bed and breakfast facilities and mobile home parks, trailer parks, and campgrounds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[149] **SECTION 1. AMENDMENT.** Subsections 2, 5, and 7 of section 23-09-01 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. "Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or held out to the public as a place where food is furnished to regular boarders for periods of one week or more. A boardinghouse does not include a facility providing personal care directly or through contract as defined in section 23-09.3-01 or 50-24.5-01.

5. "Hotel" or "motel" includes every building or structure, or any part thereof, kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public for periods of less than one week, whether such accommodations are furnished with or without meals. A hotel or motel does not include a facility providing personal care directly or through contract services as defined in section 23-09.3-01 or 50-24.5-01.

7. "Lodginghouse" includes every building or structure, or any part thereof, with accommodations for four or more persons, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished to regular roomers for one week or more. A lodginghouse does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or 50-24.5-01.

SECTION 2. A new section to chapter 23-09 of the North Dakota Century Code is created and enacted as follows:

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[149] Section 23-09-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

Salvaged food - License required. It is unlawful for a person to claim to be a salvaged food distributor or to engage in the activity of selling, distributing, or otherwise trafficking in distressed or salvaged food, or both, at wholesale, without a license issued under section 23-09-17 authorizing that person to operate as a salvaged food distributor. A salvaged food distributor license may not be issued absent compliance with this section and any rules adopted to implement this section.

SECTION 3. A new subsection to section 23-09-17 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

For a salvaged food distributor, twenty-five dollars.

SECTION 4. AMENDMENT. Section 23-09.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

23-09.1-02.1. Inspection. The department shall inspect each bed and breakfast facility at least once ~~per year~~ every two years. Any duly authorized officer, employee, or agent of the department may enter and inspect any property or place on or at which a bed and breakfast facility is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules adopted under this chapter.

SECTION 5. AMENDMENT. Section 23-10-04 of the North Dakota Century Code is amended and reenacted as follows:

23-10-04. Inspection. The department shall inspect the premises as soon as practical after receiving an application for a mobile home park, trailer park, or campground license. If the department is satisfied from the application and inspection that the mobile home park, trailer park, or campground will not be a source of danger to the health and safety of the occupants or the general public, it shall notify the applicant of its approval of the application and of the amount of the license fee. The department shall have access to and may inspect mobile home parks, trailer parks, and campgrounds at reasonable times. The department shall inspect each mobile home park, trailer park, and campground at least once ~~a year~~ every two years.

Approved March 29, 1995
Filed March 29, 1995

CHAPTER 254

SENATE BILL NO. 2460

(Senators Lips, Nalewaja, Thane)
(Representatives Martinson, Payne, Skarphol)

CERTIFICATE OF NEED REQUIREMENT ELIMINATED

AN ACT to require a legislative council study of the state's elderly residents and a study of health care; to create and enact a new section to chapter 23-09.3 and a new section to chapter 23-16 of the North Dakota Century Code, relating to a moratorium on the expansion of long-term and basic care bed capacity; to amend and reenact sections 23-17.3-01 and 23-17.5-10 of the North Dakota Century Code, relating to references to certificates of need to expand hospital facilities; and to repeal chapter 23-17.2 and section 23-17.3-03 of the North Dakota Century Code, relating to certificates of need for expansion of hospital facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STUDY OF ELDERLY AND STUDY OF HEALTH CARE - REPORT TO LEGISLATIVE COUNCIL. In conjunction with the department of human services and the health council, the legislative council shall study, hold hearings, and prepare a comprehensive report on the appropriate quantity, distribution, and use of the state's resources and services in addressing the needs of the elderly residents of this state. In conjunction with the health council, the legislative council shall study, hold hearings, and prepare a comprehensive report on the certificate of need process and other means of planning and decisionmaking in relation to growth of the health care industry in North Dakota. The legislative council shall report its findings and recommendations, together with any legislation required to implement any recommendations in the report, to the fifty-fifth legislative assembly.

SECTION 2. A new section to chapter 23-09.3 of the North Dakota Century Code is created and enacted as follows:

Moratorium on expansion of basic care bed capacity. During the period after July 31, 1995, and before August 1, 1997, the state department of health and consolidated laboratories may not issue a license under this chapter for any additional bed capacity unless the expanded bed capacity was approved by the health council under chapter 23-17.2 before August 1, 1995.

SECTION 3. A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

Moratorium on expansion of long-term care bed capacity. Notwithstanding sections 23-16-06 and 23-16-10, during the period after July 31, 1995, and before August 1, 1997, the state department of health and consolidated laboratories may not issue a license for any additional bed capacity unless the expanded bed capacity was approved by the health council under chapter 23-17.2 before August 1, 1995.

[150] **SECTION 4. AMENDMENT.** Section 23-17.3-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-17.3-01. Definitions. In this chapter, unless the context and subject matter otherwise requires:

1. ~~"Certificate of need" means a certificate issued following the review process required pursuant to chapter 23-17.2 and rules and regulations promulgated thereunder.~~

~~2.~~ "Clinical record" means a written account which covers the services the agency provides directly and those provided through arrangements with another agency which account contains pertinent past and current medical, nursing, social, and other therapeutic information, including the plan of treatment.

~~3.~~ 2. "Department" means the state department of health and consolidated laboratories.

~~4.~~ 3. "Home health agency" means a public or private agency, organization, facility, or subdivision thereof which is engaged in providing home health services to individuals and families where they are presently residing for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.

~~5.~~ 4. "Home health aide" means an individual who renders personal related service under the supervision of a registered professional nurse.

~~6.~~ 5. "Home health services" means a broad range of health and social services furnished to individuals and families by a home health agency or by others under arrangements with the agency, in the places where the recipients are presently residing. Services must include the services of a currently licensed registered professional nurse and at least one other therapeutic service and may include additional support services. These services may only be provided with the approval of a licensed physician.

~~7.~~ 6. "Licensed practical nurse" means one who has met all legal requirements for licensure and holds a current license to practice in North Dakota pursuant to chapter 43-12.1.

~~8.~~ 7. "Nursing services" means those services pertaining to the preventive, curative, and restorative aspects of nursing care that are performed by or under the supervision of a registered professional nurse.

~~9.~~ 8. "Person" means an individual, firm, partnership, association, corporation, limited liability company, or any other entity, whether organized for profit or not.

~~10.~~ 9. "Physician" means any person currently licensed pursuant to chapter 43-17.

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[150] Section 23-17.3-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

~~11.~~ 10. "Registered professional nurse" means a registered nurse as defined under chapter 43-12.1.

~~12.~~ 11. "Skilled nursing" means professional nursing services rendered by nurses licensed under chapter 43-12.1.

~~13.~~ 12. "Supportive services" includes the use of medical appliances; medical supplies, other than drugs and biologicals prescribed by a physician; the collection of blood and other samples for laboratory analysis; and nutritional guidance, homemaker, or companion services.

~~14.~~ 13. "Therapeutic services" means services which include:

a. Skilled nursing care.

b. Medical social services.

c. Home health aide services.

d. Physical, occupational, or speech therapy.

e. Respiratory therapy.

[151] **SECTION 5. AMENDMENT.** Section 23-17.5-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-17.5-10. Effective certification - Validity - Application. A cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. If the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating a cooperative agreement is lawful conduct. This section does not immunize any person for conduct in negotiating a cooperative agreement for which an application for a certificate of public advantage is not filed. If the department or the district court determines that the applicants have not established by clear and convincing evidence that the likely benefits to health care consumers which result from a cooperative agreement outweigh any disadvantage attributable to a potential reduction in competition resulting from the agreement, the agreement is invalid and has no force or effect. This section does not exempt hospitals or other health care providers from compliance with laws governing hospital cost reimbursement. This chapter does not apply to any agreement among hospitals by which ownership or control over substantially all of the stock, assets, or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals. ~~Notwithstanding any provisions to the contrary, any improvements, construction, expansion, or acquisition of health care equipment or services approved as a condition of a cooperative agreement is not subject to laws governing certificate of need.~~

[151] Section 23-17.5-10 was also amended by section 11 of House Bill No. 1050, chapter 246.

* **SECTION 6. REPEAL.** Chapter 23-17.2 and section 23-17.3-03 of the North Dakota Century Code are repealed.

Approved March 21, 1995
Filed March 23, 1995

* SECTION 6 was affected as follows:

Section 23-17.2-02 was also amended by section 16 of Senate Bill No. 2070, chapter 54, and section 2 of House Bill No. 1058, chapter 243.

Section 23-17.2-09 was amended by section 2 of House Bill No. 1058, chapter 243.

CHAPTER 255

SENATE BILL NO. 2224

(Senator Tennefos)
(Representative Gorman)

INFORMED CONSENT FOR INCAPACITATED PERSONS

AN ACT to amend and reenact subsection 1 of section 23-12-13 of the North Dakota Century Code, relating to the order of priority of persons authorized to provide informed consent to health care for an incapacitated person.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-12-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Informed consent for health care for a minor patient or a patient who is determined by a physician to be an incapacitated person, as defined in subsection 2 of section 30.1-26-01, and unable to consent may be obtained from a person authorized to consent on behalf of the patient. Persons in the following classes and in the following order of priority ~~are authorized to~~ may provide informed consent to health care on behalf of the patient:

   a. ~~The appointed guardian or custodian of the patient, if any;~~

   ~~b.~~ The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions, unless a court of competent jurisdiction specifically authorizes a guardian to make medical decisions for the incapacitated person;

   b. The appointed guardian or custodian of the patient, if any;

   c. The patient's spouse who has maintained significant contacts with the incapacitated person;

   d. Children of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person;

   e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;

   f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;

   g. Grandparents of the patient who have maintained significant contacts with the incapacitated person;

h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or

i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person.

Approved March 10, 1995
Filed March 13, 1995

CHAPTER 256

SENATE BILL NO. 2299

(Senators DeMers, Goetz, Yockim)
(Representatives Olson, Dobrinski, Hagle)

PREHOSPITAL EMERGENCY MEDICAL SERVICES

AN ACT to amend and reenact section 23-27-04.1 of the North Dakota Century Code, relating to prehospital emergency medical services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.1 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.1. Emergency care or services rendered by officers, employees, or agents of ~~ambulance~~ prehospital emergency medical service - Physician medical direction. No officer, employee, or agent of any ~~ambulance~~ prehospital emergency medical service ~~licensed to operate in this state~~ and no physician licensed in this state who provides medical direction to any prehospital emergency medical service, who is a volunteer, who in good faith renders emergency care ~~or~~, services ~~at the scene of an accident, disaster, or other emergency, or in going to the scene, or en route to a treatment facility~~, or medical direction, is liable to the recipient of the emergency care ~~or~~, services, or medical direction for any civil damages resulting from any acts or omissions by the person in rendering the emergency care ~~or~~, services, or medical direction provided the person is properly trained according to law. For the purpose of this section, "volunteer" means an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination of expenses, reasonable benefits, and nominal fees to perform the services for which the individual volunteered, provided that the fees do not exceed twenty-four hundred dollars in any calendar year. For volunteer physicians providing medical direction to prehospital emergency medical services, the twenty-four hundred dollar maximum fees amount is to be calculated separately for each prehospital emergency medical service for which the physician volunteered medical direction. This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.

Approved March 6, 1995
Filed March 6, 1995

CHAPTER 257

HOUSE BILL NO. 1283

(Representatives Dobrinski, Grumbo)

PREHOSPITAL EMERGENCY MEDICAL SERVICE STATE ASSISTANCE

AN ACT to amend and reenact section 23-27-04.2 of the North Dakota Century Code, relating to state assistance for prehospital emergency medical services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[152] **SECTION 1. AMENDMENT.** Section 23-27-04.2 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.2. ~~Licensed ambulance~~ Prehospital emergency medical services - State assistance. The health services branch of the state department of health and consolidated laboratories shall assist in the training of personnel of certain ~~ambulance~~ prehospital emergency medical services ~~licensed under this chapter~~ as determined by the branch and financially shall assist certain ~~ambulance~~ prehospital emergency medical services ~~licensed under this chapter~~ as determined by the branch in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The health services branch shall adopt criteria for eligibility for assistance in the training of personnel of various types of ~~licensed ambulance~~ a prehospital emergency medical services. To qualify for financial assistance for equipment, a ~~licensed ambulance~~ prehospital emergency medical service shall certify, in the manner required by the health services branch, that the service has fifty percent of the amount of funds necessary for identified equipment acquisitions. The health services branch shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The health services branch may establish minimum and maximum amounts of financial assistance to be provided ~~an ambulance~~ a prehospital emergency medical service under this section. If applications for financial assistance exceed the amount of allocated and available funds, the health services branch may prorate the funds among the applicants in accordance with criteria adopted by the health services branch. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

Approved March 10, 1995
Filed March 13, 1995

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[152] Section 23-27-04.2 was also amended by section 2 of House Bill No. 1058, chapter 243.

CHAPTER 258

SENATE BILL NO. 2103

(Senators Solberg, Sand, Nalewaja)
(Representatives Drovdal, DeKrey, Klein)

SOLID WASTE MANAGEMENT DISTRICTS AND SURCHARGE

AN ACT to amend and reenact sections 23-29-06 and 23-29-07 of the North Dakota Century Code, relating to solid waste management districts and solid waste management facility permits; to repeal sections 23-29-06, 23-29-06.1, 23-29-06.2, 23-29-06.3, 23-29-06.4, 23-29-07.3, and 23-29-07.4 of the North Dakota Century Code, relating to the solid waste management districts and solid waste management surcharge; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-29-06. District solid waste management - ~~Penalty~~.

1. All land in ~~this state~~ Benson, Cavalier, Eddy, Ramsey, Rolette, Towner, Grand Forks, Nelson, Pembina, and Walsh counties must be within a solid waste management district.

2. ~~The boundaries of each district must be established pursuant to chapter 54-40.1 and as delineated by executive order of the governor number 1978-12, affirmed by executive order number 1986-4.~~

~~3.~~ The governing board of each solid waste management district must include a representative of each county within the district, one representative from cities within each county within the district, a representative of each city in the district which has a population of more than ten thousand, a representative of the licensed disposal facilities within the district, and a representative of the waste haulers within the district. Members representing political subdivisions must be appointed by the subdivisions involved. The members representing licensed disposal facilities and waste haulers must be selected by the members appointed by the political subdivisions from a list of candidates submitted by each of those groups. The members of the board may be the members of the regional planning councils appointed under subdivision a of subsection 1 of section 54-40.1-03.

~~4.~~ 3. The members of the district board annually shall select a chairman and vice chairman. Each member may receive compensation for service on the board and is entitled to reimbursement of expenses at the rate provided by law for state officials. Any compensation and reimbursement of expenses of the public entity representatives must be made by the governing bodies of the entities making the appointments to the district board and any compensation and reimbursement of expenses of the private entity representatives must be made by the private entity represented by the member.

~~5.~~ 4. A political subdivision may opt ~~out of one~~ to join another solid waste management district ~~and join another~~ if the board of ~~each~~ the district ~~involved~~ the political subdivision wishes to join consents ~~to the change~~.

~~6.~~ 5. Solid waste must be managed at solid waste management facilities identified in the district's solid waste management plan. ~~A person who violates this subsection is subject to a civil penalty not to exceed twenty-five thousand dollars per day per violation.~~

~~7. By January 1, 1992, the department shall adopt rules establishing guidelines for the submission of comprehensive solid waste management plans as required under subsection 8.~~

~~8.~~ 6. ~~By January 1, 1993, each solid waste management district shall submit a comprehensive solid waste management plan to the department for approval.~~ The plan must include the district's ability to properly manage and plan for adequate capacity, accessibility, and waste flow ~~control. The plan must take into consideration existing waste transportation patterns and the ability of existing landfills to handle solid waste~~.

~~9. By July 1, 1993, the department shall incorporate all of the district solid waste management plans into a comprehensive statewide solid waste management plan.~~

SECTION 2. AMENDMENT. Section 23-29-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-29-07. Permits.

1. The department may issue permits for solid waste management facilities and solid waste transporters. It is unlawful for any person to own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. ~~Upon submission to the department of an application for a solid waste management facility permit, the applicant shall provide written notice of the application to the solid waste management district board of the district in which the facility is to be located.~~ Upon receipt of a permit application, the department shall give public notice, in the official newspaper of the county in which the facility is to be located, that the department is considering an application for a solid waste management facility. The notice must state the name of the applicant, the location of the facility, and a description of the facility. The department shall require as a condition of a permit for a solid waste management facility, not owned or operated by the state or a political subdivision, that any entity that controls the permitholder agrees to accept responsibility for any remedial measures, closure and postclosure care, or penalties incurred by the permitholder. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting shares of a permitholder, or the direct or indirect power to control in any manner the election of a majority of the directors of a permitholder, or to direct the management or policies of a permitholder, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. All permits are nontransferable, are for a term of not more than ten years from the date of issuance, and are conditioned upon the observance of the laws of the state and the rules adopted under this

chapter. ~~If the jurisdiction with zoning authority over the area in which the solid waste management facility is to be located has not held a public hearing regarding the siting of the facility, the solid waste management district board of the district in which the facility is to be located shall conduct a public meeting to receive comments regarding the siting of the facility before the department may issue a permit for the facility. If the solid waste management district board conducts a public meeting, the board shall forward a copy of the meeting minutes to the department.~~

2. For any permit application completed after July 1, 1994, the department shall notify the board of county commissioners of a county in which a new solid waste management facility will be located of the department's intention to issue a permit for the facility. The board of county commissioners may call a special election to be held within sixty days after receiving notice from the department to allow the qualified electors of the county to vote to approve or disapprove of the facility based on public interest and impact on the environment. If a majority of the qualified electors voting in the election vote to disapprove of the facility, the department may not issue the permit and the facility may not be located in that county.

3. Notwithstanding subsection 2, if the new solid waste management facility for which the permit application was completed after July 1, 1994, will be owned or operated by a solid waste management ~~district board established under section 23-29-06~~ authority, a special election to approve or disapprove of a facility may be called only if the boards of county commissioners from a majority of the counties in the solid waste management district call for a special election. However, a special election must be conducted in each county within the ~~district~~ authority. If a majority of the qualified electors voting in the election vote to disapprove of the facility, the department may not issue the permit.

4. Subsections 2 and 3 do not apply to a solid waste management facility operated as part of an energy conversion facility or part of a surface coal mining and reclamation operation, if the solid waste management facility disposes of only waste generated by the energy conversion facility or surface coal mining and reclamation operation.

SECTION 3. REPEAL. Sections 23-29-06.2, 23-29-06.3, and 23-29-07.3 of the North Dakota Century Code and sections 23-29-06.4 and 23-29-07.4 of the 1993 Supplement to the North Dakota Century Code are repealed.

SECTION 4. REPEAL. Section 23-29-06.1 of the North Dakota Century Code and section 23-29-06 of the 1993 Supplement to the North Dakota Century Code are repealed.

SECTION 5. EFFECTIVE DATE. Section 4 of this Act becomes effective on August 1, 1997.

Approved April 12, 1995
Filed April 13, 1995