

# MENTALLY ILL AND RETARDED, TUBERCULAR, BLIND, AND DEAF

## CHAPTER 265

### SENATE BILL NO. 2350

(Senator Nething)

## HUMAN SERVICES LAND CONVEYANCE TO JAMESTOWN

AN ACT to authorize the director of the department of human services to convey certain state-owned land to the city of Jamestown, North Dakota.

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

### SECTION 1. Transfer of land authorized.

1. The director of the department of human services may convey to the city of Jamestown, North Dakota, land owned by the state which is located in Stutsman County and described as follows:
  - a. That portion of section five, township one hundred thirty-nine north, range sixty-three west, which runs in a northwest-southeast direction, being bound by that certain township road on the north and east and by the Burlington northern railroad right of way on the west and south, excepting all that portion lying within the right of way of interstate highway 94 and the township road. This tract of land comprises approximately eighty-six acres.
  - b. That portion of the north half of the north half of section five, township one hundred thirty-nine north, range sixty-three west, which runs in an east-west direction lying in the northeast corner thereof and including a one-hundred-foot wide tract which extends along a north boundary and immediately adjacent to the south boundary of interstate 94, excepting all that portion lying within the right of way of interstate highway 94. This tract contains approximately fifty-six acres.
2. Any conveyance of the land described in subdivision a of subsection 1 must include a covenant or restriction that the land may not be used for the primary treatment of waste.
3. The conveyance authorized by this Act is exempt from sections 54-01-05.2 and 54-01-05.5.
4. All moneys realized from the sale must be deposited in the general fund in the state treasury.

5. The attorney general shall review and approve as to form and legality all legal documents required for the conveyance authorized by this Act, including title opinions.

Approved April 6, 1995  
Filed April 6, 1995

## CHAPTER 266

## HOUSE BILL NO. 1376

(Representatives Svedjan, Mutzenberger)  
(Senators Bowman, W. Stenehem)

SUPERINTENDENT OF STATE HOSPITAL  
QUALIFICATIONS

AN ACT to create and enact a new section to chapter 25-10 of the North Dakota Century Code, relating to a unified mental health delivery system; and to amend and reenact sections 25-01-03, 25-02-01.1, and 25-02-04 of the North Dakota Century Code, relating to the qualifications and appointment of the superintendent and the medical director of the state hospital and requirements for the formation of a state hospital governing body and delivery of mental health services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-01-03 of the North Dakota Century Code is amended and reenacted as follows:

25-01-03. Supervising officer to appoint superintendent of institutions - Salaries - Removal. The supervising officer shall appoint a superintendent for each of the institutions under its control, except for the state hospital, where the supervising officer shall appoint a superintendent and a medical director in consultation with a state hospital governing body. The tenure of office of each ~~such~~ superintendent is two years from the date of ~~his~~ the superintendent's appointment, and ~~he shall~~ the superintendent must possess ~~such~~ qualifications ~~as are~~ required by ~~the provisions~~ of this title. Any ~~such~~ superintendent may be removed by the supervising officer for misconduct, neglect of duty, incompetency, or other proper cause showing ~~his~~ the superintendent's inability or refusal properly to perform the duties of ~~his~~ office, but ~~such~~ a removal at a time other than a termination of ~~his~~ the superintendent's two-year tenure may be had only after an opportunity is given to ~~such~~ the person to be heard before a board consisting of the governor, attorney general, and supervising officer of ~~such~~ the institution on preferred written charges. A removal when made, however, is final. The supervising officer shall fix the compensation of each ~~such~~ superintendent within the limits prescribed in this title and within the appropriations made by the legislative assembly for ~~such~~ compensation.

SECTION 2. AMENDMENT. Section 25-02-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-02-01.1. Maintenance of state hospital accreditation - Governing body membership - Rulemaking authority.

1. The department of human services shall seek appropriations and resources sufficient to ensure maintenance of the state hospital's accreditation by the joint commission on accreditation of health care organizations and certification by the health care financing administration or by similar accrediting and certifying organizations and agencies possessing hospital standards recognized by the health care industry and accepted by the department.

2. The department, in consultation with the state hospital, shall create a state hospital governing body and shall by rules describe the powers and duties of the governing body. The department shall compensate and reimburse members not employed by the department in the same manner and amount as members of the legislative council are compensated and reimbursed under section 54-35-10.
3. The governing body must be composed of the executive director of the department of human services; the director of the division of mental health services of the department, who shall serve as chairman of the governing body; the state hospital superintendent; the state hospital medical director; the performance improvement coordinator; a representative of the fiscal management of the state hospital; a mental health services consumer selected by the mental health association; and a legislator selected by the legislative council. The governing body may include other persons as appointed by the governing body.

SECTION 3. AMENDMENT. Section 25-02-04 of the North Dakota Century Code is amended and reenacted as follows:

25-02-04. Superintendent to possess certain qualifications - Medical director - Employees. The superintendent of the state hospital must be a board eligible or board certified psychiatrist. A board eligible psychiatrist appointed as superintendent after July 1, 1989, must accomplish board certification within three years after the date of appointment. The superintendent shall appoint with the approval of the executive director of the department of human services an assistant superintendent of administration who must be under the superintendent's supervision and who must be a qualified and experienced hospital administrator. The superintendent shall appoint and employ the professional staff and define their qualifications and duties skilled health care administrator with professional training and experience relating to the management of facilities for mentally ill and chemically dependent persons and relating to the needs of the mentally ill and chemically dependent persons. A medical director, who must be a licensed physician and board-certified psychiatrist, shall appoint and employ all physicians and clinical staff, define their qualifications and duties, and be responsible for the organization and delivery of medical services at the state hospital. If the superintendent is not a licensed physician and board-certified psychiatrist, the medical director, or a qualified designee of the medical director, shall act as the superintendent's designee in all matters in which the superintendent's opinion on medical or clinical treatment is required by law. Every physician on the professional staff must have a license issued by the state board of medical examiners. The assistant superintendent shall employ such other personnel as may be necessary and shall define their qualifications and duties.

SECTION 4. A new section to chapter 25-10 of the North Dakota Century Code is created and enacted as follows:

Unified mental health delivery system. The division of mental health services shall plan, develop, implement, and supervise a unified mental health delivery system. The system must include the mental health services provided by the regional human service centers, the state hospital, and contracted services with providers in accordance with the state mental health plan.

Approved April 5, 1995

Filed April 5, 1995

**CHAPTER 267****SENATE BILL NO. 2506**  
(Senators Streibel, Naaden, St. Aubyn)**PROTECTION AND ADVOCACY COMMITTEE  
MEMBERSHIP**

AN ACT to amend and reenact section 25-01.3-02 and subsection 13 of section 25-01.3-06 of the North Dakota Century Code, relating to the members of the committee on protection and advocacy and the authority of the project; to provide for a report to the budget section of the legislative council; and to provide for application of this Act.

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

**SECTION 1. AMENDMENT.** Section 25-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.3-02. Committee on protection and advocacy.** The governor shall appoint a committee on protection and advocacy. The committee must consist on protection and advocacy consists of seven members who broadly represent or are knowledgeable about the needs of the persons served by the protection and advocacy project. The governor shall appoint two members on August 1, 1995. The legislative council shall appoint one member from each house of the legislative assembly on August 1, 1995. The governing board of the North Dakota association for retarded citizens shall appoint one member of the association on August 1, 1995. The governing board of people first of North Dakota shall appoint one member of the association on August 1, 1995. The mental health consumer advocates of North Dakota, inc., shall appoint one of its members on August 1, 1995. The members appointed by the North Dakota association for retarded citizens, people first of North Dakota, and the mental health consumer advocates of North Dakota, inc., must include individuals with disabilities who are eligible for services or parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who are eligible for services. Each member appointed by the governor and the legislative council shall serve for a term of two years and until a successor is appointed. The remaining three members shall serve a term of three years and until a successor is appointed. A member may not serve more than six consecutive years. If any vacancy occurs on the committee, the appointing authority shall appoint an individual to fill the vacancy for the remainder of the term, but if the federal government designates a member ineligible, the original appointing body shall fill the vacancy for the unexpired term in a manner that is consistent with federal eligibility requirements. Any vacancy on the committee must be filled within sixty days after the date on which the vacancy occurs. The committee is responsible for and shall adopt rules for the administrative supervision and direction and for the planning, design, implementation, and functioning of the project. The committee shall develop a formal process to review complaints from providers or other persons concerning protection and advocacy activities. The committee in its capacity of supervising and directing the project shall operate independently of the governor or any state agency that provides treatment, services, or habilitation to persons with developmental disabilities or mental illness. The governor, upon compliance with federal law and regulations, may redesignate the agency responsible for carrying out the responsibilities of the project under this chapter.

**SECTION 2. AMENDMENT.** Subsection 13 of section 25-01.3-06 of the North Dakota Century Code is amended and reenacted as follows:

13. Contract with any person, public or private, to carry out any responsibilities of the project under this chapter and sections 25-01-01.1, 50-26-01, 50-26-03, 50-26-04, and ~~57-27-03~~ 50-27-03.

**SECTION 3. REPORT TO BUDGET SECTION.** During the 1995-96 interim, the committee on protection and advocacy shall address the concerns raised in the 1995 performance audit report of the North Dakota protection and advocacy project and the report of the panel of special masters. The committee shall report its progress in addressing these issues to the budget section of the legislative council at the request of the chairman.

**SECTION 4. APPLICATION.** The term of office of any member of the committee on protection and advocacy whose term is not due to end on August 1, 1995, ceases on the effective date of this Act.

Approved April 5, 1995  
Filed April 6, 1995

**CHAPTER 268****SENATE BILL NO. 2430**

(Senator Wogsland)

**STATE HOSPITAL TREATMENT PLANS**

AN ACT to create and enact two new subsections to section 25-03.1-40 of the North Dakota Century Code, relating to rights of patients; and to amend and reenact section 25-03.1-24 of the North Dakota Century Code, relating to the right to treat.

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

**SECTION 1. AMENDMENT.** Section 25-03.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-24. Right to treat.** State hospital or treatment facility personnel ~~shall be able to~~ may treat a patient with prescribed medication or a less restrictive alternative if, in the opinion of a psychiatrist or physician, these treatments are necessary to prevent bodily harm to the patient or others or to prevent imminent deterioration of the respondent's physical or mental condition and there is not time to obtain a court order. ~~Nothing in this~~ This chapter ~~may be deemed to~~ does not prohibit a hospital from rendering emergency medical care without the need for consultation, if in the exercise of sound medical judgment that care is immediately necessary for the well-being of the patient and delay would endanger the life of or adversely and substantially affect the health of the patient.

**SECTION 2.** Two new subsections to section 25-03.1-40 of the 1993 Supplement to the North Dakota Century Code are created and enacted as follows:

In a manner appropriate to the patient's capabilities, to ongoing participation in the planning of services.

Not to be required to participate in the development of an individual treatment plan.

Approved April 11, 1995  
Filed April 12, 1995

**CHAPTER 269**

**SENATE BILL NO. 2381**  
(Senators W. Stenehjerm, B. Stenehjerm)  
(Representatives Delmore, Kelsch)

**DETENTION OF MENTALLY ILL OR CHEMICALLY  
DEPENDENT PERSONS**

AN ACT to amend and reenact subsection 1 of section 25-03.1-25 of the North Dakota Century Code, relating to detention of mentally ill or chemically dependent individuals.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 25-03.1-25 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 1. When a peace officer, physician, psychiatrist, psychologist, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that person, other persons, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician, psychiatrist, psychologist, or mental health professional may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26, except that if emergency conditions exist that prevent the immediate conveyance of the individual to a public treatment facility, a private facility that has adequate resources and capacity to hold that individual may hold the individual in anticipation of conveyance to a public treatment facility for up to twenty-three hours:
  - a. Without conducting an immediate examination required under section 25-03.1-26; and
  - b. Without following notice and hearing requirements for a transfer to another treatment facility required under subsection 3 of section 25-03.1-34.

Approved March 15, 1995  
Filed March 15, 1995



**CHAPTER 270****SENATE BILL NO. 2418**

(Senators Mathern, W. Stenehjem)

(Representative Hausauer)

**CHEMICALLY DEPENDENT NONRESIDENT  
TRANSPORTATION**

AN ACT to provide for the transporting of nonresident chemically dependent patients; and to declare an emergency.

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

**SECTION 1. Exchange of chemically dependent patient or prisoner.** The director of the department of human services, a county, a city, or a local law enforcement agency may enter into reciprocal agreements with the appropriate authorities of any other state regarding the mutual exchange, return, and transportation of chemically dependent or mentally ill patients or prisoners who are treated or confined in hospitals of one state for treatment of chemical dependency or mental illness but who have legal residence in another state.

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

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 271****SENATE BILL NO. 2523**

(Senator Wanzek)

(Representatives Carlisle, Hanson, Poolman)

**TREATMENT FACILITY PATIENT RECORD  
CONFIDENTIALITY**

AN ACT to amend and reenact subsection 5 of section 25-03.1-43 of the North Dakota Century Code, relating to the confidentiality of records of treatment facility patients.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 25-03.1-43 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Persons doing research or maintaining health statistics, if the anonymity of the patient is assured, ~~the patient's consent is given,~~ and the facility recognizes the project as a bona fide research or statistical undertaking.

Approved March 2, 1995

Filed March 3, 1995

## CHAPTER 272

### HOUSE BILL NO. 1056

(Legislative Council)  
 (Interim Legislative Audit and Fiscal Review Committee)  
 (Representative Aarsvold)  
 (Senator Tallackson)

### HUMAN SERVICES WRITEOFF REPORTS

AN ACT to amend and reenact sections 25-04-17 and 50-06.3-08 of the North Dakota Century Code, relating to the timing of reports by the department of human services on the reduction or writeoff of accounts receivable.

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

**SECTION 1. AMENDMENT.** Section 25-04-17 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-17. Reduction or writeoff of accounts - Report to legislative audit and fiscal review committee.** The supervising department may authorize the reduction or writeoff of a patient's past due account from the developmental center's financial records upon determining that the account is not collectible. The supervising department, ~~thirty days~~ by September first after the close of each fiscal year, shall present a detailed report to the legislative audit and fiscal review committee on the status of accounts receivable for that fiscal year. The report must include:

1. An aging by patient classification of accounts remaining unpaid.
2. The amounts by patient classification by which accounts were reduced or written off for reasons other than payment during that fiscal year.

**SECTION 2. AMENDMENT.** Section 50-06.3-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.3-08. Reduction or writeoff of accounts - Reports required.** The department may authorize the reduction or writing off of a recipient's or patient's past due account from the department's financial records upon making a determination that the account is not collectible. The department, ~~thirty days~~ by September first after the close of each fiscal year, shall present a detailed report to the legislative audit and fiscal review committee on the status of accounts receivable for that fiscal year; ~~which.~~ The report must include the following:

1. An aging by recipient classification of accounts remaining unpaid.
2. The amounts by recipient classification by which accounts were reduced or written off for reasons other than payment during that fiscal year.

Approved March 1, 1995  
 Filed March 1, 1995

**CHAPTER 273**

**HOUSE BILL NO. 1378**

(Representatives Gorman, Boucher, Rydell)  
(Senators Nalewaja, Thane, DeMers)

**DEVELOPMENTALLY DISABLED FACILITY RETURN  
ON INVESTMENT LIMITS**

AN ACT to create and enact a new section to chapter 25-16 of the North Dakota Century Code, relating to residential care and services for the developmentally disabled.

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

**SECTION 1.** A new section to chapter 25-16 of the North Dakota Century Code is created and enacted as follows:

**Maximum annual return on investment.** Profit-motivated institutions or facilities must be allowed an annual return on investment in fixed assets related to client care. The maximum return on investment must be established based upon the existing debt divided by original asset cost and must be determined as follows:

Annual average percentage debt to annual average assets	Return
51 to 80 percent -	2 percent return on original cost of fixed assets
0 to 50 percent -	3 percent return on original cost of fixed assets

Approved April 5, 1995  
Filed April 5, 1995

**CHAPTER 274****SENATE BILL NO. 2489**

(Senator Lips)

**DEPRECIATION RECAPTURE FOR  
DEVELOPMENTALLY DISABLED PROVIDERS**

AN ACT to create and enact a new section to chapter 25-16 of the North Dakota Century Code, relating to depreciation recapture from treatment or care centers for the developmentally disabled.

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

**SECTION 1.** A new section to chapter 25-16 of the North Dakota Century Code is created and enacted as follows:

**Depreciation recapture on the sale of fixed assets.** When a treatment or care center licensed under this chapter, after the effective date of this Act, sells fixed assets or otherwise removes the assets from service in or to the center, any depreciation expense included in setting the rate paid by the department to that center asserted with respect to that asset is subject to depreciation recapture. The depreciation recapture is to the extent that the sale or disposal price exceeds the undepreciated value of the asset except:

1. If the facility has been owned for twenty years or longer there may be no recapture of depreciation; or
2. If the facility has been owned for more than ten years but for less than twenty years, the depreciation recapture amount must be reduced by ten percent times the number of years the facility is owned after the tenth year.

Approved March 24, 1995  
Filed March 27, 1995

**CHAPTER 275****HOUSE BILL NO. 1379**

(Representatives Gorman, Boucher, Rydell)  
(Senators Nalewaja, Thane, DeMers)

**DEVELOPMENTALLY DISABLED FACILITY OWNER  
COMPENSATION LIMITS**

AN ACT to create and enact a new section to chapter 25-16 of the North Dakota Century Code, relating to residential care and services for the developmentally disabled.

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

**SECTION 1.** A new section to chapter 25-16 of the North Dakota Century Code is created and enacted as follows:

**Owner compensation for services provided.** For-profit companies may compensate working owners and their families for time worked on behalf of the organization. The amount of total annual compensation allowed for an owner acting in an executive or administrative capacity is limited as follows:

Number of clients served	Compensation limit
1 - 15	\$25,000
16 - 30	\$35,000
31 - 45	\$45,000
46 +	\$50,000

The limits in this section are intended to be the total compensation allowed by this state in any one year regardless of the number of owners performing work for the company. A proration of the total compensation for owners who perform services for this state and who perform services for other states must be made on the basis of individual time distribution records.

For family members working in direct care, housekeeping, maintenance, dietary, or clerical positions, wages are limited to the wage paid to any nonrelated employee, with the same qualifications and experience, working in a similar job function for that organization. The allowable compensation limit is inclusive of all salaries and related fringe benefits and may not be construed to be an addition nor enhancement to the current budgetary process in effect on the effective date of this Act.

Approved April 7, 1995  
Filed April 7, 1995