

**SECOND ENGROSSMENT
with Senate Amendments**

Fifty-seventh
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1109

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new section to chapter 50-24.5 and a new subsection to
2 section 50-24.5-02 of the North Dakota Century Code, relating to registration fees,
3 requirements, and complaints to the department of human services regarding assisted living
4 facilities; to amend and reenact subsection 2 of section 23-09-01, subsection 1 of section
5 23-09.3-01, and sections 50-24.5-01 and 50-24.5-04 of the North Dakota Century Code,
6 relating to requiring assisted living facilities to be licensed as boardinghouses, definitions, and
7 limits on cost of services provided; to repeal section 23-09.3-03 of the North Dakota Century
8 Code, relating to choice of pharmacy services; and to provide an effective date.

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

10 **SECTION 1. AMENDMENT.** Subsection 2 of section 23-09-01 of the 1999
11 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12 2. "Boardinghouse" includes every building or structure, or any part thereof, with
13 accommodations for four or more boarders, which is kept, used, maintained,
14 advertised, or held out to the public as a place where food is furnished to regular
15 boarders for periods of one week or more. The term does not include a facility
16 providing personal care directly or through contract as defined in section
17 23-09.3-01 ~~or 50-24.5-01~~.

18 **SECTION 2. AMENDMENT.** Subsection 1 of section 23-09.3-01 of the 1999
19 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20 1. "Basic care facility" means a residence, not licensed under chapter 23-16 by the
21 department, that provides room and board to five or more individuals who are not
22 related by blood or marriage to the owner or manager of the residence and who,
23 because of impaired capacity for independent living, require health, social, or

personal care services, but do not require regular twenty-four-hour medical or nursing services and:

a. Makes response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual; or

b. Is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility.

SECTION 3. AMENDMENT. Section 50-24.5-01 of the North Dakota Century Code is amended and reenacted as follows:

50-24.5-01. (Effective through June 30, 2001) Definitions. In this chapter, unless the context otherwise requires:

1. "Aged" means at least sixty-five years of age.
2. "Assisted living" means an environment where a person lives in an apartment-like unit and receives services on a twenty-four-hour basis to accommodate that person's needs and abilities to maintain as much independence as possible.
3. "Basic care facility" means a facility defined in section 23-09.3-01 which is not owned or operated by the state.
4. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
5. "Congregate housing" means housing shared by two or more persons not related to each other which is not provided in an institution.
6. "County agency" means the county social service board.
7. "Department" means the department of human services.
8. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
9. "Eligible beneficiary" means a resident of this state who:
 - a. (1) Is aged; or
 - (2) Is at least eighteen years of age and is disabled or blind;
 - b. Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that a person who was eligible

to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before January 1, 1995, is not ineligible because that person is not eligible to receive benefits under title XIX;

c. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:

(1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or a licensed basic care facility, or

(2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and

d. Is determined to be eligible pursuant to rules adopted by the department.

10. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to four or more persons who are not related to the proprietor.

11. "Living independently" includes living in congregate housing. The term does not include living in an institution.

12. "Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.

13. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.

14. "Would be eligible to receive the cash benefits except for income" refers to a person whose countable income, less the cost of necessary remedial care that may be provided under this chapter, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] which the person would receive if the person had no income, plus forty-five dollars.

1 **(Effective July 1, 2001) Definitions.** In this chapter, unless the context otherwise
2 requires:

3 1. "Activities of daily living" means bathing, dressing, toileting, transferring, eating,
4 bed mobility, medication management, and personal hygiene.

5 2. "Aged" means at least sixty-five years of age.

6 2- 3. "Assisted living facility" means any building or structure containing a facility that:

7 a- ~~Makes response staff available at all times;~~

8 b- ~~Provides housing and:~~

9 (1) ~~Congregate meals;~~

10 (2) ~~Kitchen facilities in each resident's living quarters; or~~

11 (3) ~~Any combination of congregate meals and kitchen facilities in each~~
12 ~~resident's living quarters sufficient to assure each resident adequate~~
13 ~~access to meals;~~

14 e- ~~Assures provision of:~~

15 (1) ~~Personal care, therapeutic care, and social and recreational~~
16 ~~programming;~~

17 (2) ~~Supervision, safety, and security;~~

18 (3) ~~Medication services; and~~

19 (4) ~~Transportation services;~~

20 d- ~~Fosters dignity, respect, and independence by allowing, to the maximum~~
21 ~~extent feasible, each resident to determine the resident's service providers,~~
22 ~~routines of care provision, and service delivery; and~~

23 e- ~~Serves five or more adult residents, unrelated to the proprietor, on a specified~~
24 ~~premises not licensed under chapter 23-20 or 25-16, which meets the~~
25 ~~requirements of the national fire protection association 101 Life Safety Code,~~
26 ~~as applicable.~~

27 series of living units operated as one business entity to provide services for five or
28 more individuals who are aged or disabled adults and who are not related by blood
29 or marriage to the owner or manager of the entity and which is kept, used,
30 maintained, advertised, or held out to the public as a place that makes available
31 individualized support services to accommodate an individual's needs and abilities

to maintain as much independence as possible. It does not include a facility that is licensed as a basic care facility or a congregate housing facility.

3- 4. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

4- 5. "Congregate housing" means housing shared by two or more ~~persons~~ individuals not related to each other which is not provided in an institution.

5- 6. "County agency" means the county social service board.

6- 7. "Department" means the department of human services.

7- 8. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

8- 9. "Eligible beneficiary" means a resident of this state who:

a. (1) Is aged; or

(2) Is at least eighteen years of age and is disabled or blind;

b. Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that ~~a person~~ an individual who was eligible to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before January 1, 1995, is not ineligible because that ~~person~~ individual is not eligible to receive benefits under title XIX;

c. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:

(1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or an assisted living facility; or

(2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and

d. Is determined to be eligible pursuant to rules adopted by the department.

- 1 10. "Individualized support services" means services designed to provide assistance to
2 adults who may have physical or cognitive impairments and who require at least a
3 moderate level of assistance with one or more activities of daily living.
- 4 ~~9.~~ 11. "Institution" means an establishment that makes available some treatment or
5 services beyond food or shelter to five or more ~~persons~~ individuals who are not
6 related to the proprietor.
- 7 12. "Instrumental activities of daily living" means activities to support independent
8 living including housekeeping, shopping, laundry, transportation, and meal
9 preparation.
- 10 ~~10.~~ 13. "Living independently" includes living in congregate housing. The term does not
11 include living in an institution.
- 12 14. "Living unit" means a portion of an assisted living facility occupied as the living
13 quarters of an individual who has entered into a lease agreement with the assisted
14 living facility.
- 15 ~~11.~~ 15. "Proprietor" means ~~a person~~ an individual responsible for day-to-day
16 administration and management of a facility.
- 17 ~~12.~~ 16. "Qualified service provider" means a county agency or independent contractor who
18 agrees to meet standards for services and operations established by the
19 department.
- 20 17. "Related by blood or marriage to the owner or manager" means an individual who
21 is a spouse or former spouse of the owner or manager or is a parent, stepparent,
22 grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother,
23 sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager
24 or the owner or manager's spouse or former spouse.
- 25 ~~13.~~ 18. "Related to the proprietor" means ~~a person~~ an individual who is a proprietor's
26 spouse or former spouse, or a parent, stepparent, grandparent, stepgrandparent,
27 child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister,
28 stepbrother, or stepsister of a proprietor or proprietor's spouse or former spouse.
- 29 ~~14.~~ 19. "Remedial care" means services that produce the maximum reduction of an
30 eligible beneficiary's physical or mental disability and the restoration of an eligible
31 beneficiary to the beneficiary's best possible functional level.

20. "Tenant" means an adult individual who has entered into a lease agreement with an assisted living facility.

~~15.~~ 21. "Would be eligible to receive the cash benefits except for income" refers to a person an individual whose countable income, less the cost of necessary remedial care that may be provided under this chapter, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] which the person individual would receive if the person individual had no income, plus forty five sixty dollars.

SECTION 4. A new subsection to section 50-24.5-02 of the North Dakota Century Code is created and enacted as follows:

Establish a method to receive complaints related to assisted living facilities and to forward the complaints to the appropriate agency for investigation.

SECTION 5. A new section to chapter 50-24.5 of the North Dakota Century Code is created and enacted as follows:

Registration of assisted living facilities.

1. An individual, institution, organization, limited liability company, or public or private corporation keeping, operating, conducting, managing, maintaining, advertising, or using the term "assisted living" in its advertising shall register annually with the department.
2. An assisted living facility shall pay to the department an annual registration fee of seventy-five dollars for each facility. Registration fees collected under this section must be deposited in the department of human services operating fund in the state treasury. Any expenditure from the fund is subject to appropriation by the legislative assembly.
3. The department shall establish rules governing the annual registration of an assisted living facility to regulate the application for, approval, denial, revocation, and requirements of registration. The department shall involve the facilities in the rulemaking process.
4. An individual, institution, organization, limited liability company, or public or private corporation may not operate or market its facility or services as an assisted living

1 facility unless it has registered with the department as an assisted living facility and
2 that registration has been approved by the department.

3 5. After the fifty-ninth day following the notification of noncompliance with annual
4 registration, the department may assess a fine of up to fifty dollars per day against
5 any individual, institution, organization, limited liability company, or public or private
6 corporation that provides assisted living services or uses the term assisted living in
7 its marketing without a registration approved by the department. Fines collected
8 under this section must be deposited in the department of human services
9 operating fund in the state treasury. Any expenditure from the fund is subject to
10 appropriation by the legislative assembly.

11 6. Religious orders providing assistance with activities of daily living or instrumental
12 activities of daily living to vowed members residing in the order's retirement
13 housing are not subject to this chapter.

14 **SECTION 6. AMENDMENT.** Section 50-24.5-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **50-24.5-04. Services provided - Limit on cost.** Services provided under this chapter
17 must be treated as necessary remedial care to the extent those services are not covered under
18 the medical assistance program. The cost of the services provided under this chapter to a
19 person residing in a basic care or adult family foster care facility for which the rate charged
20 includes room and board is limited to the rate set for services in that facility, plus ~~forty-five~~ sixty
21 dollars, less that person's total income.

22 **SECTION 7. REPEAL.** Section 23-09.3-03 of the North Dakota Century Code is
23 repealed.

24 **SECTION 8. EFFECTIVE DATE.** This Act becomes effective on July 1, 2001.